Organisation for Economic Co-operation and Development

DAF/COMP/GF/WD(2022)28

Unclassified **English - Or. English**

29 November 2022

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

INTERACTIONS BETWEEN COMPETITION AUTHORITIES AND SECTOR REGULATORS – Summaries of Contributions

- Session III -

1-2 December 2022

This document reproduces summaries of contributions submitted under Session III of the Global Forum on Competition to be held on 1-2 December 2022.

More documentation related to this discussion can be found at: oe.cd/icar.

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JT03508927

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Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Interactions between Competition Authorities and Sector Regulators (Global Forum on Competition to be held on 1-2 December 2022, Session III). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Albania

This paper describes the Albanian experience in the way the activity of the Albanian Competition Authority (ACA) is engaged in interactions with the sector regulators while enforcing the competition law and advocacy, in regulated markets.

Law no. 9121/2003 "On Competition Protection" applies to undertakings (public or private, and association of undertakings) operating in all sectors of the economy, even in regulated markets, within the Republic of Albania. The ACA established in 2004, enforces the law no. 9121/2003 and over the years has strengthened the collaboration with market regulators.

The market regulators in the respective fields mostly in the telecommunication and postal markets (AKEP); in financial and banking markets (BoA); in financial and insurance markets (AMF); in natural gas and electricity markets (ERE); in water supply and wastewater disposal and treatment Sector (ERRU); in public procurement markets (APP); in the activity of the audiovisual media and their supporting services (AMA); in the maritime transport market (PDA);etc.

The ACA intervenes in markets ex-ante while assessing the legal barriers to entry, or ex-post while assessing complaints, monitoring and investigating the markets on antitrust or merger and acquisition cases. While assessing the M&A, depending on the market, the market regulator has to provide a consent before the competition authority issue a decision on matters of mutual relevance. When assessing complaints, general investigations, preliminary and in depth antitrust investigations the ACA sends a request for information to market regulators to gain information on the market operators, and legal basis in force and as well as end the investigations by issuing decisions with recommendations.

The ACA, during the years, has signed many Memorandums of Understanding (MoUs) with the market regulators mentioned. In the MoUs collaborations are described especially in the form of mutually exchange information on special issues, for which the institutions have a common interest, in compliance with the competition law and sector laws; mutually exchange acts, legal or regulatory interpretations related to sector and competition; etc.

Besides the ACA collaborates with the market regulators by participating in mutual events and conferences that both institutions organize. The round tables are a tool that the market regulator can engage to commit to regulate the market and to restore the competition. Although collaboration with the market regulators has been fostered over the years, the main challenge of the cooperation between the competition law and market regulators, remains the fulfillment of the recommendations given by the ACA to the market regulator.

Argentina

Act No. 27.442, also called Competition Defence Act (LDC, for its acronym in Spanish), is a federal act, and its application reaches all natural or legal persons, whether public or private, for-profit or non-profit, that carry out activities in Argentina or outside the country insofar as their acts may affect the national market. This includes regulated markets, even though the sectoral regulators may also be mandated to maintain and promote competitive conditions in the markets in which they intervene.

There are several kinds of interactions between the National Commission for the Defence of Competition (CNDC, for its acronym in Spanish)—the Argentine agency responsible for defending and promoting competition— and the different entities in charge of regulating and supervising the markets governed by state regulation that organises their functioning in the country —such as the banking, energy and telecommunications sectors, to mention a few.

In some cases, these are procedural collaborations established by either the LDC or the different sectoral regulations governing the markets in which the specific regulatory authority intervenes. In other cases, cooperation between the competition agency and the sectoral regulator arises as a result of a case carried out by the CNDC— mostly as a consequence of a market study or an investigation for alleged anticompetitive behaviour.

The first section briefly reviews the procedural requirements stipulated by the LDC in merger control analysis, which may involve the interaction with different sectoral regulators due to Section 17 of the LDC. This section calls for an intervention from the sectoral regulator whenever a regulated market participant is taking part in the transaction subject to approval.

The second part examines specific processes in which regulators require the intervention of the CNDC to study the competitive conditions in some regulated markets. The section focuses primarily on the telecommunication legal framework.

The third section examines when and how CNDC can make pro-competitive recommendations to regulators about the markets they supervise. The section touches on the agency's recent experience with Argentina’s Central Bank and the agency in charge of managing airport facilities.

The fourth section presents some conclusions on the subject.

Armenia

The Competition Protection Commission has the mandate to enforce competition law in all sectors without almost any exception.

