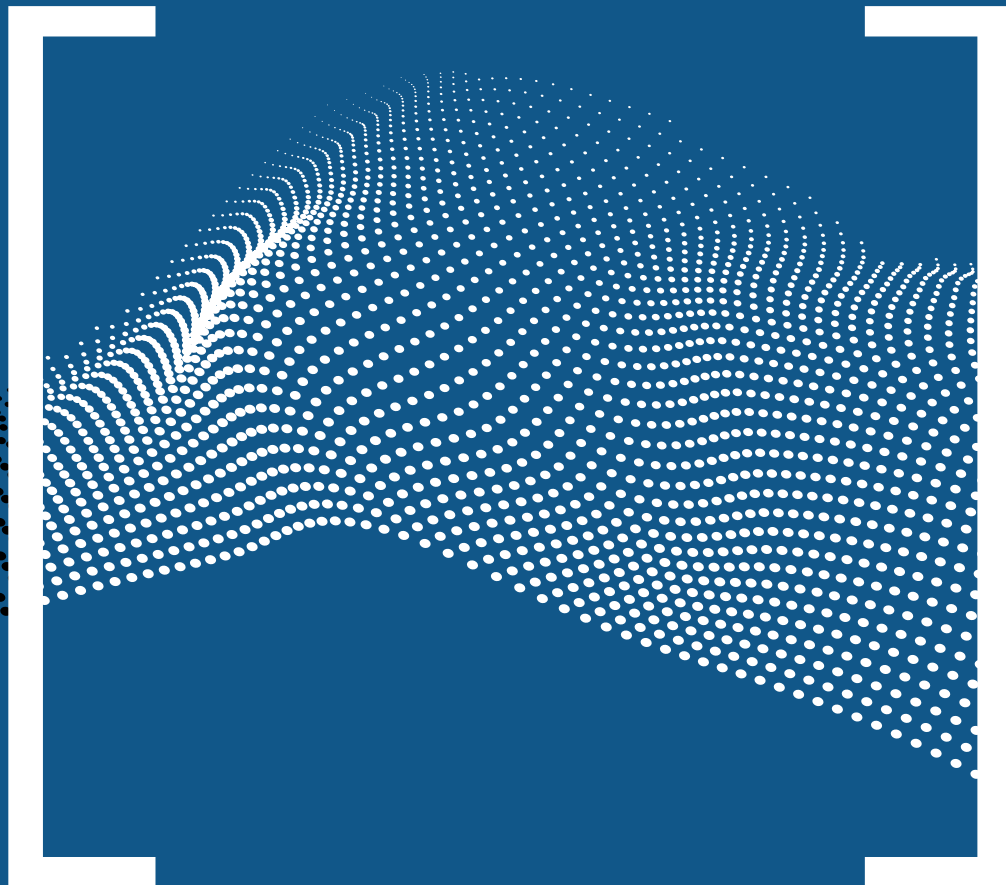


COMPETITION POLICY IN EASTERN EUROPE AND CENTRAL ASIA

Focus on banking and insurance sectors



OECD-GVH Regional Centre for Competition
in Budapest (Hungary)
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Gazdasági Versenyhivatal
The Hungarian Competition Authority

Inside a competition authority: **UKRAINE**

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FOREWORD

The OECD-GVH Regional Centre for Competition (RCC) will soon turn 15. It is time not only to celebrate the RCC's remarkable achievements but also to explore new ways in which it can fully develop its potential. To this end, on 24 June 2020 we will celebrate the **15th Anniversary of the RCC in Budapest**. The Heads of the beneficiary competition authorities have already been invited, together with key OECD representatives and competition experts.

In preparation for the meeting, we will circulate a brief questionnaire in order to collect your comments, suggestions and ideas, which we will then use to "Review the past to design the future" (to quote the title of the event).

Without prejudice to the results of the review mentioned above, some changes are already underway. This can be seen, for example, in this very Newsletter, which has been completely overhauled.

A new title and design for a new concept: this is the essence of the new phase of our Newsletter. Indeed, the Newsletter's new title "Competition Policy in Eastern Europe and Central Asia" and refreshed style are symbolic of the greater changes that are being made to the publication. Our ambition is to become a point of reference for the analysis of the developments of competition in Eastern Europe and Central Asia, by collecting the experiences of the RCC beneficiary countries on a range of topics and combining this knowledge with the reflection on the same topics carried out by the OECD Competition Committee.

Namely, each issue will be devoted to a specific topic of particular relevance for the region. Contributions by both the RCC and selected OECD competition authorities will provide for diverse and complementary perspectives. Included articles will be accompanied by an introductory section, which will place the chosen topic into the political and economic context of Eastern Europe and Central Asia and examine the extent to which the challenges faced in the region can be addressed with the tools and responses identified in the OECD debate.

This issue of the Newsletter focuses on the financial sector, which will also be the subject of our first 2020 seminar in February. **The next issue** – for which we invite you to submit your contributions by **15 April 2020** – will explore the theme of **competitive neutrality**, which is crucial for many jurisdictions in the region and will be addressed in the last seminar of the year, in November 2020. We aim to examine how competition enforcement and advocacy can prevent undue advantages from being granted to state owned enterprises over private competitors, or to national companies over foreign firms.

Another novelty of the Newsletter is the inclusion of a new section at the end of each issue, which will **analyse in depth one of the beneficiary competition authorities of the RCC**, both in terms of its strategies for dealing with potential future challenges, by way of an interview with its Chairperson, and in terms of its enforcement and advocacy records. The present issue explores the Anti-Monopoly Commission of Ukraine, which kindly hosted a very successful RCC seminar in September 2019.

We hope you will like the new direction of our Newsletter and we look forward to receiving your contributions and feedback.



Miklós Juhász
President of the GVH



Renato Ferrandi
OECD

THE OECD-GVH RCC PROGRAMME FOR 2020

This year's programme will revive some fundamental competition topics, while examining how globalisation and digitalisation require competition authorities to adapt established principles to mutated market conditions.

Indeed, the four core seminars will address:

- i. the **banking and insurance sectors**, which are confronted with digital disruption brought about by FinTech (February);
- ii. the assessment of **abuse of dominance**, in the face of increasing complexities to define relevant markets, market power and unlawful practices (outside seminar in Moldova, September);
- iii. cross-border **enforcement cooperation**, necessary to ensure consistency and fairness in global proceedings (RCC-FAS Seminar in Russia, October);

- iv. **competitive neutrality**, to rule out unjustified advantages due to ownership or nationality both in the traditional and in the digital economy (November).

They will be complemented by an **introductory seminar for young staff**, which will encompass cartels, mergers and abuse of dominance (March); a special **training for the GVH staff**, focused on issues that can be traced back to digitalization (April); and a seminar on European Competition Law for **judges** (April).

The most prominent event of 2020 will be the **15th Anniversary Celebration** of the RCC, in which the Heads of the beneficiary agencies, OECD representatives and competition experts will review the successful experience until now and explore ways forward to further develop the potential of the Centre.



Programme 2020

18-20 February
Budapest

Competition enforcement and advocacy in the banking and insurance sectors

The financial sector is characterised by a number of specific features that competition authorities have to consider, including extensive regulation and concerns about financial stability and systemic effects. Furthermore, the banking and insurance sectors are confronted with digital disruption resulting from the emergence of FinTech operators in the provision of financial services. Expert speakers and participants will share their experience on competition enforcement and advocacy in the financial sector and discuss current and future challenges.

17-20 March
Budapest

Introductory Seminar for Young Staff – Competition law principles and procedures

The aim of this seminar is to provide young authority staff with an opportunity to deepen their knowledge of key notions and procedures in competition law enforcement. Experienced practitioners from OECD countries will share their knowledge and engage in lively exchanges with the participants on cartels, mergers and abuse of dominance. We will discuss basic legal and economic theories as well as the relevant case law. Participants will also have a chance to face and discuss procedural issues through practical exercises.

Programme 2020

1-2 April
Budapest

GVH Staff Training

Day 1 – Competition and consumer protection enforcement in the digital era: adjustment or reform?

The seminar will focus on a number of issues and developments that can be traced back to digitalisation: the role of data, additional criteria for assessing vertical restraints, the relationship between consumers and online platforms, and enforcement cooperation in global cases. As usual, particular attention will be devoted to the evolution of the EU case law.

Day 2 – Breakout sessions

In separate sessions, we will provide dedicated trainings and lectures for the merger section, the anti-trust section, the economics section, the consumer protection section and the Competition Council of the GVH.

27-28 April
Budapest

Seminar on European Competition Law for National Judges

This seminar will address three main topics: 1) access to cartel evidence for the purposes of judicial proceedings in national damages cases; 2) horizontal and vertical restrictions: from traditional to new infringements (e.g., new forms of digital collusion, abusive conducts concerning big data); and 3) Role of market definition and current challenges (including those raised by digital markets).

24 June
Budapest

15th Anniversary Celebration of the OECD-GVH RCC – Reviewing the past to design the future

In a globalised world, high expertise and international cooperation have become indispensable for competition authorities. Building on the successful experience of the Centre over the last 15 years and the international initiatives in these areas, the event will explore the ways in which the RCC's role as a catalyst for capacity building and enhanced regional cooperation can be further enhanced.

September
Moldova
(3 days)

Outside Seminar – The assessment of abusive conduct by dominant players

Cases of abuse of dominance are becoming increasingly complex for competition authorities. Building on the best international practices, this seminar will go through the steps that lead to a careful and informed assessment, starting from market definition and the identification of market power. The discussion will then focus on the methods and tools that competition authorities may deploy to evaluate the effects of the conduct on competition and on consumers, in order to distinguish unlawful practices from legitimate competitive initiatives.

October
Russia
(3 days)

RCC-FAS Seminar in Russia – Enforcement cooperation in cross-border cases

Globalisation and the digital economy, as well as the increasing significance of emerging economies and the proliferation of competition regimes, have increased the complexity of cross-border competition law enforcement cooperation. Several initiatives by international organisations (e.g. OECD Recommendation on International Co-operation on Competition Investigations and Proceedings, ICN-led Framework to Promote Fair and Effective Agency Process and UNCTAD Guiding Policies and Procedures under Section F of the UN Set on Competition) aim to explore the ways in which costs can be reduced, inconsistencies can be avoided and procedural fairness can be guaranteed in parallel proceedings. This seminar will explore best practices for formal and informal enforcement cooperation.

17-19
November
Budapest

Competition policy to ensure a level playing field between private and public firms

It is a fundamental principle of competition law and policy that firms should compete on their merits and should not benefit from undue advantages due to their ownership or nationality. This seminar will address the challenges of enforcing competition rules against state-owned enterprises and the advocacy actions that can help governments to achieve competitive neutrality between publicly-owned and privately-owned competitors.

Empowering consumers in the banking and insurance sectors

Addressing novel competition issues in Eastern Europe and Central Asia in light of international experience



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Introduction

Digitalisation and technological innovations have been transforming the intermediary role that traditional banks¹ and insurers² have played in the allocation of capital and risk in many countries. Competitive and financially stable banking and insurance sectors are key to the efficient allocation of capital and risk across an economy and to its further development and growth. Sensitivity to these issues has been increasing over the last few years, particularly following the 2007-09 financial crisis.

Competition authorities worldwide have been carefully monitoring the impact of digital innovation in finance and the novel challenges raised by digitalisation. The international debate on several competition issues is still open, but most competition authorities have endeavoured to use their enforcement and advocacy powers to pave the way to a fertile level playing field.

In this framework, the OECD held a Roundtable on Digital disruption in financial markets in June 2019, which encouraged an exchange of views between competition authorities of OECD Member countries on how best to address these novel issues.

In Eastern Europe and Central Asia (EECA), the banking and insurance sectors lag behind Western countries: in 2018, domestic credit to the private sector averaged about 37% of GDP, i.e. one-quarter of the OECD average or one-third of the average for all middle income economies (*see W. Thompson's article below*). Nonetheless, digital innovation in the banking and insurance sectors is strongly affecting the region and

some competition authorities have taken significant initiatives in this respect. It is likely that other competition authorities in the EECA region will shortly follow suit.

A consistent approach within the EECA region, which also takes into account international best practice, will be essential for ensuring financial development and growth, private-sector development and the emergence of new activities and firms.

In light of the above, the aim of this article is to explore the possible future development of competition enforcement in relation to digitalisation in the banking and insurance sectors in the EECA region and, furthermore, the extent to which the discussion at the international level and some of the solutions implemented in Western countries may be applicable and useful for the competition authorities of the EECA region.

The novel issues at stake

The use of technological innovations and advanced analytics such as algorithms, artificial intelligence (AI) and machine learning (ML), which are fuelled by big data, and blockchain enable companies to screen consumers in new and more accurate ways. These innovations allow for more accurate risk assessment, better authentication of customers to prevent fraud before transactions are processed, and for better-tailored products and services to be offered to consumers.

At the same time, several new players have entered the market: FinTech and InsureTech start-ups, such as P2P lending platforms, payment services initiators, aggregators, robo-advisors, digital currency operators, and large digital

1 The intermediary role of banks can be seen in the transformation of maturity, whereby short-term deposits from households and businesses are transformed into long-term credit. A second function of the banking sector is the provision of transaction banking services.

2 The intermediary role of the insurance sector is different from that of the banking sector. In the insurance sector, the risks that may arise from individuals or businesses' activities are transferred to insurance companies. A second role of insurers is to channel savings into investments.

platforms, also referred to as BigTech (e.g. companies such as Amazon, Facebook, Google, and Alibaba). These entrants typically offer their services through online platforms.

This, together with new technology such as smartphones, has resulted in easier consumer access to banking and insurance services and has transformed consumers' expectations concerning the friendliness of interfaces and information transparency. For instance, in some countries consumers prefer to carry out their retail banking activities using their smartphones as opposed to visiting their high street branches. In the insurance sector, the increased accuracy and efficiency of underwriting has enabled new types of insurance to be offered, e.g., insurance for very short periods of time, such as for specific car trips or for short-term home rentals.

Such disruptive innovation has the potential to increase competition in both the banking and the insurance sectors, where markets tend to be concentrated and present low levels of contestability. However, it also poses potential competition issues and challenges for the regulatory framework in terms of ensuring that the benefits arising from increased competition continue in the long-term.³

Competition enforcement and financial digital disruption

Increased use of new technology has important welfare implications. It has the potential to lower the financial intermediation costs associated with lending, payments systems, financial advising, and insurance, as well as enabling more tailored products and services to be provided to consumers, while contributing to financial inclusion. However, it also raises novel issues for competition authorities. The combination of platform technologies and access and operation by users can result in competition issues related to network effects, interoperability, and access to data. Data driven network effects reinforced by user feedback loops, and high economies of scale associated with information technology infrastructures, may provide companies that own the data with market power and create a tendency for markets to tip where the "winner takes all".⁴

An active pursuit of non-interoperability by dominant players may act as a deterrence with anticompetitive effects on access to markets by making it difficult or costly to enter.

Moreover, control over unique data troves, which arise due to the combining of datasets from multiple sources may result, for example, in exclusionary conduct when competitors are prevented from accessing the data. It may also result in exclusive contracts, if the incumbent uses its control over a particular valuable dataset to create a network contract that forecloses competition, or in the tying and bundling of services, if the company takes advantage of its position to impose the use of other services.⁵

The intensive use of data and technology may also lead to personalised pricing, a form of price discrimination.⁶ Personalised pricing is typically pro-competitive and often enhances consumer welfare. On certain occasions, however, personalised pricing can also be harmful as it may enable consumers to be exploited and create a perception of unfairness. This is particularly relevant in insurance, where the use of big data and advanced analytics enable a more granular risk segmentation that creates a breakdown of the current risk pooling principles. While this may lead to improved consumer outcomes for some consumers, it could also increase the likelihood of consumers being unable to purchase insurance at a reasonable premium level as far as risk-based premiums are concerned.

With regard to collusive conducts, it has been argued that the widespread use of computer algorithms may in fact be incentivising and increasing the ability of companies' to take part in, monitor and enforce explicit and tacit collusion, insofar as pricing algorithms may increase companies' ability to detect and punish deviations. In addition, due to enhanced transparency and processing capacity, collusive conducts that have typically been confined to oligopolistic and highly concentrated markets may also arise in markets that do not possess the structural features that ordinarily facilitate collusion.⁷

In reality, there has been limited competition enforcement by competition authorities to date within the FinTech sector, since the latter is still relatively new. However, the formal proceedings carried out by the European Commission and the competition authorities of Sweden, Lithuania and Brazil addressed several of the issues mentioned above, namely as regards to pre-emptive mergers and exclusionary action by incumbents. For example:

- The regulatory set up, among other factors, was an important consideration for market definition in the

3 Xavier Vives (2019), "Digital Disruption in Financial Markets", Background note for the OECD Competition Committee Roundtable on Fintech and Digital Disruption in Financial Markets. Available at: [https://one.oecd.org/document/DAF/COMP\(2019\)1/en/pdf](https://one.oecd.org/document/DAF/COMP(2019)1/en/pdf)

4 OECD (2016), Big Data: Bringing Competition Policy to the Digital Area, Background Note for the OECD Competition Committee. [https://one.oecd.org/document/DAF/COMP\(2019\)1/en/pdf](https://one.oecd.org/document/DAF/COMP(2019)1/en/pdf)

5 Fraile Carmona A., González-Quel Lombardo A., Rivera Pastor R., Tarín Quirós C., Villar García J. P., Ramos Muñoz D. (2018), Competition issues in the Area of Financial Technology, Study by the Policy Department of Economics, Science and Quality of Life Policies, Directorate-General for Internal Policies, PE 619.027, European Parliament's Committee on Economic and Monetary Affairs.

