

Effective competition frameworks
EBRD's experience in technical assistance

**First Joint ESCWA-UNCTAD-OECD COMPETITION FORUM FOR THE ARAB
REGION**

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European Bank
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1

Why competition policy is relevant for EBRD

Competition is at the core of the EBRD mandate but transition threats remain

Competition is at the core of the Bank's mandate to promote open and well-functioning market economies – defined by EBRD by **six qualities** (competitive, well-governed, integrated, resilient, green, inclusive)

Healthy rivalry between market players is a key ingredient for a competitive economy

Threats and barriers to competition are increasingly impacting transition in our CoOs



Resurgence of state intervention and industrial policies



Trade protectionism in response to liberal economic policies



Lack of adequate regulatory mechanisms

EBRD supports competition through investments and policy dialogue

Investments

1. Supporting entrants in new product or geographic markets
2. Consolidation of smaller players in markets dominated by large incumbents
3. Supporting innovation affecting market dynamics

Policy Dialogue

1. Policy engagement directly linked to investments (reform programmes linked to SOEs financing in regulated sectors)
2. Horizontal interventions (technical assistance to competition authorities and regulators)

Focus today on **horizontal support to competition authorities and competition law**

EBRD principles: (i) tailored approach; (ii) co-ordination with stakeholders; (iii) bring EBRD's added value (private sector focus, vast sectoral expertise)



2

EBRD's approach to technical assistance

Pillars of EBRD's technical assistance



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01

Legislative support

Support to primary and secondary legislation adoption (guidelines)

Examples:

- Support for introduction of merger guidelines in Serbia
- Primary law amendments in Uzbekistan
- Implementation of new provisions in Bulgaria (abuse of superior bargaining power)

02

Capacity building

Comprehensive training programmes

Examples:

- Econometrics training (various WB countries)
- Detecting collusion in public procurement (Bulgaria)
- How to conduct market studies (Moldova)
- Study visits

03

Advocacy

Establish the role of competition authorities

Examples:

- Advocacy strategy (Albania, Romania)
- Workshops with stakeholders (including business associations, media etc.)
- International events



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Some reflections on institutional set-up

- **In 2001, when ICN was created, 14 jurisdictions were part of it. Today, 138 members**
- **This reflects belief of the importance of competition policy in stimulating economic performance**
- **Literature shows that “good” competition policy is indeed important, but does not work in isolation**
- **Two fundamental questions:**
 - (i) What defines a Good competition policy?**
 - (ii) How should the specific features of emerging economies factored in institutional design?**
- **In order to answer one first needs to define a competition policy regime (the “choice set”, then reflect of key features (economic, institutional and cultural) that may affect the choices in terms of competition policy**

Competition policy regime



Institutional set-up	Independence and accountability	Scope of the enforcement power	Investigative and sanctioning power
	<ul style="list-style-type: none"> • Administrative vs. judicial model • Independence of public powers • Organisational and financial independence 	<ul style="list-style-type: none"> • Antitrust prohibitions and merger control • Exclusion of sectors or subjects • Advocacy powers • Other functions (e.g. consumer protection) 	<ul style="list-style-type: none"> • Request for information • Inspection of business and non-business premises • Interim measures • Sanctions for main violations • Sanctions to back up ancillary provisions
Implementation	Interpretation of the substantive rules	Sanction policy	Setting priorities
	<ul style="list-style-type: none"> • Guidelines on market definition, and on the interpretation of the substantive rules • Presumptions • Evidence • Standard of proof 	<ul style="list-style-type: none"> • Criteria for fine-setting • Aggravating and alleviating circumstances • Leniency programme • Compliance programme • Commitment decision • Settlement 	<ul style="list-style-type: none"> • Enforcement vs. advocacy • Types of infringement • Sectors • Strategy plans vs. informal statements

Characteristics of emerging economies affecting competition policy design / Economic

Economic characteristics

1. Barriers to entry (regulatory barriers; economic barriers)
2. Role of the state (SOEs and uneven playing field)
3. Sectoral composition of output/domestic consumption
4. Informality



Implications

Institutional set-up: the central role of **independence** (key to establish the perception of non-biased competition agencies) and **transparency** (guidelines, disclosure)

The importance of **advocacy function** (market creation rather than protection of competition)

Rules and their implementation: limiting **discretion** (per se approach may be favoured)

Clear **prioritisation** of sectors – also linked to scarce resources, and need to build reputation / Prioritisation of **conducts** (abuses over mergers)

Incorporate informality into assessment (market definition, market dominance)

Characteristics of emerging economies affecting competition policy design / Institutional

Institutional characteristics

1. Weak rule of law (especially judiciary)
2. Role of the state (weak institutions, poor regulatory quality)
3. Corruption



Implications

Administrative model to be preferred in the set-up phase

Independence again emerges as of paramount importance (extends beyond formal independence – financial and organisational)

Competition law does not work in isolation – weakness in institutions likely to affect CAs too

Limit discretion and increase transparency

Powers (dawn-raids) / Sanctions

Gradual built-up of the institution (focus on sustainability of donors interventions)

Importance of public procurement as focus area

Characteristics of emerging economies affecting competition policy design / Cultural

Cultural characteristics

1. No belief in competition
2. Consumer protection through ex-ante regulatory approach (price control)
3. Social issues more important and competition often seen as detrimental



Implications

Competition authorities need to build trust in society – advocacy should play a key role

Focus on consumer relevant sectors and break down cartels especially affecting basic consumer goods

Expand role of competition authorities into consumer protection (and initially focus on those)



4

Conclusive remarks

The key pillars for a competition policy system in emerging economies



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A

Independence accompanied by transparency and limited discretion

B

A broad set of areas of interventions (including consumer protection, advocacy, public procurement)

C

A cautious approach to powers during investigations and sanctions

D

A strategic approach to enforcement (prioritizing sectors and conducts)