In 2021 the Law on the Protection of Economic Competition of the Republic of Armenia was significantly amended and specific attention was paid to the further regulation of cooperation between the Commission and Central Bank in the financial sector and Public Services Regulatory Commission in the public service sectors.

Regarding cooperation with financial sector regulatory authorities, an explicit cooperation by the joint order between the Chairpersons of the Commission and the Central Bank is foreseen in the Law.

The joint order of the Chairpersons of the Commission and Central Bank has not yet been signed, it is still under drafting process. Although the joint order has not been adopted yet, the Commission and Central Bank have an established cooperation practice. In the framework of several merger cases the roles of competition authority and financial regulatory body have been outlined with certain mechanism enabling both bodies to enforce their mandate in analyzing the mergers.

The cooperation with the Public Services Regulatory Commission is also regulated by the Law, and the Commission carries out the functions of economic competition concerning economic entities operating in the field of public services based on the principle of cooperation with the Public Services Regulatory Commission. For instance, the Public Services Regulatory Commission sets regulated tariffs for the public services operating economic entities; meanwhile, the Commission is responsible for competition-related issues.

Belgium

1. The Competition act

Article IV.94 of the Code of economic law (CEL) provides for cooperation agreements with sector regulators in respect of investigations and the exchange of confidential information. See also article IV.32 §1 CEL.

2. The Competition act

Cooperation agreements have been concluded with the BIPT/IBPT (the telecom and postal regulator, Royal decree of 8 May 2014)) and with the CREG (federal energy regulator, Royal decree of 3 December 2017).

These agreements provide for:

The exchange of confidential case related information.

The obligation to inform the relevant other authority of cases that might also be relevant to them.

Regular high level meetings in order to discuss sector developments.

We may add that under the relevant EU rules, implemented by article 55 of the Act on electronic communications (the telecom act) of 13 June 2005, the telecom regulator must seek the opinion of the competition authority before taking certain decisions.

In practice, the BCA always invites the relevant regulator to file written observations and to participate in hearings in infringement and merger control cases involving undertakings in regulated sectors.

3. Expected developments

The DMA: the Government prepares legislation designating the BCA as the relevant authority in charge i.a. of the composition of the delegation to Advisory Committee meetings and the selection of the regulators to be consulted on market studies.

The EU Digital Services Act, the envisaged EU Data Act, Data Governance Act, Network and information security service, Cybersecurity Act, Artificial Intelligence Act: the BCA, the BIPT/IBPT, the Data protection authority, the FSMA (financial markets authority) and the FOD/SPF Economie (ministry of economic affairs) have started discussions on a platform for digital governance (gouvernance numérique).

*BIAC**

Interactions between competition authorities and sector regulators can be facilitated and governed in a variety of ways, including through specific regulations and general competition legislation, cooperation agreements, memoranda of understanding, and regulatory forums. When interactions between a country's competition authority and sector regulators are well-established and they have a good faith relationship facilitated through memoranda of understanding or agreements, this can produce constructive and efficient outcomes in cases.

It is also important that the objectives of sector regulators, and the way in which they will interact with the competition authority where needed, is clearly defined, particularly where the sector regulator and the competition authority have non-exclusive review in a case or concurrent competition law powers. The absence of such clarity or relationships can lead to duplication of processes or increased costs and confusion for parties involved in cases.

The nature of interactions between sector regulators and competition authorities is dynamic; in many countries it has evolved over time and will continue to do so. It can be expected that further legislative amendments, the creation of new sector regulators, further MoUs to facilitate cooperation, and regulatory forums will further change the ways in which a given sector regulator and competition authority interact. In digital markets, however, some jurisdictions have already begun to implement explicit cooperation mechanisms between regulators to address competition and regulatory concerns, and this is only likely to increase.

Bulgaria

In accordance with Art. 8 (1), point 12 of the Law on Protection of Competition (LPC) the Commission on Protection of Competition (CPC) shall interact with other state authorities, including the authorities of the executive branch, as well as with local government authorities, institutions and non-governmental organisations, by participating in drafting legislative acts, expressing opinions on draft and existing legislative and general administrative acts, exchanging information and other forms of cooperation. Art. 46 LPC also imposes a general obligation on all natural and legal persons, including public authorities and local self-government authorities, to provide assistance to the CPC in performing its powers.

Laws regulating specific sectors also envisage coordination with the Commission on Protection of Competition. Such is the case for cooperation and coordination between CPC and the electronic telecommunications regulator (under the Law on Electronic Communications), with the energy and water regulator (under the Law on Energy), etc.