6 Personalised pricing can essentially be seen as a form of price discrimination in which individual consumers are charged different prices based on their different characteristics and behaviour, resulting in each consumer being charged a price that is a function of his/her willingness to pay.

7 OECD (2017), Algorithms and Collusion: Competition Policy in the Digital Age www.oecd.org/competition/algorithms-collusion-competition-policy-in-the-digital-age.htm

Worldline/Eququens/Paysquare merger dealt by the European Commission (M.7873, 2016).⁸

- The Swedish competition authority pursued a suspected abuse of dominance case where the operator of the Swedish stock market, NASDAQ, shut a competitor out of the server building of the stock exchange. The competitor was dependent on being in close proximity to the stock exchange servers as it traded stocks using automated trade robots. The competitor's resulting distance from the servers caused lag times in trade communication, thereby lessening its efficiency and competitiveness.⁹
- The Competition Council of Lithuania investigated a suspected abuse of dominance by an incumbent bank (AB Swedbank) whose conduct restricted the ability of firms providing payment initiation services from providing AB Swedbank's customers with a new service (i.e. e-commerce payment collection service). The provision of this service required direct access to the bank accounts and security information of purchasers. Legislation in relation to data protection was a key factor in the investigation.¹⁰
- In the card payment market, the Brazilian Competition Authority intervened to break the exclusive agreement that existed between Visa and Visanet. In order to successfully intervene in this case, the authority had to take account of the network effects that arise in this multi-sided digital platform market. According to the authority, such types of exclusive contracts are considered as a barrier to entry and detrimental to innovation.¹¹

As regards to the EECA region, two examples involving Albania and Russia are worth mentioning. In Albania, the competition authority has been monitoring the insurance market to minimise the potential risk of price fixing and market sharing resulting from algorithms. In addition, the Albanian competition authority has identified that the publication of financial and other bank activity information collected by the Albanian Banking Association using a data flow system can make it easier for banks to track and coordinate their policies, thus reducing competition in the banking sector (*see the*

related article below). In Russia, the FAS Russia carried out proceedings concerning anti-competitive agreements implemented by electronic platforms providing tender loans aimed at preventing the entry of a new competitor (*see the related article below*).

Competition advocacy and financial regulation

Competition advocacy is the area in which the practice of more experienced competition authorities can perhaps provide the most meaningful insights for EECA peers. Financial regulation can influence the nature of competition, thus minimising or amplifying the potential competition concerns described above. After the financial crisis, new models emerged with respect to the role of competition in the financial services sector including new methods of co-operation between competition authorities and financial regulators. For example, competition authorities can be involved in the process of designing new regulatory regimes in the context of co-operation within dedicated Working Groups. In Poland, the FinTech Working Group housed by the financial supervisor (KNF) includes the Competition and Consumer Protection Authority (UOKiK).¹²

As FinTechs enter financial markets, a key question is how to regulate them. As previously mentioned, in 2019 the OECD held a roundtable on whether these players needed a different type of regulatory oversight. The debate among the different competition authorities and financial regulators suggested a consensus where regulation should be proportionate to the level of risk and should move from regulating entities to regulating activities/functions in order to have a level playing field. It should also continue to be technology neutral, transparent, principle-based and non-discriminatory.¹³

Furthermore, a range of international good practice is emerging from the policies and activities of governments and competition authorities, which are aimed at fostering competition in the banking and insurance sectors.

In 2018, the Portuguese competition authority analysed the market entry conditions faced by FinTech and InsurTech firms. In payment services, the authority identified barriers

8 See EU's contribution to the OECD (2019) Roundtable on Digital Disruption in Financial Markets, [https://one.oecd.org/document/DAF/COMP/WD\(2019\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)33/en/pdf)

9 See Sweden's country contribution to the OECD (2019) Roundtable on Digital Disruption in Financial Markets, [https://one.oecd.org/document/DAF/COMP/WD\(2019\)32/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)32/en/pdf)

10 See Lithuania's country contribution to the OECD (2019) Roundtable on Digital Disruption in Financial Markets, [https://one.oecd.org/document/DAF/COMP/WD\(2019\)29/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)29/en/pdf)

11 See Brazil's country contribution to the OECD (2019) Roundtable on Digital Disruption in Financial Markets, [https://one.oecd.org/document/DAF/COMP/WD\(2019\)34/en/pdf](https://one.oecd.org/document/DAF/COMP/WD(2019)34/en/pdf)

12 See Elena Carletti and Agnieszka (2017), *10 years on from the Financial Crisis: Co-operation between Competition Agencies and Regulators in the Financial Sector*, Background Note for the OECD Working Party No.2 on Competition and Regulation. [https://one.oecd.org/document/DAF/COMP/WP2\(2017\)8/en/pdf](https://one.oecd.org/document/DAF/COMP/WP2(2017)8/en/pdf)

13 See <https://www.oecd.org/daf/competition/digital-disruption-in-financial-markets.htm>

to innovation and entry arising from the regulatory framework applicable to the provision of financial services based on new technologies. The authority also highlighted the risk of market foreclosure by incumbent banks, which may hinder FinTech firms' access to key inputs, namely the data and infrastructure needed to provide payment services. The recommendations put forward by the authority aimed at reducing barriers to exit and expansion of FinTechs, focusing on the risk of foreclosure of new entrants by incumbents and how interventions of the legislators and sector regulators may mitigate this by being technology neutral, principles-based, and none discriminatory¹⁴

In Japan, revisions to the Banking Act introduced in 2017 encourage banks to open their APIs¹⁵ (application programming interface software applications), as well as enable banks to acquire FinTech banks and/or collaborate with them to promote innovation and efficiencies.¹⁶

The Mexican FinTech Law (approved in 2018) also includes requirements for financial entities, including FinTech firms, and novel models to open data through APIs to third parties and allows financial entities to collect fees for this. Financial authorities will authorise the proposed feed and can veto them to prevent such fees from being excessive.¹⁷

In 2017, the Canadian competition authority in also completed a similar review of the payments sector (along with a review of lending and equity crowdfunding, and investment dealing and advice).¹⁸ The review concluded that the key factors for encouraging competition and continued innovation in the payments services space were access, awareness and ability to induce switching. One of the recommendations was for Payment Canada to explore the possibility of providing an application programming interface (API) to lower the cost of entry for new payment service providers (PSPs) while encouraging competition between payment systems by reducing switching costs for financial institutions and PSPs.

In Australia, the government announced a "consumer data right" initiative, which will give consumers greater ac-

cess to and control over their data. This will be applied sector by sector, with open banking to be the first application.¹⁹

The UK case study

The most advanced initiative in this field seems to be the one undertaken by the Competition and Markets Authority (CMA) in the UK aimed at increasing price and none-price competition in the retail-banking markets of personal current accounts (PCAs) and business current accounts (BCAs) through greater data mobility and open standardised standards.

In particular, a competition investigation initiated by the CMA in 2016 provided the basis for the imposition of requirements on the largest banks, according to which they must not only enable consumers to share their data with third parties, as required by the European Commission's second payment services directive (PSD2), but they must also to do so using open access and common standards for data, security and APIs to share data functionality.

The remedy was expressly designed to create a new type of innovative business model in which third parties would help consumers to drive competition by providing them with appropriate tools for managing their money and their banking services to obtain better value. The remedy recognised that consumers have been unable, on their own, to drive the market to offer better value by switching, or considering switching, and that the efforts made to help them do so, for example through the provision of better information and reduced switching costs, have proven inadequate.²⁰

Access to consumers' bank account data through APIs (where the consumer gives consent) would make it easier for third party developers to programme applications that help consumers to better understand and manage their finances. An open and standardised API would work across banks and thereby enable the comparability and management of multiple accounts with different banks.

14 Technological innovation and Competition in the Financial Sector in Portugal (2018), Issues Paper, http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Banca_e_Seguros/Documents/2018%20-%20Issues%20Paper%20Technological%20Innovation%20and%20Competition%20in%20the%20Financial%20Sector%20in%20Portugal.pdf

15 An application programming interface (API) is a piece of software that lets one programme access or control another programme. APIs allow applications to share data without requiring developers to share software codes.

16 The Bank Act prohibited banks and bank holding companies from having any subsidiaries other than those that engaged in certain specified activities. Following the amendment, banks can acquire companies engaged in business activities that are complementary to their own activities or which improve convenience, subject to approval.

17 See Financial Stability Board (2019), FinTech and Market Structure in Financial services: Market Developments and Potential Financial Stability Implications. <https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/>

18 See Competition Bureau of Canada (2017), Technology Led Innovation in the Canadian Financial Services Sector. <https://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/04322.html>

19 Australian Competition and Consumer Commission (ACCA) www.accc.gov.au/focus-areas/consumer-data-right-cdr-0

20 Retail Banking Investigation Final Report, CMA (2016), pp.433-460. <https://assets.publishing.service.gov.uk/media/57ac9667e5274a0f6c00007a/re-tail-banking-market-investigation-full-final-report.pdf>

In addition, the Competition and Markets Authority (CMA) recommended that the Financial Conduct Authority (FCA) should require firms to publish objective measures of service performance for both PCAs and BCAs. The new information aims to help customers, comparison websites and the media to make meaningful comparisons of the services different current account providers offer. By encouraging competition on quality, it is expected that providers will improve their services and performance.

Under the new rules, competition on the quality of services focuses on the following service metrics:²¹

- how and when services and helplines are available
- contact details for help, including for 24 hour helplines
- how long it will take to open a current account
- how long it will take to have a debit card replaced
- how often the firm has had to report major operational and security incidents
- the level of complaints made against the firm

The CMA also engaged in advocacy initiatives regarding the insurance sector in response to its findings stemming from an investigation involving loyalty penalties, i.e. the practice of charging longstanding customers more than new customers or existing customers that have renegotiated their deal for the same goods or services. The CMA argued that increased use of big data could be used by insurers to more accurately engage in differential pricing based on whether customers have been identified as being more likely or less likely to switch. Therefore, the CMA designed a framework setting out the conditions for healthy competition and acceptable behaviour by companies. The framework sets out six key principles which, if followed, will help prevent customers from being hit by loyalty penalties (see the table below).²²

CMA's Framework

Practices should be transparent and never misleading:

1. **Auto-renewal must be explicitly agreed to** by the consumer when signing up; not applied on a default basis and consumers should be able to take the contract without auto-renewal;
2. Consumers are **properly notified before** any renewal - in good time for them to take action;
3. **Changes to price, the product or other important terms must have the consumer's express agreement.**

It should be as easy as possible to opt out:

4. It should be at least **as easy to exit a contract as it was to sign up**, including being able to easily stop the renewal at any time, exit in the same way as it was signed up to and a cancellation right after renewal that is easy to exercise.

The behaviour being encouraged is in the consumer's best interest:

5. **Minimum terms are restrained and no longer than justified** and beyond that refunds are given if consumers cancel early;
6. **No auto-renewal onto a fresh fixed term**, unless it is clearly in consumers' interests, and exit fees should not be used after any initial minimum term.

The CMA also made a series of recommendations, including to the Financial Conduct Authority (FCA), about the possible ways in which loyalty pricing and other harmful business practices arising in the provision of home insurance may be tackled. In October 2018, the FCA launched a market study on general insurance pricing practices and in November 2019 it published its interim findings, according to which the markets for home and motor insurance are not working well for all consumers. The regulator estimates that approximately 6 million consumers in the UK are affected and it is currently considering appropriate remedies.²³

The role of consumer protection and data protection

Competition compliance and pro-competitive regulations are necessary but not sufficient conditions for the smooth development of the banking and insurance sectors. Indeed, these requirements on the supply side should be matched with consumer trust on the demand side. Empowered consumers play an important role in improving economic performance and driving innovation, productivity and competition. Effective consumer protection policies are therefore essential for building trust in the digital economy and enabling everyone to participate fully in it, reaping the opportunities while reducing the risk²⁴.

By the same token, it is crucial that rules related to the privacy and safety of consumer data allow for the emergence of

21 The design of the quality service metrics was informed by extensive consumer research showing what dimensions of quality consumers care about. For further information, see the FCA's Consultation Paper CP17/20 and Policy Statement PS17/26 available at <https://www.fca.org.uk/publications/policy-statements/ps17-26-information-about-current-account-services>

22 CMA (2019), Loyalty penalty update: getting better and fairer deals. https://assets.publishing.service.gov.uk/media/5d08f9daed915d42ea95ddb4/Progress_update_June2019_31916.pdf

23 FCA (2019), General insurance pricing practices market study interim report, MS 18/1. <https://www.fca.org.uk/publications/market-studies/ms18-1-general-insurance-pricing-practices-market-study>

24 OECD, Toolkit for Protecting Digital Consumers, A Resource for G20 Policy Makers (2018), <https://www.oecd.org/internet/consumer/toolkit-for-protecting-digital-consumers.pdf>

consumer trust and do not restrict competition. For example, data protection regimes can have an impact on the degree of contestability of markets (i.e. the ability of new players to enter), and the potential for companies to expand internationally. Specifically, the cross-border application of different regimes may hinder global operations. As raised at the OECD (2019) roundtable on FinTech and Digital Disruption on Financial Markets, fragmentation and market barriers emerging around requirements for privacy and data flows across borders make international operability a growing challenge. Moreover, it may be possible that companies located in jurisdictions with restrictive data protection regimes are being prevented from operating in third countries due to their inability to subject themselves to effective supervision from third-country regulators.

Final remarks

Although competition enforcement and advocacy regarding digitalisation in the banking and insurance sectors are still at an early stage, it is possible to formulate a number of suggestions for the competition authorities of the EECA region, also taking into consideration the recent discussion at the OECD Roundtable on Digital disruption in financial markets.

It is widely agreed that the benefits of digitalisation for economic wellbeing can only be fully realised if there is healthy competition in digital markets. Policymakers, as well as competition, consumer protection and data protection authorities, all have an important role to play in ensuring consumers are protected and empowered to get the best possible deal.

The relationship between competition and innovation is complex. Promoting innovation competition will require a case-by-case approach by competition authorities. Competi-

tion authorities are beginning to tailor some aspects of their approach to digital markets. Specific technical expertise and resources have proved necessary and the analytical tools might need to be adapted.

That said, it is important to underline that competition enforcement cannot address all of the concerns arising in digital markets. Market studies and advocacy are essential elements of a competition policy adapted to digitalisation. Regulatory barriers to competition may need to be removed, and new measures may be needed to promote competition. To this end, competition authorities can highlight the most pro-competitive options, but it seems advisable that their role remains confined to technical advice. Elected policy makers are better placed to take responsibility for weighing possible competition restrictions against other general interest objectives.

Notably, interdisciplinary co-operation between competition, consumer protection and data protection authorities, as well as between sector regulators and government policymakers, is crucial for ensuring a consistent approach in the face of the borderless nature of digital markets.

Finally, consumers have a decisive role to play in the digital realm. With the advent of digital technologies, consumers have taken an increasingly active part in these markets, to the point of becoming directly involved in production processes (this phenomenon has been referred to as 'prosumption'). At the same time, despite the benefits and convenience of e-commerce, the ease and speed with which consumers can engage in online transactions – at anytime, anywhere, and in particular across borders – may create situations that are unfamiliar to them and put their interests at risk. The promising advocacy initiatives of the CMA, which aim to increase transparency and comparability between available offers, suggest that the most effective way to enhance competition and protect consumers is to empower them.

Quo Vadis?

Policy challenges in Eastern Europe and Central Asia



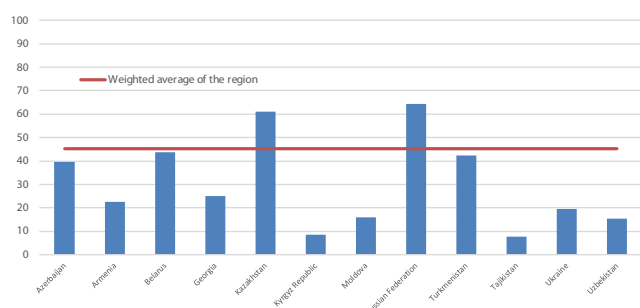
William Tompson

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Introduction

Home to more than 290m people, the partner economies of the former Soviet Union stretch from the Baltic to the Pacific. The region's assets include considerable hydrocarbon and mineral wealth, strategic location and high literacy rates. Per capita GDP ranges from less than USD 3000 in Tajikistan to more than USD 26000 in the Russian Federation; the regional average in 2018 stood at about USD 18310 – 45.2% of the OECD average (Figure 1).¹ Almost three decades after the Soviet collapse, the former Soviet republics continue to wrestle with common challenges associated with the institutional and physical legacies of state-led central planning. While their post-independence trajectories have varied considerably and due account must be taken of their diversity, the institutional and economic legacies of the past continue to present them with a set of shared challenges but also with the basis for a particularly rich policy dialogue.

