Effective competition frameworks
EBRD’s experience in technical assistance

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

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Outline

1. Why competition policy is relevant for EBRD
2. EBRD’s approach to technical assistance
3. Some reflections on institutional design based on EBRD’s experience
4. Conclusive remarks
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)
EBRD’s approach to technical assistance
Pillars of EBRD’s technical assistance

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
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 on key features (economic, institutional and cultural) that may affect the choices in terms of competition policy
### Competition policy regime

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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)
Conclusive remarks
The key pillars for a competition policy system in emerging economies

- **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)