Figure 1. GDP per capita at purchasing-power parity as a % of the OECD average, 2018



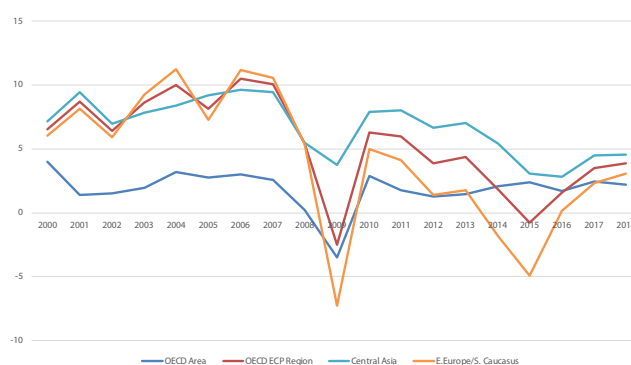
Source: World Bank, World Development Indicators, OECD calculations.

Recent performance

The region experienced a series of powerful external shocks in 2013-15

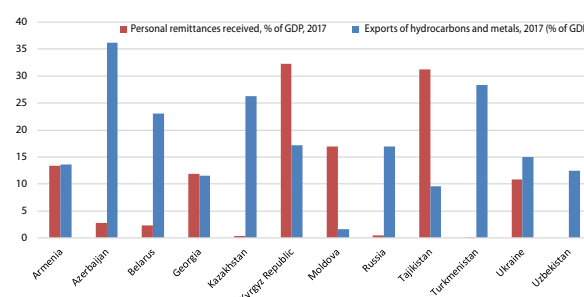
Lower global commodity prices, moderate growth in the People's Republic of China and subdued economic prospects in many Western Europe economies all hit the post-Soviet states hard in the middle of the decade (Figure 2). The end of the commodities boom hit the region's oil and metals exporters hard, and even the comparatively resource-poor economies suffered, as they rely heavily on trade with, and remittances from, neighbouring oil exporters (Figure 3). Moreover, the conflicts in Afghanistan and Ukraine, which have inflicted enormous costs on those countries, affect the rest of Eurasia, owing mainly to their impact, including through sanctions and counter-sanctions, on trade and investment.

Figure 2. Real GDP growth (annual %)



Source: World Bank, World Development Indicators, OECD calculations.

Figure 3. Reliance on exports of hydrocarbons, metals and labour



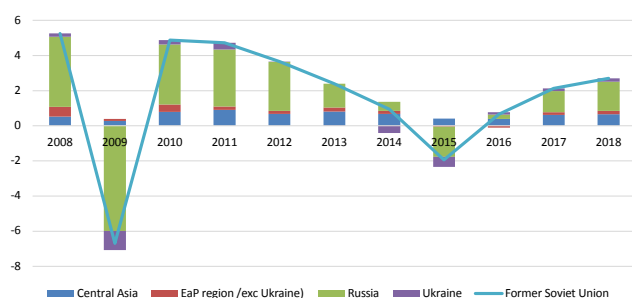
Source: UNCTAD, World Bank, World Development Indicators, OECD calculations.

1 2011 constant PPP dollars.

Recovery is under way but growth remains subdued

A weak recovery began in 2016 and accelerated modestly in 2017-18, but it is uneven and growth is still far below the rates seen in the 2000s. The aggregate figures mask considerable regional variation (Figure 4). Current growth rates, though above those of the OECD area, are too low to support convergence with OECD productivity levels and living standards except over a very long time. Indeed, since 2013, per capita GDP, measured at purchasing power parity, has fallen relative to the OECD average.

Figure 4. Contributions to growth, 2008-18



Source: World Bank, World Development Indicators, OECD calculations.

The region faces important downside risks in the short-to-medium term

There is considerable uncertainty looking ahead, owing to trade tensions, energy-price fluctuations and weakness in the EU and Turkey, which are all important trading partners and sources of labour remittances. A sharper slowdown in Europe or China, in particular, could be damaging to growth prospects, and countries with large current account deficits, heavy reliance on capital flows or large foreign currency-denominated debt, such as Ukraine, could be vulnerable to sudden shifts in market sentiment.

Policy challenges

The shocks of 2013-15 threw into sharp relief some of the structural vulnerabilities of the post-Soviet economies. Most have highly concentrated export profiles – particularly in terms of goods exported but also, in many cases, heavy reliance on a few export markets. In several, hydrocarbons and metals account for 80-90% of exports; many others depend heavily on agricultural goods with minimal or no processing. Moreover, the data suggest that the commodity share of exports was increasing in many countries in the years preceding the slowdown of the mid-2010s.

Diversification of exports and productive activity is critical

These problems are not new: the challenge of diversifying economic activity, employment and exports has loomed large on the region's policy agenda for well over a decade, especially in the oil-exporting economies. There was widespread awareness even during the boom years before the global financial crisis in 2008 that sustained long-term growth would require a transition to more investment- and innovation-led growth. The slower growth that followed the crisis – even before the shocks of 2014-15 – seemed to confirm that the growth models of the previous decade were reaching their limits. However, the issue of diversification acquired a new urgency as countries experienced the end of the commodity super-cycle; vulnerability to sharp terms-of-trade shocks was no longer a risk – it was a reality.

Reducing external vulnerabilities requires more than diversifying productive activity or exports. Raising productivity must also play a critical role. If they are to make most of their populations' talents and to allow the great mass of their citizens to pursue productive, rewarding careers, the countries of Eurasia need to invest in human capital and to foster the emergence of activities capable of generating more high-skilled, high-productivity employment. Across the region, capital-intensive sectors that generate few jobs drive most growth, while employment is concentrated largely in low-productivity activities. The result is wide disparities in productivity, income and, as a result, well-being across both individuals and regions. This must change if growth is to be more inclusive. Diversification is thus critical to equity and inclusion.

The case of Kazakhstan is instructive here: Resource extraction generates upwards of 20% of GDP but employs a mere 2% of the working population. At the same time, close to half the population in 2016 was employed in sectors with average productivity that is below half the national average.

Large-scale outward labour migration from some countries continues

This failure to generate productive jobs underlies the large flows of migrant workers from many post-Soviet economies. Labour migration has provided a lifeline for many countries with very weak export capacities in goods and services. In many cases, this was arguably consistent with the Heckscher-Olin model of international trade, which posits that a country will export goods that are relatively intensive in the factors that it has in abundance and import goods that are intensive in its scarce factors. Yet even those Eurasia countries with an abundance of relatively cheap, low-cost labour have had only limited success in growing exports of labour-intensive goods, owing to a combination of geography, institutional weaknesses, infrastructure bottlenecks and poor policies. As a result,

much of that labour moved abroad: those countries exported labour rather than labour-intensive products.²

The impact of labour migration is not by any means limited to remittances.³ For sending countries, out-migration can help to reduce unemployment on local labour markets and raise household consumption. If migrants return with professional skills acquired abroad, they can further benefit the sending countries.⁴ There may also be opportunities for them to generate new activities: migrants often tend to be among their countries' most entrepreneurial citizens. Unfortunately, in many countries, framework conditions for entrepreneurship do not make it attractive for returnees to build businesses. There are also important costs for sending countries, notably in terms of migrants' own well-being and the costs of family separation, which can be substantial, particularly for the children of migrants.

Diversification efforts should focus on building countries' endowments

When considering diversification, policy-makers often think in terms of sectors. However, politicians and officials are rarely best placed to identify promising long-term trends in product markets. A more effective approach focuses on building a country's endowments – its natural, human, physical and financial capital.

At first glance, it might seem that countries can do little about their natural endowments but there is in fact a great deal that depends on policy. The economic potential of natural resources depends to a great extent on legislative and regulatory factors, and land management practices, as well as physical infrastructure and technological capacities – hence the importance of subsoil law reform in Russia or Kazakhstan, or Ukraine's efforts to advance land reform. Reforms to water policy and water governance in Central Asian states could support both economic growth and long-term environmental sustainability.

Yet reducing external vulnerabilities requires more than diversifying output or exports. Raising productivity also plays a critical role. If they are to make most of their populations' talents and to allow the great mass of their citizens to pursue productive, rewarding careers, the countries of Eurasia need to invest in human capital, and also to foster the emergence of activities capable of generating more high-skilled, high-productivity employment.

Human capital is another area where much must be done to enhance the endowments of post-Soviet countries. Higher productivity and inclusive growth will require more focus on fur-

ther reforms to education and training systems, which have in some cases changed little since communist times.

Above all, post-Soviet countries need to continue building up their *institutional* capital, strengthening public governance and the rule of law, while creating sound conditions for investment, entrepreneurship and innovation. Well-designed and well-functioning regulatory and tax regimes are critical, together with secure property rights, fair competition and open markets.

Competition and market openness are vital to meeting these challenges

Internal market openness, characterised by low entry barriers and strong competition, is critical, because diversification requires the emergence of new firms, activities and sectors; barriers to entrepreneurship or to new investment from abroad can only get in the way, as do regulations and other policies that favour large incumbent firms at the expense of emergent rivals. And policies that impede exit or support poor performers simply tie up resources in less productive uses. Domestic and international competition, trade and investment flows do more than shift goods and capital from place to place: they spread technologies and – even more important – ideas. Productivity rises. In the end, that means more and better jobs, particularly with more investment in skills and education.

For many of the same reasons, external openness contributes to diversification. The diversification of economic activity, and especially exports, is a central objective for many Eurasia countries, not least in order to reduce their exposure to the kind of shocks experienced in the mid-2010s. The limited market size of the individual countries means that any serious diversification policy needs to be outward-oriented. Moreover, in a world of increasingly complex global value chains (GVCs), where implies that countries seeking to develop higher value-added activities and create more high-productivity employment need to find particular tasks within GVCs in which they enjoy a competitive advantage and work to create the conditions for the development of those activities.

These concerns are particularly relevant for the four countries in the region that have yet to join the World Trade Organisation (WTO). Azerbaijan, Belarus, Turkmenistan and Uzbekistan are at different stages in their reflection on potential WTO accession, but all are increasingly aware of the importance of this issue, and, in the case of the hydrocarbons exporters, of its link to diversification efforts. In terms of institutional and policy commitments, WTO entry is an important step in international integration, as it assures market access for a wide range

2 Not only low-skilled workers leave, but “brain drain” fears have been overblown. Emigration rates for the highly educated in recent years have been well below the overall emigration rates in most world, partly because returns to education in many Eurasia economies remain comparatively high.

3 There are also benefits for the receiving countries, where a great deal of economic activity now depends on foreign labour. In many places, this dependency will keep rising as a result of very low fertility, population ageing and the consequent reduction in local labour forces, although it has also generated political and social tensions in some host regions.

4 This depends, though, on the form of migration – seasonal agricultural labourers, for example, are less likely to return with new skills than those who emigrate for longer terms.

of goods and services to all member countries and provides a framework for negotiating trade agreements. It is also a very strong commitment for a country, because of its dispute resolution process, which aims at enforcing adherence to WTO agreements, and because WTO accession has important implications not just for trade policy but for “behind-the-border” reforms, not least those linked to competition and market openness. Indeed, many studies suggest that the real impact of WTO accession comes not from tariff adjustments but from the deeper institutional changes that membership necessitates.

Also relevant here is the evolution of integration efforts within the Eurasian Economic Union (EEU) created in 2015, when the Common Economic Space created by Russia, Belarus and Kazakhstan in 2012 became a Union, encompassing the original three member states, as well as Armenia and Kyrgyzstan. In addition to providing for free movement of goods, labour, capital and services across the member states, the EEU is to evolve common transport, agriculture and energy policies (Johnson and Köstem, 2016). While the early years of the Union have seen considerable friction over tariffs and other trade policies, particularly in the context of western sanctions on Russia and Russia’s counter-sanctions, it has held together, negotiating agreements with a number of external partners and initiating discussions with some on potential enlargement.

The critical question is how the EEU will integrate with the wider international economy: it represents less than 2.5% of global GDP, and there has been no increase in this share over the last decade. By contrast, the European Union accounts for over a fifth of world GDP and the North American Free Trade Agreement countries more than a quarter. Moreover, Russia constitutes more than 85% of the EEU’s total GDP. As a regional block, it is thus very small and its longer-term dynamism will thus depend greatly on its success in opening outwards and helping members generate trade and investment linkages with external players.

Financial sectors are underdeveloped and unstable

Financial development across the region remains a major constraint on growth and, in particular, on private-sector development and the emergence of new activities and firms. In 2018, domestic credit to the private sector across the region averaged about 37% of GDP, not much more than one-quarter of the OECD average or one-third of the average for all middle income economies. It was highest in Russia and Kazakhstan, at 76 and 68% of GDP, respectively – still far below the OECD (141.3%) and middle income (104.5%) averages.

While financial markets have begun to take shape, the region’s financial systems are overwhelmingly bank-based, and their banking sectors have often been unstable, corrupt and politically driven. Major banks are most often owned by the state or state-owned enterprises, and/or linked to influential political players. “Pocket banks”, operated primarily by and for a single large client, are common. Moreover, the quality of regulation and supervision has often been patchy. The economic shocks of 2014-15 triggered major banking crises in Azerbaijan, Tajikistan, Kazakhstan and Ukraine. In the case of Kazakhstan, the crisis hit before the country had fully addressed the previous crisis, triggered by the global financial crisis of 2008-09. Russia’s banking sector has fared better than some, but it still struggled to cope with the double-whammy of western sanctions and rouble devaluation. And in Moldova, MDL 18bn – equivalent to 16% of GDP – was converted into foreign exchange and moved abroad in a massive bank fraud in 2014.

These shocks have resulted in successive bail-outs and government take-overs, with the result that state-owned players now dominate most of the region’s banking sectors, but there have also been significant improvements in regulation and supervision in many countries. Ukraine, in particular, has made remarkable progress in cleaning up its banking sector, following a boom-and-bust cycle that saw bank lending rise to almost 80% of GDP before dropping to around 27%. However, in many countries, sanitation efforts have foundered because of the political influence of some major banks.

This situation creates particular problems for new firms and SMEs: across the region, access to finance remains among their principal complaints. It also impedes diversification efforts, since credit allocation tends to be biased towards influential incumbents.

Looking ahead

Governments in the region are far from idle. The squeeze of recent years has triggered new reforms in such diverse fields as customs regulation, tax administration and investor protection, though implementation has often been uneven. Support for start-ups is expanding. There is also a new regional dynamic at work, creating better conditions for trade and integration. However, there is more to do, particularly to create favourable conditions for the growth of new firms and SMEs, the critical drivers of innovation, job-creation and diversification.

The Albanian Competition Authority's competition enforcement and advocacy activities in the banking and insurance sector

The new challenges arising from the digital economy and their implications on competition in the financial industry – an overview of the competition issues dealt with by the Albanian Competition Authority (ACA).



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The objective of this article is to shed light on the enforcement record of the Albanian Competition Authority (ACA) in the banking and insurance sector. The article will provide an overview of how the Authority attempts to ensure a level playing field by preventing anticompetitive restrictions, while allowing the financial industry to contribute to internal economic growth.

The financial sector, which includes banking and insurance, has always been of particular importance to the Authority. Consequently, also taking into account the public's sensitivity to changes in this sector, the ACA carries out constant monitoring in this area. The decisions of the Competition Commission on these markets aim to ensure free and effective competition, in compliance with the Albanian law no. 9121/2003 "On the protection of competition"¹, as amended. Competition enforcement in the financial sector brings about several challenges for the ACA, in relation both to traditional markets and to digital economy matters. Over the last few years, the ACA has intervened on a number of markets that have been affected by the emergence of new technologies and the digitalisation process. The markets include banking, insurance and public procurement.

In 2015 the Albanian Government approved the "Digital Agenda - Crosscutting strategy for the period 2015-2020"². According to the document, "consolidating the digital infrastructure in the whole territory of the Republic of Albania, by respecting the European principles of free and effective com-

petition in the market.³ is one of the three main listed objectives.

In order to provide greater insight into the work of the ACA in this area, a number of cases and activities of the ACA relating to sector such as banking, insurance and public procurement are discussed below.

Insurance

During a number of preliminary investigation procedures in the mandatory motor vehicle insurance market, the Competition Authority established that some insurance companies had created systems in order to manage various data. The ACA analysed whether the systems and their algorithms were in line with market behaviour rules.

The Competition Commission provided several recommendations to the regulatory body, the Financial Supervisory Authority, in order to prevent anti-competitive conduct stemming from the use of algorithms, promote access to the database of insured persons and ensure that these data are used to the benefit of final customers, while minimising the potential risks of price fixing and market sharing.

Consequently, in 2018 the Competition Commission issued a number of recommendations to the Financial Supervisory Authority⁴ and insurance companies in relation to the trading systems of compulsory insurance policies, aimed at

1 Law no. 9121/2003 "On Competition Protection", amended <http://www.caa.gov.al/laws/read/id/68>

2 DCM no. 284/2015 "For the approval of the crosscutting strategy – Digital Agenda 2015-2020" [2015] OJ no. 56.

3 Digital Agenda - Crosscutting strategy for the period 2015-2020 http://akshi.gov.al/wp-content/uploads/2018/03/Digital_Agenda_Strategy_2015_-_2020.pdf

4 Competition Commission Decision, no. 561, date 15.10.2018 "On some recommendations and closing of the preliminary investigation into the compulsory motor third party liability insurance market for domestic TPL product", available at: <http://www.caa.gov.al/decisions/read/id/1007>

enhancing compliance with competition law and preventing competing undertakings from coordinating their behaviour, for example through the use of algorithms to fix prices or the sharing of markets.

Since the decision of the Competition Commission, this market has been under continuous monitoring.

Banking

The digital economy has also affected the banking sector, particularly as regards the payment system.

In 2018 the Competition Authority opened a preliminary investigation in relation to the services provided in the banking sector.⁵

During the administrative proceedings, the Competition Authority addressed an information flow system between Second Level Banks, the Albanian Banking Association and the Central Bank of Albania, in the framework of improving the standards of transparency and consumer protection to enable customers to make smart choices. As a result of the Commission's decision in this procedure, the Central Bank of Albania's behaviour is now more transparent as it must:

- publish on a monthly basis data on the banking industry (financial health indicators), deposits and loans interests; and
- regularly publish the financial indicators of each bank (assets, liabilities, portfolio of loans and deposits) and an analysis of profitability indicators.

Furthermore, according to the requirements other specific bank activity data may be published for study reasons, such as: investments in IT, circulation cards, etc. So in this way, Second Level Banks sent information to the Albanian Association of Banks about Social Corporate Responsibility and they signed, among themselves, a "loan termination agreement" facilitating credit transfer procedures from one bank to another.

At this stage the question that arises is: To what extent does this flowing information result in Second Level Banks coordinating their behaviour?

The following response can be given to this question. In a transparent market, involving homogeneous products such as those provided in the banking system, the publication of information by the Association around the market and among competitors can operate as a monitoring mechanism and facilitate the coordination of the behaviour of banks. The use of

data flow systems makes it easier to track and coordinate bank policies and to reduce competition between them.

On the other hand, as part of the digitalisation of the economy banks are using information systems (e-banking) and digital applications to provide customer services, and are competing to increase their number of customers. Fast and cost-free banking services have provided banks with a competitive edge.

This investigation has already passed the in-depth investigation stage.⁶

Public Procurement Market (Bid-rigging)

Public procurement is one of the key areas of state activity and one of the most important processes in public finance management.

Public procurement procedures are developed by the Electronic Procurement System, which has created a new module in the electronic procurement system.

The Competition Authority carried out an analysis of the information contained on the website of the Public Procurement Agency and in a number of cases identified signs of bid-rigging among enterprises. On the basis of the collected and analysed information the ACA opened investigative procedures and imposed fines on those companies involved in bid-rigging.⁷

In cooperation with the Public Procurement Agency, the Competition Authority has prepared "The Guidelines for Contracts Agreements".⁸

When the Agency considers that there are signs of bid-rigging in its system, it is obliged to notify the Competition Authority. Likewise, the Public Procurement Agency must take into account the amendments to the Law "On Public Procurement" that were proposed by the Competition Authority and later adopted.

As a result of these changes to the Law, when the Competition Commission establishes that companies have committed a violation of the law by engaging in bid rigging, and this decision has been upheld by the Court, the Agency is obliged to exclude the concerned economic operators for up to 3 years from participation in procurement procedures.

Resale Price Maintenance (RPM)

The ACA initiated an investigative procedure in 2018 against the food chain company "Conad", which is an Italian

5 Competition Commission Decision, no. 516, date 22.05.2018 "Initiation of an Preliminary Investigation Procedure in the Banking Sector in relation to Raiffeisen Bank, National Commercial Bank, Credins Bank and Intesa SanPaolo Bank", available at: <http://www.caa.gov.al/decisions/read/id/982>

6 Competition Commission Decision, no. 592, date 31.01.2019, "Initiation of an in-depth investigation procedure in the banking sector in relation to Raiffeisen Bank, National Commercial Bank, Credins Bank and Intesa SanPaolo Bank" available at: <http://www.caa.gov.al/decisions/read/id/1030>

7 Competition Commission Decision, no. 535, date 17.07.2018 "On fines imposed against Tea-D LLC and "AE.K & CO" LLC for prohibited agreements in the public procurement market" available at: <http://www.caa.gov.al/decisions/read/id/986>

8 Albanian Competition Authority, available at: <http://www.caa.gov.al/?lng=en>

Company that operates in the Albanian market through its supermarket network.⁹

The “Conad brand” is one of the most popular in Albania, due to the quality and the food security it offers.

The investigation conducted by ACA found that the Conad Albanian Company, through a specific software, set recommended resale prices for all products, to be applied both by vertically integrated and by franchised supermarkets.

It was determined that the recommended prices did not result in an increase of the final consumer price.

When concluding the investigation the Competition Commission gave a number of recommendations aimed at

preventing the restriction of competition through the application of resale price maintenance.

To conclude, at the ACA we think that when talking about the digital economy it is difficult to distinguish anti-competitive practices from lawful business strategies. Each case involving the digital economy is unique and requires an individualised solution. Consequently, it is essential that there is cooperation between competition authorities and others regulatory bodies in the formulation of common policies and rules and, even more importantly, that these institutions possess appropriate professional knowledge.

9 Competition Commission Decision, no. 560, date 15.10.2018 “Conclusion of the preliminary investigation procedure against “Conad Albania” LLC in the market for the trade of food products bearing the “Conad” brand in the Republic of Albania and the imposition of a number of obligations”, available at: <http://www.caa.gov.al/decisions/read/id/1006>

Are commercial banks more “reliable” than insurance companies?

Exclusionary conduct of Georgian public procurers to the prejudice of insurance companies



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Public procurement is acknowledged to be one of the most significant functions of public entities. The rational spending of state resources, the establishment of a proper competitive environment for undertakings and the development of a free market economy are the major rationales behind public procurement legislation. Public procurement procedures are intended to ensure the fair allocation of public resources among undertakings, which is an important way to achieve fierce competition on different markets.

The contract arising between a public entity and a supplier/service provider as a result of a public tender provides the legal basis for the imposition of mutual demands and obligations. According to the terms of a procurement contract, the concerned public entity has the right to demand that the supplier/service provider fulfills the obligations contained within the contract and the supplier/service provider has the right to receive appropriate remuneration in return. However, there is always a risk that the supplier/service provider subject to such a contract will breach the terms contained therein, thereby posing a threat to the protection of the public interests attached to the proper fulfilment of the contract. Therefore, the mitigation of this risk is of great significance and forms the basis behind the mandatory tender condition envisaged by the Georgian public procurement legislation, which obliges the supplier/service provider to provide the contracting public authority with an appropriate bank guarantee.

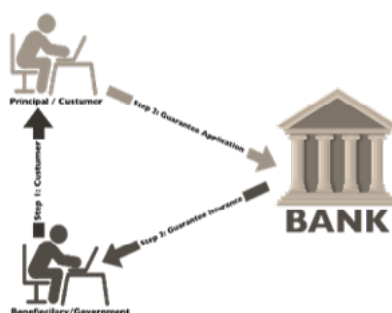
The Georgian public procurement legislative framework recognises 2 types of bank guarantees. The first type of bank guarantee ensures the adequate fulfillment of the public procurement contract from the side of the concerned supplier/service provider (“contract performance guarantee”), while

the second type of guarantee refers to the protection of the state funds that were given to the concerned company prior to the performance of the obligation contained in the public procurement contract (“advance payment guarantee”).

It is worth mentioning that the Georgian Civil Code (hereinafter “GCC”) does not make any distinction between the two different types of issued guarantees, with both being referred to as “bank guarantee”. In particular, pursuant to Art. 879 GCC “By virtue of a bank guarantee, a bank or any other credit institution or insurance organisation (guarantor) undertakes in writing, at the request of another person (the principal), to pay a sum of money to the principal’s creditor (the beneficiary), according to an assumed obligation, at the principal’s written request”.

In this regard, it should be noted that the GCC recognises *commercial banks, insurance companies and any other credit institutions* as organisations that are equally entitled to issue bank guarantees and provide markets with this service. Hence, a supplier/service provider that is obliged to provide a public entity with

a bank guarantee has three ways of obtaining the necessary bank guarantee. Namely, the supplier/service provider can acquire the necessary bank guarantee either from a commercial bank, insurance company or other credit institution. Thus, the mentioned institutions are potential contracting parties for suppliers/service providers. This approach of the Georgian legislator, which is laid down in Art. 879 GCC, creates a legal and equal expectations for all of these institutions to be able to compete in the relevant market by offering bank guarantees to bidders. In addition, Art. 13 of the Law of Georgia on Public Procurement declares that “A contracting authority shall define qualification criteria for each particular procure-



ment that the tenderers are to meet in order to participate in the procurement”, while also stipulating that “Requirements in qualification criteria shall be fair and non-discriminatory and promote effective competition”.

However, recent developments in the area of public procurement revealed that certain public entities were exhibiting a strong preference for the Georgian Banking Sector over the Insurance Sector. Such preference could be seen, for example, in the conditions of the invitations to tender issued by Georgian public procurers, according to which the required bank guarantees could only be issued by commercial banks. This requirement concerned both contract performance guarantees and advance payment guarantees. The inclusion of this requirement in the invitations to tender of public authorities obliged suppliers/service providers to obtain bank guarantees only from commercial banks, thereby excluding insurance companies and other credit institutions from the relevant market. As a consequence, a significant number of bidders already holding bank guarantees issued by insurance companies were obliged to obtain new guarantees from commercial banks. This type of exclusionary conduct became very common among public entities and threatened to prevent the whole insurance sector from operating on the relevant market, in violation of the right provided by the Georgian civil legislation. This threat resulted in an increasing number of consumers switching from insurance companies to commercial banks.

Due to these circumstances, there was a pressing need to change this practice, with a view to restoring equal competitive conditions between commercial banks and insurance companies. In particular, the affected insurance companies submitted two different complaints to the Competition Agency of Georgia (Hereinafter – “GCA”) regarding the public entities’ breach of Art. 10 of the Law of Georgia on Competition. On the basis of these complaints the GCA successively launched two separate investigations concerning the possible breach of Article 10 of the Law of Georgia on Competition, which prohibits the distortion of competition by public entities, authorities of Autonomous Republic and local self-government authorities. The first investigation concerned contract performance guarantees and the second related to advance payment guarantees.

The reasoning and arguments presented by the public entities involved were almost identical in both cases. Respondents indicated the following grounds and arguments in order to justify their exclusionary practices:

1. commercial banks issued bank guarantees with more caution as they studied the company’s history in a more detailed way;
2. banks were more solvent;
3. in case of necessity, banks reimbursed the guaranteed amount more rapidly and easily compared to insurance companies and

4. they had “bad” experience with several insurance companies in terms of the reimbursement of guarantees.

Based on an overall analysis of the cases the GCA concluded that the above-mentioned arguments did not provide sufficient justification for the restriction. When coming to this conclusion, the GCA took into account that according to the annual report of the Georgian National Bank, 16 commercial banks, 16 insurance companies and 75 credit organisations were operating in Georgia. Consequently, the disputed practice had significantly reduced the number of undertakings operating on the relevant market, which was acknowledged by the Competition Agency as posing a great threat to the competitive environment on the bank guarantee market. This alarming data was of vital importance from a competition law standpoint and highlighted the need for competition enforcement to be strengthened in this field.

The insurance market in Georgia is strictly regulated and supervised by the LEPL Insurance State Supervision Service of Georgia. The financial sustainability of insurers is thoroughly observed and scrutinised by the supervisor. During its investigations the GCA analysed all of the relevant information and came to the conclusion that the applicable legal obligations and very strict regulatory rules guaranteed the financial stability of insurance companies, as regards to the complete reimbursement of the bank guarantees issued by them. Furthermore, it was found that special insurance legislation included rational and proportional risk mitigation mechanisms in order to avoid the breach of obligation deriving from the financial institute in question. Therefore, the GCA did not agree with the arguments put forward by the concerned state authorities regarding the financial instability and incredibility of insurance companies. Consequently, there was no justifiable reason for claiming that insurance companies were less reliable when it came to meeting their liabilities and fulfilling their obligations on time. Furthermore, the past ill practice of one specific insurance company was deemed to be an insufficient ground for the exclusion of the whole insurance sector from the relevant market. Hence, the GCA stated that the approach taken by the concerned public entities had unreasonably and disproportionately restricted competition and could not be justified on the grounds indicated by the respondent bodies.

Due to these circumstances, in both cases the GCA established the infringement of Article 10 of the Law of Georgia on Competition. Here it is worth mentioning that the Georgian Competition Law does not actually provide for the imposition of a fine in the event of a breach of one of the provisions contained in the Law of Georgia on Competition by a public entity. Consequently, in order to restore a competitive environment on the relevant market, the GCA made use of the only tool at its disposal, namely the elaboration of a recommendation. In particular, the GCA recommended that the

public authorities should bring to an end the above described unlawful practice suitable to exclude insurance companies from the relevant market. Given that the recommendations of the Georgian Competition Authority must be followed by all other public entities, the fulfillment of the issued recommendations is under the permanent monitoring of the GCA.

It must also to be noted that the respondent public entities appealed against the above-mentioned decisions of the GCA

at the Tbilisi City Court. The first court case concerning contract performance guarantees was decided in favour of the GCA, while the second appeal concerning advance payment guarantees is still ongoing before the court.

The GCA is currently conducting an impact assessment in order to evaluate the overall positive impact of the aforementioned decisions on the relevant market.

The Russian Federation's experience of antitrust compliance in the banking and insurance sectors

The current issues and the role of the digital economy



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As with a number of other areas of the Russian economy, in recent years the provision of financial services has been subject to the rapid development of various digital tools aimed at improving and optimising the services provided. According to FAS Russia, in general the digitalisation of financial services has undoubtedly had a positive effect on both financial organisations and the consumers of such services. At the same time, it can be noted that in certain segments, and mainly among large players, competition is developing along with the digitalisation of the relations with clients.

In this regard, FAS Russia is working to adapt antimonopoly laws to the new challenges of the digital economy. In particular, FAS Russia has prepared the so-called “fifth antimonopoly package”, aimed, inter alia, at protecting the Russian segment of the digital market from the point of view of competition. The new package is aimed to promote optimal regulation and the emergence of innovative operators, including by establishing clear, transparent rules for the market.

A number of cases are discussed below. These cases involved the detection and suppression of violations of the currently applicable antimonopoly legislation in the financial sector through the use of information technology.

In 2018, FAS Russia uncovered an anticompetitive agreement between organisations that acted as administrators of electronic platform services (one of the most significant channels for the provision of tender loans) while also participating in the tender lending process. While in possession of administrator rights for the electronic platform services, the companies entered into an oral agreement, the purpose of which was to create barriers aimed at hindering the participation of a particular bank in the provision of such services. These actions, including the discriminatory application of the stipulated requirements for connecting organisations to these services, could have resulted in a restriction of competition in the market for loans for tenders.

Furthermore, in 2018, FAS Russia prevented unfair competition on the part of an electronic trading platform operator and a credit organisation, when the latter posted false information on the operator's website requiring the participants of a tender to urgently open a special account with the credit organisation in question, thereby misleading consumers.

FAS Russia also pays close attention to other forms of unfair competition. For example, in 2018, FAS Russia determined that the actions of an insurer, which lured customers from another provider by sending them analytical emails containing information about the impending bankruptcy of the competitor, constituted unfair competition.

In addition, FAS Russia is currently working to block unfair competition stemming from financial institutions' inclusion of information on state participation in their organisations when promoting financial services and activities. According to FAS Russia, the inclusion of such information may give consumers the impression that these organisations are more reliable and provide them with non-market based advantages. In 2018, FAS Russia and the mega-regulator of the financial market - the Bank of Russia - recommended that financial institutions should refrain from such actions in a joint information letter.

FAS Russia is also engaged in work aimed at ensuring competition in the field for payments and other related services through which citizens receive payments from the budget and state extra-budgetary funds. To this end, FAS Russia prevents and suppresses, among others, the practice of restricting the right of citizens to choose which economic entities shall provide them with the services they need in order to receive their pensions and other social benefits. Same applies to tenders that are not prescribed by the legislation of the Russian Federation concerning the determination of economic entities, which will reimburse expenses for services required by citizens for obtaining their pensions and other social benefits. At the same time, FAS Russia informed citizens about these tenders.

Furthermore, FAS Russia continues to work on improving the rules regarding interaction between credit and insurance organisations with regard to insuring borrowers, which are established in the General Exemptions. Currently, due to the Bank of Russia's strict supervisory activities, the insurance market is sufficiently protected from unscrupulous players. Consequently, FAS Russia is considering the possibility of updating the General Exemptions by an amendment in order to oblige banks to accept the policies of all insurance organisations possessing licenses to carry out such insurance activities for the borrowers being insured.

Specificities of the Serbian insurance market and the protection of competition



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Introduction

The insurance sector in the Republic of Serbia is underdeveloped and below the EU Member State average. Despite this fact, this sector is one of the most represented sectors in the proceedings before the Commission for Protection of Competition of the Republic of Serbia (hereinafter: the Commission). This paper will present the regulatory framework of the insurance sector in Serbia and the Commission's experience in this area.

General indicators of Serbian insurance market development

The ratio of total insurance premiums to gross domestic product (GDP) and the average collected premium per capita, are the criteria that are most commonly used as indicators of insurance market development. In EU countries, the ratio of premiums to GDP is more than 7%, while in Serbia it is 2%. At the same time, in the EU the average premium per capita is more than 2,000 euros, while in Serbia it is just above 100 euros. The fact that 34% of the total insurance premiums in Serbia come from compulsory motor vehicle liability insurance is a further indication that this market is underdeveloped.

There are 20 insurance companies operating in the Serbian market and the top four companies have a market share of over 70%. The market concentration measured by the HH index is moderate and stands at 1.289.

Legislation issues in the insurance sector from a competition law point of view

Insurance Law

A new Insurance Law was adopted in 2014¹. After undertaking a detailed analysis, the Commission sent an opinion² on the Insurance Law to the National Bank of Serbia, the institution responsible for overseeing the insurance sector. As expressed in the opinion, the Commission's main concern was that the law lacked sufficient precision, especially in the parts related to risk equalisation (coinsurance and reinsurance). Coinsurance involves the horizontal distribution of risk between insurers, while reinsurance refers to the vertical distribution of risk, i.e. the insurer purchases insurance from another insurance company in order to insulate itself from major claims that it cannot cover with its own funds.

Article 149 of the Insurance Law states that "An insurance company shall be required to manage risk in a way that ensures the coinsurance and reinsurance of excess risks above maximum retention", while Article 203 states that "If the National bank establishes that an insurance company is not complying with the rules of risk management referred to in Article 149, it shall order the company to comply with the Law and, among other provisions, to ensure coinsurance and reinsurance".

In its opinion the Commission highlighted the problematic nature, from a competition law point of view, of the provisions establishing an obligation to provide coinsurance, given the fact that a coinsurance agreement constitutes, in essence, a restrictive agreement. The determination of price (premium) and insurance conditions is an obligatory requirement of coinsurance agreements. In a number of requests for individual exemptions³ submitted to the Commission, insurance companies stated that the National Bank requires them to co-insurance risks between each other. Consequently, the Commission stated that the disputed provisions of the Insurance Law should be reformulated in a way that imposes an obligation for reinsurance, and an obligation – in certain cases and subject to the fulfillment of a number of conditions – for coinsurance, with the Commission recognising that coinsurance can act as a possible, but not as a mandatory form of risk equalisation.

¹ https://www.nbs.rs/internet/english/20/laws/law_insurance_139_2014.pdf

² <http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/09/Opinion-on-the-Insurance-Law.pdf>

³ under Serbian Competition Law it is still possible to apply for individual exemption

Law on Compulsory Traffic Insurance

In 2009 the Commission issued an opinion⁴ on Article 108 of the Law on Compulsory Traffic Insurance⁵. Article 108 stipulates that insurance companies that offer motor third party liability insurance shall implement common insurance policy terms, premium system and minimum scales of premium. Such conditions should be defined by the Association of Insurance undertakings and subject to prior consent by the National Bank. Although Article 108 envisages the theoretical possibility that the amount of insurance premiums may exceed the minimum premium, records of the past behaviour of insurance companies suggest that insurance companies tend to keep the identical insurance premium price policy (minimum allowed). The Commission pointed out that the implementation of the same resale price by all of the competitors on the relevant market excludes competition; furthermore, it stated that it is unacceptable that Article 108 enables insurance companies to eliminate price competition. The Commission observed that the likely objectives pursued by the described provision (i.e., reliable manner of reimbursement of third party liability claims, fulfilment of contractual obligations, solid claims loss ratios) could also be accomplished by the effective implementation of the previous regulatory principle, which was consistent with comparative legislations. Independent regulation of the expense loading calculated by each insurance company against the net premium would lead to competition on the amount of insurance premium paid by the policyholder. As a result, insurance companies would be induced to rationalize costs with the goal of attracting clients, which would lead to the reduction of insurance premium prices.

The Commission informed the competent authorities of its views on both laws and published them on its website.

Competition cases in the insurance sector

As regards to the insurance sector, each year several requests for individual exemptions are submitted to the Commission, one or two initiatives to investigate restrictive practices are initiated and one or two concentrations are notified.

The Commission has so far dealt with two major cases in which it established that the decisions taken by the Association of Insurance Undertakings and its members violated competition law; in the motor hull (casco) and third party liability insurance markets. Finally, the Commission conducted a large sector inquiry (hereinafter: SI) into the Serbian insurance market over a 4-year period.

The results of the SI revealed the following: Only 2 out of the 15 participants⁶ in the market do not deal with coinsurance; coinsurance premiums are growing much faster than insurance premiums (72% vs 31%), although claims from coinsurance are on the same level; the number of coinsurance contracts is increasing (56%). Furthermore, the SI showed that: there are no pools of insurers in the Serbian market (EU Regulation 267/2010, which expired in March 2017, covered only coinsurance pools, not ad-hoc contracts); the market is cross-linked with ad-hoc coinsurance contracts; in some cases, coinsurance is requested by the terms of public tenders for insurance services, but insurance companies often conclude coinsurance agreements even they are not required, as well as when they cover the risks for private users.

The SI set out 18 findings and 9 recommendations, the majority of which were for the National Bank, with a smaller number addressed to insurance companies and the public procurement agency. Some of recommendations were as follows:

- It is recommended that the National Bank, by clarifying the application of Articles 149 and 203 of the Insurance Act, clarifies coinsurance obligations while addressing competition concerns,
- It is recommended that the National Bank should require insurance companies to provide transparent criteria for coinsurance operations in terms of objectively measurable indicators of coinsurance necessity,
- It is recommended that the National Bank should evaluate the possibility of keeping records of the total coinsurance premium achieved by insurance companies and types of insurance (the data is currently not available),
- Although the “network” of coinsurance contracts is not always related to public procurement, bearing in mind the specificities of coinsurance, as well as the great importance of insuring the assets of public companies, it is recommended that all relevant institutions monitor and analyze the conditions under which public procurement procedures takes place and to give their opinions and suggestions, if necessary.

Conclusion

Competition in the insurance sector must be carefully monitored and fostered. Economic doctrine recognized a specificity of the insurance industry insofar as insurance is an instrument of risk management, which is necessary for the stability of the economic system as a whole. The specificity of insurance also lies in the fact that it is based on uncertainty and requires insurance companies to be able to anticipate fu-

⁴ <http://www.kzk.gov.rs/kzk/wp-content/uploads/2017/11/Opinion-on-Article-108-of-the-Law-on-Compulsory-Traffic-Insurance.pdf>

⁵ Official Gazette of the RS 51/2009

⁶ 15 companies are providing non-life or non-life and life insurance and others only life insurance

ture costs. Thus, when determining premiums in the correct manner, insurance companies must rely on exact statistics regarding the possibility of the actualisation of the insured events and the extent and magnitude of the damage that may occur. Therefore, cooperation between participants in the insurance market seems to be a natural need and an integral part of this industry. Economists believe that allowing operators to share statistics on risks leads to better and more accu-

rate actuarial calculations, based on the experiences of multiple market participants. This is crucial particularly where the potential damage is “irregular”, the risk categories are numerous (nuclear risks, natural disaster, etc.) and the possible damage is huge. This results in clear incentives for insurance companies to cooperate, but this cooperation must not endanger consumer welfare; in other words, it must not go beyond what is prescribed by competition law regulations.

Competition enforcement and advocacy in the banking and insurance sectors



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Introduction

The Hungarian Competition Authority (Gazdasági Versenyhivatal, hereinafter GVH) has been active in monitoring the payment and insurance markets in Hungary. In addition to its competition enforcement proceedings, the GVH has used a number of other tools in order to identify possible competition problems on these markets. The GVH recently conducted a sector inquiry in the bank card acquiring market, and it also dealt with the motor vehicle insurance market in a market study.

Banking sector inquiry

When it comes to settling an account or carrying out transactions, Hungarian people tend to prefer cash to electronic means of payment. The smooth functioning of the card acquiring market is key to the proliferation of card payments.

The GVH carried out a sector inquiry into the bank card acceptance market in 2017 with the intention of assessing any market failures which may justify the initiation of competition supervision proceedings. While the GVH did not reveal any market failures it did, however, identify a number of market circumstances affecting competition on the market. Consequently, the GVH issued a number of recommendations to address the highlighted concerns.

First of all, the final report of the GVH issued on the conclusion of the sector inquiry notes that the setting of a cap on the level of interchange fees has reduced merchants' cost burden. The smallest merchants (less than 1 million HUF [approximately €3,000] quarterly card payment) have benefitted the most from this reduction; nevertheless, when compared to turnover, this merchant size category still faces the highest cost burden.

This is due to the fact that interchange fees are determined based on turnover, thereby placing large retailers in a much

better bargaining position as a result of their high domestic turnover, which encourages competition between acquiring banks. Consequently, the GVH's first recommendation was to launch awareness raising programmes for merchants. The GVH also suggested minimising or completely eliminating proportional fees, in order to enable smaller companies to compete effectively.

Secondly, the GVH suggested extending the POS terminal programme to the higher turnover category (1-2.5 million HUF [approximately €3,000 to €7,500] quarterly card payment), since this category faced higher acceptance costs due to their low bargaining power. The POS terminal programme benefits those merchants that have not previously had a POS terminal and which fall within the smallest merchant category.

In addition, the GVH recommended increasing the popularity of bank card acquiring as well as the use of bank cards by means of tax policy measures. According to a market study conducted in the course of the sector inquiry, merchants complained about the fact that they receive the value of purchases several days later. The GVH therefore advised that the acquiring banks should speed up their crediting process of card transactions.

Market study on the motor vehicle sector, including insurance

The GVH also conducted a market study into the sales and servicing of passenger vehicles and LCVs, with the study also covering the issues arising on the motor vehicle insurance market. The findings of the market study were published in May 2017.

The GVH found that the premium income of insurers from products declined annually by an average of 10% until 2013 as a result of the tariff decrease implemented in the campaign period. Since 2014, partly because of the abolition of the campaign period, the trend has reversed, with the average tariffs and premium income experiencing an increase.

While in its findings on the conclusion of the market analysis, the GVH did not identify any market distortion that could be remedied by a competition supervision proceeding, it detected a number of problems on the market that may affect competition. The GVH recommended the consideration of the return of the campaign period in the compulsory motor vehicle liability insurance market.

Competition in the banking sector in Spain



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The banking sector has become one of the main priorities of the Spanish Competition Authority (CNMC). For this reason, it has been included in the annual strategy plan of the CNMC in recent years. The supervision of this sector is carried out from two different perspectives: on the one hand from an advocacy point of view, through an analysis of the new models of the financial sector (Fintech) in order to detect potential competition risks, and on the other hand from an enforcement perspective, through merger control and antitrust proceedings. In this sense, we have assessed several mergers in recent years in the banking sector and we have also initiated different investigations in the sector. Finally, the CNMC also monitors certain issues arising in the banking sector, such as ATM fees.

Advocacy

One of the phenomena that is shaking the financial sector and sparking the interest of competition and regulatory agencies is the Fintech revolution (leading the CNMC to carry out a study [E/CNMC/001/18](#)). Fintech can be defined as the disruptive application of new technologies to the financial system, having an impact on the competitive conditions of the financial sector and hence on the entire economy. Furthermore, the Fintech phenomenon can help mitigate some of the market failures (such as information asymmetries, externalities and market power) that were used to justify some regulations.

While it is too early to know the full effects of Fintech on financial systems, it is possible to identify some opportunities and challenges. Among the opportunities, without jeopardising the objectives of security and consumer protection, Fintech implies both a process innovation (thanks to the personalisation and individualisation of financial services, more oriented to individual consumers' satisfaction) and a product innovation (as it gives rise to new products or services through a better exploitation of information). Secondly, new (often small) Fintech competitors are challenging traditional (often big) incumbent financial institutions, and contestabili-

ty in some financial activities could lead to the remodeling of a number of sectors and entities, thereby enabling the unbundling of financial services.

However, the advent of Fintech also poses some important challenges. First, some of these new services are based on digital platforms (crowdfunding) and networks, which can grow to the point of acquiring significant market power thanks to indirect network effects. Secondly, Fintech raises a number of concerns for competition authorities in relation to undertakings' access to information, the role played by algorithms and the growing relevance of Big Techs, which may be tempted to expand their market power "downstream" (leveraging). Thirdly, given that Fintech is based on better exploitation of information, this could raise several questions about the possibility of price discrimination and the extraction of consumer surplus (excessive pricing).

Therefore, although Fintech innovations are not risk-free, they may have huge positive potential in two respects. First, Fintech promotes competition in the financial sector, which is likely to have a positive impact not only on the financial sector but also on the economy as a whole. The entry of new competitors and new business models generates greater efficiency in the form of more affordable prices and better and more differentiated services. Second, and to the extent that some market failures (such as information asymmetries) can be mitigated, the Fintech revolution warrants reconsidering (on a case by case basis) the regulatory burden on the financial sector.

Merger control

The Spanish banking Industry has undergone intense consolidation in recent years. During the last 10 years the Spanish Competition Authority has approved more than forty mergers within the banking industry, all of them in phase I, without remedies nor the need for in-depth analysis. At the national level, the Spanish banking sector remains below the threshold level of a highly concentrated market, although a provincial-level analysis reveals higher levels of concentration. In fact, the regional analysis undertaken in the most re-

cent transactions revealed that the aggregate market shares of the merging parties in a few provinces could reach between 30 and 40%. But both the EC and the CNMC concluded that important competitors remain present, thus leading competition authorities not to oppose the transactions.

In addition to this, the risks arising from the consolidation process in the banking industry - entailed in terms of possible exit barriers or risk to competition - have been largely offset by the parallel and complementary action of competition policy, financial assistance conditionality and financial regulation.

According to a recent statement of the vice-president of the European Central Bank, consolidation is inevitable among banks in the euro zone and therefore new mergers can be expected in the near future.

The merger process in the Spanish financial sector has affected not only the banking sector in the strict sense but also payment systems. In 2018, the three card payment systems existing in Spain merged creating a new unified domestic system of payments. The transaction was cleared by the CNMC with commitments offered by the parties, which were oriented to ensure the access of payment service providers to the unified domestic system, unbiased and objective behaviour towards those service providers, and the transfer to the market of the achieved efficiencies.

Antitrust proceedings

In the summer of 2015, the CNMC initiated proceedings against four big Spanish Banks: CAIXABANK, BANCO SANTANDER, BANCO DE SABADELL and BBVA, based on a complaint filed by an investing company (VAPAT) denouncing price agreements in the interest rate derivatives associated to syndicated loans. The loan contracts contained a clause that obliged borrowers to negotiate certain financial products with each of the creditors (in particular, collars and swaps) as a means of hedging interest rate risks. According to the complaint, the concerned banks coordinated to fix strike prices for these financial options so that they were way above their market price, instead of quoting individual prices under market conditions.

During these proceedings, doubts were raised as to syndicated loans themselves and the way banks link them to contract hedging products at EU level. These doubts were not included in the Draft Resolution but motivated DG Comp to commission a report on a systematic analysis of the loan syndication market, focusing on six EU Member States, and its possible implications for competition policy.

On the 1st of January 2017, the Competition Directorate adopted a Statement of Objections on the opened case. On the

13th of February 2018, the Council of the CNMC adopted the Resolution qualifying the four banks conduct as an infringement of article 1 of the Spanish Competition Act and 101 of the TFEU, and imposing the following fines: SANTANDER €23,900,000, SABADELL €15,500,000, BBVA €19,800,000 and CAIXABANK €31,800,000.

In April 2019, the European Commission published its final report on syndicated loans, for which it launched a call for tenders in 2017. The report confirms the concerns of the Spanish Competition Authority, and identified potential competition risks, depending on the way that syndicates are formed and the hedging products designed, which have direct drawbacks for borrowers.

Finally, the CNMC has recently opened a preliminary investigation regarding alleged anticompetitive practices involving access conditions to ATM networks by certain banks. According to the complainant, certain financial entities are being systematically and unjustifiably denied access to a network of ATMs under the same favourable conditions that are being offered to other banks, with the aim of reducing the affected entities' ability to compete in the market for providing payment methods. Under the ongoing investigation, dawn raids were conducted on 25-27 September at the headquarters of several companies, both banks and network administrators, operating in this market.

Monitoring of ATM fees

In 2015, a national Decree established a new regulation for ATM fees, including a model to avoid double ATM fees for users. This regulation mandated the CNMC to monitor the agreements and decisions taken by banks with respect to the determination and application of ATM fees. Thus, in 2015 the CNMC published a report containing an in-depth analysis of the existing ATM fees systems and the main ATM networks (<https://www.cnmc.es/2016-07-19-la-cnmc-publica-el-informe-sobre-las-comisiones-por-la-retirada-de-efectivo-en-los>).

In December 2018, the CNMC published a new report (INF/DC/176/18) containing an assessment of the main effects of the ATM fees model introduced in 2015. As far as consumers are concerned, the main effects have been a reduction in the number of withdrawals made using external ATMs and an increase in the amount that is withdrawn when using external ATMs. As regards to the effects on banks, the report shows that there has been a reduction of the medium fees and an increase in the number of withdrawals made in banks with lower ATM fees. In conclusion, ATM fees have acted as a competitive tool for banks and users.

Competition law in the financial sector

Recent activity of the Portuguese competition authority

Introduction



This article focuses on the Portuguese Competition Authority's (Autoridade da Concorrência, hereinafter AdC) recent activity concerning the financial sector, notably the imposition of fines in two cases of collusion carried out by banks and insurance companies, as well as an Issues Paper regarding FinTech.

Concerted practice in the banking sector

In September 2019, the AdC fined 13 banks a total of EUR 225 million euros for a concerted practice consisting of the exchange of sensitive commercial data between 2002 and 2013.¹

The banks exchanged sensitive data on their credit offers in retail banking, namely on mortgages, and credit products for both consumers as and small and medium enterprises..

In this scheme, the banks provided each other with relevant, strategic and non-public information on their commercial offers indicating, for example, the spreads to be applied in the near future on mortgage loans or the volume of loans made in the previous month, information that otherwise would not have been available to their competitors. Thus the banks knew, in a detailed, precise and timely manner, the credit offers being made by other banks, which discouraged them from offering better conditions to their clients. As a result, they were not subject to the normal competitive pressure that is beneficial to consumers.

The AdC opened the case in 2015 following a leniency application. It subsequently conducted dawn raids on 25 premises of 15 banks, issuing a statement of objections in May 2015. One bank was granted immunity from fines and another benefited from a fine reduction under the leniency programme. The EUR 225 million fine is the highest fine that has been imposed by the AdC in a single case so far. The procedure also involved a very significant amount of litigation and was sus-

pending for approximately one year as a result of court decisions. The banks submitted 43 appeals during the investigation, but only 5 judicial decisions did not uphold the AdC's position.

Cartel in the insurance sector

In August 2019, the AdC concluded a cartel investigation in the insurance sector, covering five companies and imposing fines of over EUR 54 million.²

The insurance companies involved in the cartel were Fidelidade, Lusitania, Multicare, Seguradoras Unidas and Zurich.³ They coordinated prices for large corporate clients regarding workplace accident, health and auto insurance, colluding to quote higher prices so that the incumbent insurer retained the respective client.

The investigation was formally initiated in May 2017 following a leniency request submitted by Seguradoras Unidas. In June and July 2017, the AdC conducted dawn raids at the premises of the insurance companies and in August 2018 it sent an SO to the five insurers.

The first decision in the proceedings came in December 2018, with the AdC fining Fidelidade and Multicare EUR 12 million. Both companies, which belong to the Fosun Group, were granted fine reductions in light of their leniency applications and participation in settlement procedures.

The case was concluded in August 2019 with the sanctioning of Lusitania and Zurich, as well as two board members and two directors, with the imposition of fines of over EUR 42 million. Seguradoras Unidas received full immunity under the leniency programme.

Issues Paper on Technological Innovation and Competition in the Financial Sector in Portugal (Fintech)

In October 2018, the AdC published an Issues Paper on Innovation and Competition in the Financial Sector in Por-

1 The case involved 15 banks: Abanca, Barclays, BANIF, BBVA, BCP, BES, BIC (for practices of its predecessor BPN), BPI, Caixa de Crédito Agrícola, CGD, Deutsche Bank, Montepio, Santander (liable for its own actions and those of Banco Popular, which it acquired in the meantime) and UCI. Abanca was not fined as it ceased its involvement several years before the other banks and its anticompetitive behaviour was time-barred. See the AdC's press release at: http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201917.aspx?lst=1&Cat=2019.

2 See the AdC's press release at: http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201916.aspx?lst=1&Cat=2019.

3 Fidelidade – Companhia de Seguros, S.A., Lusitania – Companhia de Seguros, S.A., Multicare – Seguros de Saúde S.A., Seguradoras Unidas, S.A. and Zurich Insurance PLC – Sucursal Portugal.

tugal.⁴ The paper identified barriers to entry in Portugal for new firms based on innovative technologies applied to the financial sector – the so-called FinTech –, while highlighting that the innovative technologies in the financial sectors and the new FinTech entrants may play a key role in promoting choice and increased access to credit and other financial services for consumers and companies, notably SMEs.

FinTech entrants may therefore introduce competition in a market characterised by high concentration and low contestability, thereby enhancing consumer welfare. FinTech may also contribute to the modernisation and greater efficiency of the financial sector as a whole, bringing important innovations to payment services, crowdfunding and other innovative technologies such as robo-advisory. New technologies have also been introduced in the insurance sector (InsurTech), and have resulted in new products, services and business models. These developments reduce costs, broaden the range of consumer choice and represent an opportunity to increase financial inclusion by widening the coverage of consumers and business with more limited access to the traditional financial services.

However, Portugal has had a slow response in adapting to these market developments vis-à-vis other countries. New FinTech entrants to Portuguese financial markets have faced barriers to entry and expansion that have compromised their ability to offer new products and services that appeal to consumers. These barriers mainly relate to the regulatory framework and the risk of market foreclosure of FinTech entrants by incumbent banks.

In particular, the AdC identified a risk of market foreclosure by the incumbent banks by hindering FinTech entrants' access to key inputs, namely client account data and settlement and clearing infrastructures. The AdC has also identified a set of specificities of the Portuguese retail payment systems that are likely to entail added difficulties for FinTech entrants. Regarding crowdfunding, mainly provided by FinTech firms, the AdC identified both regulatory and non-regulatory barriers to entry and expansion (e.g. associated with lack of consumer trust).

Therefore, in its Issues Paper, the AdC recommended measures to promote choice for consumers and companies in financial services in Portugal. The recommendations aim to reduce barriers to the entry and expansion of FinTech firms, focusing on the risk of foreclosure of new entrants by incumbents and how the intervention of the legislator and the sector regulator may mitigate this risk.

The AdC put forward a number of recommendations regarding payment services, aimed at the Government and the Bank of Portugal. In particular, the AdC highlighted the rel-

evance of a timely regulatory response to market developments, and further recommended proceeding with the transposition of the PSD2 Directive⁵ without further delay. This Directive, embedded with principles of openness, innovation and competition, is important to alter the current status quo that is preventing the full benefits of technological innovation from being realised. A key aspect of the PSD2 is the access of new FinTech entrants to client account data. The Directive, along with the General Data Protection Regulation,⁶ puts an end to the banks' exclusive access to client account data, while strengthening the security of both financial services and information. The AdC recommended that, in the context of implementing the Directive, the legislator and sector regulator reduce the degrees of freedom granted within the obligations for incumbents to grant access to the necessary inputs to provide their services.

The AdC further recommended that consideration is given to the adoption of measures aimed at facilitating access to the settlement and clearing system, in order to reduce the reliance of FinTech entrants on incumbent banks. This should be achieved through adequate, proportionate and non-discriminatory requirements for access to the settlement and clearing system, while adequately safeguarding the security and integrity of the system. In addition, the Issues Paper highlighted that it is important to ensure the direct participation of the payment institutions in the systems and agreements pertaining to instant payments.

The AdC further recommended that, during the transition period and until the regulatory technical standards came into force, new entrants should be able to provide their services. In this regard, it is key that the Bank of Portugal monitors the credit institutions that manage payment accounts to ensure that they do not block or obstruct the use of payment initiation and account information services.

The State, as a consumer of goods and services, also plays a key role in shaping demand while procuring financial services. The AdC thus recommended that public tender procedures are designed with technologically neutral specifications.

Given the relevance of crowdfunding as an alternative source of funding for SMEs and consumers with restricted access to capital and credit, it is key to ensure that the regulatory framework applicable to crowdfunding is proportionate and eliminates legal uncertainty for all the relevant parties. The AdC therefore put forward a set of recommendations on crowdfunding that are based on the principles of efficient regulation, namely necessity, proportionality and non-discrimination. In particular, the AdC recommended that the Government, CMVM (the Portuguese Securities Market

4 See the AdC's press release at: http://www.concorrenca.pt/vEN/News_Events/Comunicados/Pages/PressRelease_201815.aspx?lst=1&Cat=2018. See also the Issues Paper at: http://www.concorrenca.pt/vEN/Estudos_e_Publicacoes/Estudos_Economicos/Banca_e_Seguros/Documents/Issues%20Paper%20Technological%20Innovation%20and%20Competition%20in%20the%20Financial%20Sector%20in%20Portugal%20-%20Final_Version.pdf.

5 Directive (EU) 2015/2366.

6 Regulation (EU) 2016/679.

Commission), the Bank of Portugal and other competent authorities promote legal certainty and the proportionality of regulatory requirements, grant new FinTech entrants access to the Portuguese Central Credit Register and promote financial literacy relating to crowdfunding.

Finally, the AdC also advocated for the adoption of a regulatory framework that allows FinTech and InsurTech to test innovative products, services and business models in a live market environment, while safeguarding the interest of consumers and preserving system security – the so-called regulatory sandboxes.⁷ These regimes play a key role in mitigating barriers to entry and reducing legal uncertainty, enhancing contestability in financial services markets. The benefits of these regulatory regimes apply across the different financial

services covered in the AdC's Issues Paper, namely payment services, crowdfunding, InsurTech and robo-advisor.

Conclusion

Insurance, mortgages, credit products and other banking services play an important role in today's economy.

Any anticompetitive behaviour in these markets may therefore have a very direct and immediate negative impact on the daily lives of consumers, whether individuals or firms.

It is therefore essential to ensure the protection of competition in this area.

The AdC's focus on the financial sector over the past two years, both in enforcement and advocacy, reflect its importance.

⁷ In this respect, see an overview of international experiences concerning Regulatory Regimes that Promote Innovation in the Financial Sector at: http://www.concorrenca.pt/vEN/News_Events/Noticias/Documents/Regulatory%20Regimes%20that%20Promote%20Innovation%20in%20the%20Financial%20Sector.pdf.

Summary of the OECD Competition Week, 2-6 December 2019

Please note that all relevant background papers and country contributions from the December 2019 OECD Competition Week can be found on the following webpage: <http://www.oecd.org/daf/competition/roundtables.htm>

Working Party no. 2

Working Party no. 2 (Competition and Regulation) of the OECD Competition Committee discussed the role and mandate of **sector regulators**, the functions and policy objectives they pursue, and their relationship with competition authorities.

Independent regulators operate autonomously and are not subject to any undue influence from political forces or private entities. Their independence and relationship with competition authorities, which focus on merger control and anti-trust enforcement, is very important as effective independent regulators can successfully complement the role of competition authorities, thereby helping to ensure that the competition policy of sectors is consistent and coherent. They can achieve this by not only refraining from implementing unnecessary anti-competitive regulatory measures in pursuit of their broader objectives, but also by stimulating more competitive outcomes through better regulation, such as through interventions to tackle asymmetric information, limits on the exploitation of behavioural biases, as well as by reducing barriers to entry and setting standards for portability or interoperability where appropriate.

Given the broad adoption of independent regulators in utility industries, it is surprising that many other regulated markets lack independent regulators (with regulations set either through self-regulation or by government ministries). In addition, where independent regulators exist, there are many different approaches for ensuring consistency between them and competition authorities.

The Roundtable discussion explored these issues and provided an opportunity to learn from the experiences that delegations have had in advocating for (or against) the creation of, and cooperating with independent sector regulators.

Working Party no. 3

Working Party no. 3 (Enforcement and Co-operation) focused on **access to the case file**, which is essential for ensuring that parties' rights of defence are protected, as it allows them to examine the basis on which a competition authority or court will adopt its decision. Access ensures that deci-

sion-making is transparent and that the rights of defence of involved parties are protected.

The scope of the right to access the file varies across jurisdictions. Although some authorities provide access to virtually the whole file, others only provide access to the evidence in the file that will be used to establish an infringement. The moment at which parties can access the file and the methods through which this access is provided also vary.

The right to access the file or the evidence to be used in court is not unlimited, and must be balanced against the need to protect the confidential information contained in the file. In order to carry out their investigations and enforcement activities, competition authorities depend on access to sensitive, non-public information that is provided by parties and third parties. It is in the authorities' interest to protect the confidentiality of sensitive information, both to prevent competitively sensitive information from being shared among competitors and to ensure that parties and third parties remain willing to supply information and co-operate with competition authorities. Jurisdictions take different approaches to balancing parties' right to access the file or obtain evidence necessary for a court proceeding and protecting confidential information.

The Roundtable examined different types of rules and the ways in which access to the file in competition proceedings is granted. It also explored the different approaches to protecting confidential information, including such issues as the types of information considered confidential, the procedures used to determine whether confidential treatment must be granted, and the methods used to protect confidentiality.

Competition Committee

The Competition Committee held a roundtable on **hub and spoke arrangements**. Hub and spoke conspiracies are horizontal restrictions of competition that are facilitated or implemented through vertical relationships. In the extreme form they result in a full-blown horizontal hard core cartel (mostly price fixing), without the cartelists ever having any direct communication between them.

The main aim of the roundtable was to outline the case practice in OECD jurisdictions with regard to hub and spoke arrangements and the standards of proof as established in leading jurisdictions. Particular attention was given to the risk of hub and spoke arrangements arising in digital markets. During the roundtable delegates presented their case practice and jurisprudence, exchanged views on the practical difficulties related to investigating such arrangements, on the bur-

den and standard of proof, and on the applicability of leniency programmes to vertical restraints with horizontal effects.

In the subsequent roundtable, delegates discussed the role of **barriers to exit** in their enforcement and advocacy work and the difficulties they encountered when identifying appropriate remedies. Barriers to exit, like barriers to entry, decrease the market discipline mechanisms of the competitive process to relocate resources from one market or firm to another according to changing conditions. This can lead to less efficient firms staying in the market. As a result, resources (both financial and human capital) remain ‘trapped’ in existing firms instead of being relocated to their most efficient use. This makes it difficult for more efficient firms to expand and crowd-out the growth of more innovative firms. Therefore barriers to exit can have an adverse effect on the level of competition, hinder innovation and change, be an important driver of productivity slowdown, and have an adverse impact on economic growth.

Global Forum on Competition

The last two days of the week were devoted to the 18th annual meeting of the Global Forum on Competition, which brings together delegations from Member and non-Member economies as well as international, regional and non-governmental organisations. Over 450 high-level competition officials from over 110 authorities and organisations worldwide participated in the event.

The first panel addressed the theme of “**Competition Under Fire**”. The current policy debate criticising the activities of competition authorities is broad and wide ranging from questioning the inadequacy of the consumer welfare standard, to concerns about the current merger control standards. Competition authorities face questions about the effectiveness of their activities and whether competition maybe skewed, favouring large firms to the detriment of smaller ones or certain economic classes of the population over others. Considerations of industrial policy, and public interest objectives, also enter into the debate of whether competition as we know it is still relevant.

The session analysed the growing scepticism of competition, examining and responding to the broad criticisms that antitrust policy has been subject to in recent times. The panel also looked at the role that competition policy could play when pursuing such broader interests; the enforcement standard that authorities could apply; and if competition should have any role in promoting industrial policy objectives and reducing inequalities in modern societies.

The second session of the Forum examined competition provisions in **trade agreements**. The majority of trade agree-

ments include a competition policy chapter or individual competition provisions. These cover a range of issues, such as the adoption or maintenance of competition laws, international co-operation on competition policy or the introduction of procedural safeguards. This session considered the purpose and impact of these competition provisions in practice and discussed their usefulness in broadening and strengthening the application of competition law worldwide. In addition, the session looked at the role of competition authorities in the drafting and negotiation of competition provisions in trade agreements.

The 2019 Global Forum on Competition also held a plenary session on **merger control in dynamic markets**. Modern competition dynamics observed in rapidly-evolving sectors, such as high-technology, consumer services and online retail, are challenging the role of competition authorities in merger control, where enforcement decisions fundamentally depend on an effects-based analysis of the likely future effects of the merger.

As these sectors are typically characterised by high entry and exit rates, as well as innovations that continuously disrupt existing business models and create entirely new markets, it is increasingly difficult for authorities to predict how markets will evolve in order to support merger decisions. This is further aggravated by the fact that many of the merger tools currently available tend to focus on static measures of competition. Delegates debated the relevant timeframe of merger control and how far into the future authorities should look when assessing the effects of a merger.

The final session addressed **competition for-the-market**, which occurs when firms compete not to gain market share or consumers, but to serve the entire market. This might include cases of natural monopolies (with large economies of scale), publicly-funded monopolies (which would otherwise not be provided), legally-protected monopolies, or platform monopolies (with powerful direct or cross-platform network effects that generate increasing value from scale).

The roundtable focused on the enforcement and advocacy challenges that arise for competition agencies when governments offer concessions on natural and publicly-funded monopolies. The discussion considered a range of issues, including the circumstances in which a concession constitutes a change of control, the role of market definition, and the peculiarities of exclusionary conduct in concession markets. It also focused on when and how best to use concessions to achieve better value.

The next Competition Week will be held on 8-12 June 2020.

Competition policy in Eastern Europe

INSIDE THE COMPETITION AUTHORITY: ANTIMONOPOLY COMMITTEE OF UKRAINE

1. THE INSTITUTION

Chairperson

Mr. Yuriy TERENTYEV

Chairman of the Antimonopoly Committee of Ukraine since May 2015.

End of mandate: May 2022.

Members of the Board (Commissioners)

Ms. Olha PISHCHANSKA, *First Deputy Chairperson.*

Start of mandate: September 2019. End of mandate: September 2026.

Ms. Nina SYDORENKO, *Deputy Chairperson.*

Start of mandate: August 2015. End of mandate: August 2022.

Ms. Dar'ya CHEREDNICHENKO, *Deputy Chairperson.*

Start of mandate: October 2019. End of mandate: October 2026.

Ms. Nataliia BUROMENSKA, *State Commissioner.*

Start of mandate: July 2019. End of mandate: July 2026.

Ms. Iryna KOPAIHORA, *State Commissioner.*

Start of mandate: September 2019. End of mandate: September 2026.

Ms. Olga NECHYTAILO, *State Commissioner.*

Start of mandate: July 2019. End of mandate: July 2026.

Ms. Mariia PROTSYSHEN, *State Commissioner.*

Start of mandate: June 2015. End of mandate: June 2022.

Mr. Serhii TYSHCHYK, *State Commissioner.*

Start of mandate: October 2019. End of mandate: October 2026.

Head (Chief) of staff

Mr. Yuriy LYTVYN

Start of mandate: July 2019. End of mandate: July 2024.

Appointment system for the Chairperson and other key positions

Pursuant to the Law of Ukraine "On the Antimonopoly Committee of Ukraine" (LAMCU), the Members of the Board of the Committee consist of the Chairperson and 8 State Commissioners, from among which there are the First Deputy Chairman and 2 Deputy Chairpersons.

The Chairperson of the AMCU shall be appointed or dismissed by the Ukrainian Parliament based on the proposal of the Prime Minister. The term of the Chairperson's office is 7 years. He/she may not be appointed for more than 2 consecutive terms. On the conclusion of the Chairperson's office, he/she shall continue to perform his/her functions until the new Chairperson is appointed.

The First Deputy Chairperson and 2 Deputy Chairpersons shall be appointed from among the State Commissioners by the President of Ukraine based on the Prime Minister's proposals which, in their turn, shall be based on the AMCU Chairperson's proposals.

The State Commissioners of the AMCU shall be appointed by the President of Ukraine based on the Prime Minister's proposals which, in their turn, shall be based on the AMCU Chairperson's proposals.

Subject to the Law of Ukraine "On public service", the Chief of Staff of any public body (including the AMCU) shall be appointed based on the results of a competitive procedure for a term of 5 years and shall have the right to hold this position for one further 5-year term without the need for the competitive procedure to be repeated.

Authority's competences in competition

- Antitrust (anticompetitive agreements and abuse of dominance)
- Mergers and acquisitions
- Advocacy
- Market studies
- State aid
- Other (please specify)

In addition to the list of competences that a competition authority normally possesses, the AMCU performs two important functions that are not usual for a competition authority:

- State aid monitoring and control;
- Public procurement complaints review.

Under the EU-Ukraine Association Agreement, Ukraine has undertaken to launch and maintain a state aid monitoring and control system. Consequently, the Ukrainian Parliament adopted the Law of Ukraine "On state aid to business entities" (entered into force in August 2017), which identified the AMCU as the public body responsible for the performance of this function. The AMCU now performs all of the functions mentioned

above. This places the AMCU in a special position, one which was only previously experienced by the competition authorities of EU Member States during the EU accession period.

The other non-typical function of the AMCU is its role in undertaking public procurement complaints review. The Law of Ukraine “On public procurement” (LPP, entered into force in December 2015) identified the AMCU as the public body responsible for public procurement complaints review. In order to fulfill this role the AMCU has established the Permanent Administrative Board on Review of Complaints on Violations of the Public Procurement Law (the Board), which (in accordance with the LPP) consists of 2 State Commissioners and is headed by a Deputy Chairman of the AMCU with a Master’s Degree in Law. The AMCU reviewed more than 7 thousand public procurement complaints in 2018 and this number is constantly growing. Thus, at least 3 State Commissioners are taking part in the Board’s hearings at any one time. Moreover, since one Board is barely able to deal with such a large number of complaints, the AMCU has launched a second parallel Board as a pilot project, which means that already 6 State Commissioners are constantly participating in the Boards’ hearings. This situation makes it difficult for the AMCU to perform its main function, namely the protection of economic competition. The AMCU, together with other stakeholders, is currently looking for possible ways to solve this problem.

Accountability

Pursuant to the LAMCU, the AMCU is controlled by the President of Ukraine and reports to the Ukrainian Parliament. The AMCU reports to the Ukrainian Parliament annually.

Number of staff of the authority and its organisational structure

Number of staff	Number of positions as provided for by the organisational structure	Actual number of positions filled as of October 2019
Total number of staff of the AMCU bodies (central body and 26 regional offices)	761	630
Total number of staff of the AMCU regional office	428	351
Total number of staff of the AMCU central body	333	279
Number of case handlers of the AMCU central body	256	213
Number of administrative (support) staff of the AMCU central body	77	66

Decision-making in competition cases

The AMCU’s decision are taken by the Chairman and 8 State Commissioners (each having 1 vote) based on a majority vote.

Regional offices (if any)

Pursuant to the LAMCU, the AMCU has the right to establish or liquidate regional offices. The AMCU’s central body and regional offices together form the system of the AMCU bodies headed by the Chairman.

The AMCU regional offices are separate legal bodies, each of which has its own name, separate bank account(s) and seal (stamp). The AMCU currently has 26 regional offices.

The main task of the AMCU regional offices is participation in the formulation and implementation of competition policy, inter alia, by:

1. State control over compliance with legislation on the protection of economic competition;
2. State control over concerted actions of business entities and the regulation of prices (tariffs) on goods produced (services provided) by natural monopolies;
3. Promotion of the development of economic competition;
4. State control over the establishment of a competitive environment and the protection of economic competition in the sphere of public procurement.

Number of staff working on competition issues

Competence	Number of case handler positions as provided for by the organisational structure	Actual number of case handler positions filled as of October, 2019
Antitrust (<i>antitrust cases only</i>)	31	26
Mergers and acquisitions	15	15
Market studies (<i>together with advocacy and antitrust cases on the relevant markets</i>)	85	72
Advocacy	*	*
State aid (if applicable)	30	26
Other (please specify):		
• Chairman, State Commissioners and Chief of Staff	10	10
• Public procurement complaints review	35	25
• Unfair competition	11	9
• Legal department	28	21
• Chief Economist Unit	11	9
TOTAL	256	213

*There are no separate positions on advocacy

Economic impact

Economic impact, as defined internally in the AMCU, is an assessment of the impact of the AMCU's activities on total welfare through the restoration of competition on markets or through the prevention of negative impacts on competition.

The methodology used by the AMCU to calculate the economic impact of its activities is based on the provisions set

forth in the OECD's «Guide for helping competition authorities assess the expected impact of their activities», which was published on 14 April 2014.

The economic impact of the AMCU's activities in 2018 was estimated as UAH 4 billion (over USD 146 million) compared to UAH 2.56 billion (over USD 96 million) in 2017.

2. ANTITRUST ENFORCEMENT OVER THE LAST 24 MONTHS

Cartels

Number of infringements*

	2017	2018	TOTAL
Infringement decisions	314	262	576
– With fines	300	260	560
– Without fines	14	2	16
Among them bid rigging	288	250	538
Non-infringement decisions	N/A		
Other (specify)	-	-	-
TOTAL	314	262	576

*There may be several infringements identified within one case.

Fines

Total sum of cartel fines in 2017 and 2018 was UAH 1,804.7 million (over USD 66.2 million).

- In 2017 - UAH 1 684.8 million (over USD 61.9 million);
- In 2018 - UAH 119.9 million (over USD 4.3 million).

Leniency applications

The AMCU did not receive any notifications under the leniency programme during 2017-2018. Although the possibility to apply for leniency has been in place since the enactment of the Competition Law in 2002, the absence of procedural guidance has prevented the relevant provisions from being applied in practice. The Leniency Programme came into force in October 2012 but there is only very limited practice of its application.

Dawn raids

The total number of dawn raids conducted by the AMCU in 2017-2018 was 31 (23 in 2017 and 8 in 2018)

Main cases

In 2017:

Decision of the AMCU dated 14 November 2017 No. 628-P.
Defendants: Sanofi-Aventis Ukraine LLC, BaDM LLC, Optima-Farm Ltd. LLC.

Brief description:

Conditions of purchase agreements concluded by Sanofi-Aventis Ukraine LLC with Optima-Farm, Ltd LLC and BaDM LLC included such pricing mechanisms that hindered the distribution of generic medicines on those markets where Sanofi medicines were sold, thereby restricting competition and also enabling an increase in the prices at which Sanofi medicines were sold through public procurement procedures.

Committed violation:

Breach of Article 6 (1) and Article 50 (1) of the Law of Ukraine «On the Protection of Economic Competition» in the form of anticompetitive concerted actions that were capable of restricting competition.

Total fine imposed – UAH 139.09 million (over USD 5 million).

In 2018:

Decision of the AMCU dated 21 June 2018 No. 315-P.

Brief description:

The AMCU became aware of suspicious conduct in relation to a group of companies which had carried out similar price increases for the retail sale of liquefied hydrocarbon gas in August 2017, when an analysis of the market situation at the time did not reveal the existence of objective reasons for engaging in such coordinated conduct, which resulted in a restriction of competition on the concerned market.

Breach of Article 50 (1) and Article 6 (3) of the Law of Ukraine «On the Protection of Economic Competition».

Total fine imposed – UAH 41 million (over USD 1.47 million).

Non-cartel agreements

There were no such cases over the last 24 months.

3. JUDICIAL REVIEW OVER THE LAST 24 MONTHS

Outcome of the judicial review by the Regional Court of Appeal and the Supreme Court

Entirely favourable judgments (decision entirely upheld)	150
Favourable judgments but for the fines	-
Partially favourable judgments	13
Negative judgments (decision annulled)	28
TOTAL	191

Outcome of the judicial review by the District court

Entirely favourable judgments (decision entirely upheld)	87
Favourable judgments but for the fines	-
Partially favourable judgments	2
Negative judgments (decision annulled)	12
TOTAL	101

Main judgments

The Tedis Ukraine LLC case

Court hearings relating to Tedis Ukraine LLC's attempt to have the decision of the AMCU dated 16 December 2016 No. 551-r (by which the claimant's actions were qualified as amounting to an abuse of dominance in the market of cigarette distribution during the period of 2013-September 2015) invalidated and annulled lasted for the whole of 2018. The AMCU in its decision mentioned above imposed a fine of UAH 299,816,800.00 (over USD 10.81 million) on Tedis Ukraine LLC and also obliged the company not to abuse its monopoly position in the future. On 18 June 2018 the Supreme Court adopted a decision in the case, by which the AMCU's decision in the case was upheld (except for the operative clause, which established one of the ways of executing the decision).

As of 15 October 2019 the AMCU's decision had been partially implemented by Tedis Ukraine LLC (the fine had been partially paid).

The Kyivstar PJSC case

Kyivstar PJSC appealed to the court for invalidation of the AMCU's decision dated 23 November 2017 No. 664-p, which established that the claimant had committed a violation in the form of a failure to submit information at the request of the State Commissioner of AMCU within the established period of time.

At the centre of the dispute was the question whether or not the AMCU had the right to request confidential information regarding phone, namely information about the type of call, its date, time and duration (without disclosure of its content).

The decisions of the Regional courts and the Court of Appeal went against the AMCU, with the courts declaring that the above-mentioned decision of the AMCU was void. However, the Supreme Court disagreed with the position adopted by the courts of previous instances and annulled their decisions. The Supreme Court stated that, based on provisions of the LAMCU, the AMCU had the right to request the relevant information from Kyivstar PJSC within the limits of its powers and in order to exercise them in its proceedings and Kyivstar PJSC was obliged to provide such information within the established period of time.

4. MERGER REVIEW OVER THE LAST 24 MONTHS

Number of cases

	2017	2018	TOTAL
Blocked merger filings	0	0	0
Mergers resolved with remedies	2	0	2
Mergers abandoned by the parties/ application returned	64	79	143
Unconditionally cleared mergers	600	447	1047
Other (specify)	0	6	6
TOTAL CHALLENGED MERGERS	2	0	2

Main cases

In 2017:

Merger Participants:

1. Bayer Aktiengesellschaft (Leverkusen, Germany);
2. Monsanto Company (Wilmington, USA).

National markets:

seeds of agricultural crops and vegetables, in particular cucumbers; chemical means of plant protection (pesticides) - herbicides (selective, nonselective).

Obligations imposed:

1. not to create unlawful barriers for entry or exit to/from the markets of the distribution of plants protection products and seeds of agricultural crops and vegetables of business entities of residents or non-residents of Ukraine that are sellers/producers of plants protection products and seeds of agricultural crops and vegetables.
2. Bayer Aktiengesellschaft shall submit to the AMCU copies of the agreements with all relevant annexes, which are integral parts of the contracts concluded by the Bayer Group with distributors for the distribution of plants protection products and seeds of agricultural crops and vegetables during the period of three years starting from the year following the merger.

Conclusion:

A merger permit was issued in the form of obtaining control by Bayer Aktiengesellschaft (Leverkusen, Germany) over Monsanto Company (Wilmington, USA).

In 2018:

Merger Participants:

1. Higan LLC (Kyiv)
2. Alkonost LLC (Kyiv)
3. Amadina LLC (Kyiv)
4. Aminami LLC (Kyiv)
5. Ankona-Torg LLC (Kyiv)
6. Muyne LLC (Kyiv)
7. Ultrastarinvest LLC (Crimea)
8. Eastern European Fuel and Energy Company LLC (Kyiv)
9. Aynam LLC (Kyiv)
10. Individual – Citizen of Ukraine Kurchenko S. V.
11. Brokbiznesbank PJSC (Kyiv)

Markets: bank services

Conclusion:

Citizen of Ukraine Mr. S. Kurchenko, Higan LLC, Alkonost LLC, Amadina LLC, Aminami LLC, Ankona-torg LLC, Muyne LLC, Ultrastarinvest LLC, Eastern European Fuel

and Energy Company LLC, Aynam LLC committed a violation (clause 12, Article 50 of the Law of Ukraine «On the Protection of Economic Competition») by gaining control over Brokbiznesbank PJSC before first obtaining the necessary permit from the AMCU.

Total fine imposed – UAH 15 million (over USD 541,000).

5. ADVOCACY OVER THE LAST 24 MONTHS

Main initiatives*

The Committee constantly analyses draft laws submitted by MPs and registered at the Ukrainian Parliament for their conformity with competition laws and possible anticompetitive effects. As a result of such examination, the AMCU has formulated and submitted proposals to the relevant committees of the Ukrainian Parliament regarding 49 draft laws, mostly relating to:

- Retail pharmacies market;
- Hemodialysis market;
- Financial services and administrative markets;
- Electricity, fuel and utilities markets;
- Pharmaceutical markets, etc.

Moreover, the AMCU constantly conducts market studies which usually result in the initiation of antitrust cases and the submission of obligatory recommendations to public authorities aimed at eliminating barriers to competition. One of the recent and most successful examples of the work of the AMCU is its advocacy initiative in the sphere of the public procurement of medicines.

One of the ways to promote generic medicines is to remove administrative barriers to entry. An important step forward is to define the subject matter of a public procurement contract by its international non-proprietary name, which allows generics to compete with original drugs on public tenders. The AMCU actively promotes competition in public procurements of medicines as a way to avoid excessive pricing.

In 2018 the AMCU issued recommendations to the MOH and the MEDT aimed at improving the Procedure for the definition of the subject matter of public procurements, in particular through the development of a methodological framework or the introduction of amendments to the existing Procedure.

Results

The procurement procedures at stake included one only lot containing a wide list of product (up to several hundred drugs) with different nosology, to be provided by the wholesale suppliers. This resulted in the number of possible competitors being decreased to only large distributors. Thus, the discriminatory conditions could be set in the tender docu-

mentation by the buyer. This possibility is confirmed by a substantial number of public procurement appeals in this area. One of the possible ways to eliminate this could be a “one INN - one lot” principle.

In pursuance of the recommendations of the Committee, the MOH and the MEDT drafted general recommendations and guidelines and sent them to all stakeholders. Those documents contained new requirements to:

- conduct analysis on the prices of similar medicines (specific sources of information were recommended);
- ensure the correct determination of the subject matter of the procurement and, if necessary, split into separate lots;
- ensure maximum competition during the procedure;
- avoid discriminatory conditions via setting the dosage form for the drugs.

The above-mentioned requirements developed by regulators will contribute to the establishment of transparent and equitable conditions for the public procurement of medicines and to improve compliance by procurement entities.

6. MARKET STUDIES OVER THE LAST 24 MONTHS

Main initiatives

1. Report on the results of the study on the hemodialysis equipment market (machines, consumables) for the period 2013 - September 2015. Approved at the Committee's meeting on 4 October 2017;
2. Report on the results of the research undertaken on the sale of goods, the provision of services and the execution of work in small architecture forms. Approved at the Committee's meeting on 31 August 2017;
3. Report on the research undertaken in relation to services markets in the field of domestic waste management. Approved at the Committee's meeting on 11 January 2018;
4. Report on the results of the domestic waste management services markets study was approved at the Committee's meeting on 11 January 2018;
5. Report on the results of the lotteries market study. Approved at the Committee's meeting on 22 February 2018;
6. Report on the results of the impact of the actions of the local government (regarding communal property rent) on competition in the retail sales of medicines at regional level. Approved at the Committee's meeting on 20 December 2018;
7. Report on the results of the railway freight transportation market study for the period of 2017-2018. Approved at the Committee's meeting on 17 January 2019.

7. OTHER (IF APPLICABLE)

7.1. The AMCU's activities as a Public Procurement Complaints Review Body:

- The AMCU received 13,492 public procurement complaints during the 2017-2018 period (as compared to 930 complaints in 2014, 1342 in 2015, 3067 in 2016, 5706 in 2017 and 7786 in 2018);
- 13,342 decisions taken in 2018;
- Total financial amount of public procurement appeals considered in 2018 was UAH 143.5 billion (over USD 5.15 billion);
- In addition to the imposition of obligations to eliminate the violations identified during public procurement procedures, fines were imposed amounting to a total of UAH 54.77 billion (over USD 1.97 billion) in 2018 and UAH 37.38 billion (over USD 1.4 billion) in 2017.

7.2. The AMCU's activities as an Authorised Body in the sphere of state aid monitoring and control:

The AMCU prepared a number of draft laws and secondary legislation aimed at resolving the state aid issues in Ukraine in accordance with the requirements of the EU-Ukraine Association Agreement. The current regulatory framework in this area is still being improved, with the AMCU playing a major role in initiating the preparation and adoption of new regulatory acts.

Legislative processes in the field of state aid:

- introduced procedural legislation which regulates, in particular, the procedures for reviewing state aid notifications and conducting state aid cases;
- drafted 4 bylaws for the coordination of legislative acts with the Law of Ukraine «On State Aid to Business Entities»;
- drafted 7 resolutions which were adopted by the Cabinet of Ministers of Ukraine on the criteria for assessing the admissibility of certain categories of state aid (5 of them have already been adopted);

Since August 2017 (the date of entry into force of the Law of Ukraine «On State Aid to Business Entities») the AMCU has exercised powers in the field of state aid monitoring and control, in particular by taking decisions on the admissibility of state aid and on the termination and reimbursement of illegally received state aid.

During 2018, the AMCU adopted 264 decisions in the sphere of state aid, namely:

- 175 – recognising that the given support did not qualify as state aid;
- 78 – formally opening investigations;
- 9 – recognising the admissibility of state aid for competition;

- 2 – concluding that new state aid was incompatible with competition.

The transparency of the activities of the AMCU in this area is ensured by the open and accessible State Aid Portal, which is located on the official website of the AMCU and contains information about the state aid register, as well as state aid decisions and cases of the Committee.

Between 2 August 2017 and 31 December 2018 the AMCU:

- received 1049 state aid notifications;
- considered 470 draft legal acts on the matter of their compliance with the state aid legislation;
- provided over 9,500 consultations to state aid providers;
- provided over 534 written clarifications on the application of state aid legislation.

8. INTERNATIONAL COOPERATION

1. On 11 May 2017 the AMCU was awarded with the 2016 WBG/ICN Advocacy Award («Engaging through results: Successful experience in planning, implementing and monitoring advocacy strategies») for the best example of a competition authority's activity in the field of competition advocacy (Ukraine energy market study 2016);
2. Between 28 February – 1 March 2019 the AMCU successfully held the 2019 ICN Advocacy Workshop for the first time ever;
3. Between 10-12 September 2019 the AMCU successfully held the OECD-GVH RCC's Seminar on Competition Enforcement and Advocacy in the Pharmaceutical Sector for the first time ever;

The AMCU is also an active member of the international competition community, which may be proven by the following numbers (for the last 24-month period):

1. More than 20 OECD-GVH RCC RFIs submitted and replied to;
2. More than 12 written contributions submitted to the OECD Competition Committee;
3. More than 12 questionnaires on the AMCU's activities submitted;
4. 5 international events held;
5. 5 international technical assistance projects implemented, 2 are still being implemented and TORs for 5 more projects are being drafted;
6. The AMCU's representatives have participated in more than 45 international competition-related events abroad;
7. The AMCU has 14 bilateral memorandums of understanding with other competition agencies.

Nevertheless, we are still working on fostering our international cooperation in any way possible in order to strengthen

en the AMCU's institutional capacity, enforcement practices, internal procedures and legislation in accordance with the world's best standards.

9. STRATEGIC PLANS

In recent years the AMCU has started to use annual action plans, which identify priorities for market studies, competition enforcement and advocacy, drafting amendments to internal procedures and legislation.

As for its strategic plans, one of the most important objectives for the AMCU now is to advocate for amendments to the Ukrainian legislation in order to:

- Ensure the implementation of the recommendations provided for in the "OECD Reviews of Competition Law and Policy: Ukraine 2016" document and, as a

result, to become an Associate Member of the OECD Competition Committee;

- Close the legal gaps in the Ukrainian legislation on the protection of economic competition (e.g. the "sausage gap");
- Provide the AMCU with the additional powers that it requires in order to more effectively carry out its functions;
- Carry out the Public Procurement Complaints Review reform;
- Bring the Ukrainian legislation on state monitoring and control into conformity with European standards and to eliminate the legal discrepancies identified since the entry into force of the Law of Ukraine "On state aid to business entities";
- Optimise the organisational structure of the AMCU, etc.



Interview with Mr Yuriy Terentyev, Chairman of the Anti-Monopoly Committee of Ukraine

9 December 2019, OECD Paris

By Renato Ferrandi, OECD

Editorial contribution: Takuya Ohno, OECD

We took advantage of the presence of Chairman Terentyev at the 2019 OECD Global Forum on Competition to ask him about the present and the future of the Anti-Monopoly Committee of Ukraine (AMCU).

What are the main challenges that your authority is facing? In your view, what are the strengths and weaknesses of the AMCU?

There are two key challenges ahead of us. Changing the way we approach competition issues and building internal expertise.

The first is to some extent a philosophical challenge. You must consider that the AMCU was established 26 years ago, in 1993. At that time, the economic and political framework was completely different to what it is today. As a result, our enforcement practice for more than 20 years was focused on regulated markets, particularly on utilities such as electricity and gas. The AMCU's approach resembled more consumer protection or regulatory intervention than real competition enforcement. Still before my appointment in 2015 the AMCU was adopting more than one thousand decisions on abuse of dominance cases per year, which is unimaginable for OECD jurisdictions. This history of enforcement became a kind of model for the AMCU. Now we are seeking to shake off this burden, improve our enforcement by focusing on key competition issues and become a truly modern and effective agency.

The second, complementary challenge is to develop the proper professional expertise to support this change of course, which not only requires proficiency but also an in-depth understanding of the economy and of specific markets. This competence cannot simply be acquired externally but must be developed internally. However, this will not be an easy task as it is extremely difficult for us to recruit people with the right skills, given that the public sector is often not appealing for young professionals and is not the obvious first choice of bright graduates. Finally, we will need to take very hard decisions in terms of staff and organisational structure, which might not be well received by some employees.

In light of the above, my personal challenge as the Chairman of the agency is to prevent frustration and ensure that staff remain motivated. While this is a complex task due to our limited resources vis-à-vis the strong economic and political powers that we often face, it is definitely worthwhile.

I understand that your history makes it particularly difficult to promote competition culture and to ensure competition awareness in your country.

Indeed, we have to fight against a deep-seated perception of the role and objectives of competition that is held by our economic, political and business counterparts. If we were to just stop pursuing the type of cases that we have been pursuing to date, we would be perceived as being an alley or accomplice of the incumbents.

It is important that we maintain those aspects of our 26 years of operation that have proven to be successful while at the same time seeking further opportunities for improvement. It is essential that we acquire a firm understanding of the markets and enhance the business community and political decision makers' awareness of the benefits of competition. We also need to transform our perception of exclusionary practice cases.

What decisions of the AMCU demonstrate its new approach to enforcement?

Our statistics show that during my mandate as the Chairman of the AMCU over the last four and a half years, the agency has imposed more fines than in its entire previous history.

Since the second half of 2015, we have conducted investigations into concerted practices and abuse of dominance on high-profile markets such as fuel retail, pharmaceuticals, tobacco, airports, ports and state enterprises. We have taken many decisions in markets that had never previously been addressed by the AMCU.

One of the most relevant decisions concerned abuse of dominance and coordinated behaviour in the tobacco markets. We have also dealt with cases involving state enterprises. One particular case concerned Boryspil Airport, which had been preventing private handling companies from operating in the airport. In 2016, we adopted a decision relating to the concerted practices of six major fuel retail networks. While litigation against some of the defendants in this case is still ongoing, in the case of three of the defendants, the Supreme Court decided in favour of the AMCU last September. We also took a decision concerning an abuse in the market for nitrogen fertilisers, which was the first decision in the AMCU's history resulting in structural remedies (i.e. divestment).

Our view is that we should investigate cases thoroughly and take decisions based on a clearly formulated theory of harm. Market players should be reassured that the role of the AMCU is not to threaten and discipline them, but rather to

take decisions based on transparent standards that firms are required to comply with.

If you could make one major change in your national competition law tomorrow, what would it be?

The experience of the AMCU may provide other agencies with an example of the prudence that is required when it comes to adding extra functions to their mandate. In fact, the AMCU has been responsible for reviewing procurement complaints for 10 years. While such a function may look attractive because it gives competition authorities insights into what happens in public procurement, it has turned into a weakness for the AMCU in light of the unimaginable amount of complaints received. In 2014, the number of complaints was just slightly above 900; this year, it has exceeded 10,000. The resulting workload is diverting the AMCU from its primary objectives and is producing unmanageable stress. Furthermore, the AMCU's role in this area is disadvantageous from a political point of view, as procurement officials often view the agen-

cy as being responsible for blocking and disrupting the public procurement process.

Luckily, amendments to the competition law are currently under review by the Ukrainian Parliament. One of the objectives of the amendments is to better organise and process the review of complaints regarding public procurement. A second group of amendments is aimed at modernising the substantive competition law. According to the proposed amendments, the merger control procedure would be improved and the way in which merger thresholds are calculated would be modified. As regards to enforcement, the AMCU would be granted more discretion about the prioritisation of cases. In addition, the revised competition law would improve the rules concerning liability and the execution of penalties. Finally, yet importantly, there is a specific section on procedural fairness.

All this seems challenging and promising at the same time. One thing is for certain, you will not be bored! I wish you all the best.

Literature Digest



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Xavier Vives, Digital Disruption in Financial Markets, OECD background note

This background note provides an overview of the short- and long-term implications of technological disruption in the banking sector. In the short-term, the entry of a large number of new firms and the high level of technological development imposes vital competitive pressure on incumbents. This increased competitive environment results in efficiencies and increased customer welfare; for instance, it can help to overcome information asymmetries and bring about a higher standard of service and user-friendly technology. The long-term implications will depend on whether a number of BigTech companies manage to monopolise the interface with customers due to their superior information about consumer references, habits and conducts.

Although digital disruption brings about benefits to customers, it raises new types of challenges for regulators. The main question of the paper, which is considered in light of various regulatory examples, is whether equal regulatory conditions should apply to both incumbents and new entrant firms or if new entrants should be favoured in order to promote competition and innovation. The regulators' main task is to perform a delicate balancing act, namely to maintain financial stability and security, foster consumer protection and insure data interoperability between platforms, while also preserving the innovative and welfare-enhancing attributes stemming from digital disruption.

Peder Østbye, The Adequacy of Competition Policy for Cryptocurrency

This paper attempts to predict the role of competition law in the field of cryptocurrencies. Its main conclusion is that the traditional competition policy instruments, such as antitrust and regulation, are not adequate to address competition issues related to cryptocurrencies. It describes the basic technology and nature of cryptocurrency, highlighting those char-

acteristics that are relevant from a competition law point of view. Two important characteristics are highlighted, first, that cryptocurrencies utilise blockchain technology and cryptography to create trust and second, that they can replace or supplement money and other payment systems.

The author then discusses the grounds for regulating cryptocurrencies. Generally, regulation is necessary to correct market failures in the market, which, in this case, is the lack of competition that brings about market power. Firstly, a market failure associated with most money-related services is that these services can be used to support crimes. Hence, regulations such as know your customer obligations and anti-money laundering requirements are justified. Secondly, asymmetric information allows persons with more information to take advantage of persons with less information. This justifies market integrity regulations such as the prohibition of market abuse and consumer protection. Thirdly, financial services are also associated with certain failures that may lead to financial instability and costly disturbances in the real economy (i.e. systemic risk). While it is generally assumed that cryptocurrencies have not yet reached such significance as to pose a risk to the financial system, this may change in the near future.

Within the competition analytical framework, authorities must acknowledge that cryptocurrencies possess several attributes that distinguish them from typical industries, for instance, the related income and costs for the currency issuer (issuance, trust-creation). Additionally, there are other characteristics that must be taken into account when analysing competition on the market (characteristics that are related to the mining and protocol of cryptocurrencies); furthermore, the analysis must include network effects and must consider platform competition, i.e. whether users can be active on multiple cryptocurrency platforms without barriers. Assessing the market power, the paper concludes that cryptocurrencies compete not only among themselves but also with traditional means of payment. However, cryptocurrencies are subject to both network effects and platform effects, which may enhance the creation of market power.

The paper discusses the different ways in which competition law could be applied to cryptocurrencies, and sets out

why competition law may not be the best instrument for promoting competition in the market and recourse to other policy instruments may be preferable. Competition enforcement could contribute by addressing non-discriminatory access to ancillary services and limiting network and platform effects. The paper emphasises the need for government-issued cryptocurrencies. It concludes that competition policy may coexist and work hand-in-hand with other public policy objectives, but there may also be areas where the objectives are conflicting. Traditional tools, such as antitrust and regulation may have shortcomings when it comes to taking into account such public policy objectives.

European Parliament Report, Competition issues in the Area of Financial Technology (FinTech)

The Report provides an overview of the potential competition issues that may arise in this area, while acknowledging the hypothetical nature of the discussion. The application of competition law to potential anticompetitive behaviours in the FinTech sector faces several challenges, the most relevant being the difficulty in applying existing tools and methodologies to new market phenomena such as: (i) many providers operating in multi-sided markets, with concomitant difficulties in terms of market definition and identifying market power; (ii) the possibility of network effects operating as barriers to entry, together with restrictions on interoperability and the

adoption of standards; (iii) the role that access to data can have in restricting competition.

The report looks at FinTech market segments and discusses the potential antitrust risks. (1) Payment systems, particularly as regards to access to critical assets such as data and mobile near field communication chips, and the use of an incumbency position gained offline to engage in exclusionary conduct towards competitors. (2) Digital currencies, due to network effects, vertical integration and restrictive practices, and the possibility that the market power of banks in traditional banking services might be used to limit competition in the cryptocurrency market through pre-emptive acquisitions or predatory pricing. (3) Wealth and asset management, particularly the risk that algorithms used in the provision of FinTech wealth management services will facilitate co-ordination and collusion. (4) In insurance, access to customers' data and the impact of algorithms on pricing strategies can lead to anticompetitive practices.

The report provides a comprehensive overview of the structure of financial services markets and how they are being impacted by digital technologies and poses hypothetical competition concerns in the different market segments. Ultimately, the author concludes that FinTech could be used as an example of the greater need to incorporate a competition approach into financial regulation. FinTech offers a fertile ground to re-open the dialogue between regulatory and competition goals, principles and frameworks, which could help re-balance financial regulation policies towards a more pro-competitive stance.

Thank you, dear József!

After serving at the GVH for 29 years, our friend József Sárai retired in December 2019. We are pleased to announce that despite his retirement, he will remain at the competition authority for a period of time as an advisor.

Dear József, we would like to express our profound gratitude to you for all of your outstanding work and dedication over the years. Your contribution has played a pivotal role in the development and success of the OECD-GVH Regional Centre for Competition. It has been a true pleasure to work

with you. Please keep in touch, as we would be delighted to continue to enjoy your presence and to benefit from your great knowledge and experience.

At the same time, we are pleased to welcome Gabriella Szilágyi as the new Head of the International Section of the GVH. Gabriella has already been deeply involved in the activities of the RCC and will certainly play a key role in the further development of the Centre.

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