The interactions of the Bulgarian CPC with the Communications Regulation Commission (CRC) and respectively with the Energy and Water Regulatory Commission (EWRC) are detailed in Rules adopted by decisions of the two commissions. The forms of interaction include consultations, exchange of information, providing of opinions, joint working groups.

In the banking sector, the Bulgarian banking regulator (Bulgarian national bank-BNB) is authorized under the sector legislation to authorize mergers and restructuring of banks, but only subject to prior authorization of the deal by the Commission on Protection of Competition under the LPC, provided that the deal falls under the LPC merger rules.

In its enforcement practice under antitrust rules and under merger review rules in sectors where sector regulator is present, the Bulgarian CPC sends on a mandatory basis requests for information and asks the opinion of the respective regulator. Due to the fact that as a general rule the companies in regulated markets operate under licenses issued by the sector regulators and the fact that the sector regulators have as a rule control powers, the market data provided by the sector regulators to competition authorities is of essential importance.

With the latest amendments of the LPC in 2021, the CPC has the power to prioritize its enforcement activities, i.e. the power to close cases that do not fall within the scope of commission's enforcement priorities. The CPC adopted Rules for prioritizing requests for initiation of proceedings and under p. 8 of these Rules the CPC takes into consideration if the commission or the sector regulator is in better position to effectively end the alleged infringement, when deciding to proceed with or to close the case.

An example of a case in the energy sector involved the terms under which the central heating supplier in Sofia, a vertically integrated undertaking with dominant position on all three markets (production, transmission and supply to final clients and customers), contracted with construction investment companies the connection of their new buildings to the central heating network. On the basis of the legal and economic analyses the CPC adopted Statement of Objections for alleged exploitative abuse of dominant position (Art. 21 LPC). After the adoption of the SO, the central heating undertaking proposed commitments in order to address the CPC competition concerns and the commission approved them and closed the case. The input of the energy regulator as data and opinion on the subject were used by the CPC in its proceedings.

Brazil

In Brazil today, there is institutional parity between the antitrust authority (CADE) and sectoral regulatory agencies considering that they are independent and autonomous and operate under the same legal framework. The similarities in terms of where they fit into the Brazilian government organisation and their institutional legitimacy facilitate cooperation. To understand their interactions, we first present their legal framework, clarifying (i) the scope of the performance of the sectoral regulators compared to the antitrust authority and (ii) the cooperation provided by law. Then, we provide examples of this cooperation in proceedings involving mergers and anticompetitive conduct in the following sectors: (i) financial; (ii) oil and gas; (iii) ports; (iv) data protection; (v) intellectual property; and (vi) telecommunications.

Lastly, we conclude by emphasising that antitrust law and sectoral regulation are complementary in Brazil. The cooperation between sectoral regulation and antitrust policy is a primary mechanism in aligning expectations and providing legal certainty, considering state entities' divergent decisions bring about a negative impact. In practice, this cooperation has always been necessary, and CADE has historically promoted technical cooperation agreements with regulatory agencies of different sectors.

Chinese Taipei

The aim of the Contribution is to show the usefulness of the SIC’s contributions to the regulatory process, through the performance of the competition advocacy role set forth in Law 1340 of 2009. This, through the documents drafted by the Competition Advocacy Group (hereinafter "CAG"), specifically, the competition advocacy opinions, and the studies prepared by the competition authority on certain matters. The Contribution is structured in five (5) sections including conclusions.

This paper introduces the role of the Fair Trade Commission, the statutory authority enforcing competition law, as well as the functions of sector regulators in Chinese Taipei. It also provides case examples to illustrate how sector regulators and the competition agency cooperate with each other and ongoing challenges in practice.

The ways in which the Fair Trade Commission (CTFTC) interacts with other regulatory agencies can be summarized as follows:

- Choosing a cooperation model contingent on its corresponding context for the optimal effect of cooperation: A formal cooperation agreement is a binding arrangement between two governmental agencies that come to mutual conclusions through formal consultation meetings, recorded in writing. For example, the coordination agreement between the CTFTC and the National Communications Commission (NCC) was required to be approved by their Commissioners’ meetings and then published to the public. In terms of ad hoc cooperation models, they are normally subject to certain case scenarios and each agency’s authority as well as its responsibility. They are more flexible and more quickly adaptable making them more suitable for cases required to be solved in a relatively short period of time.
- Challenges faced by the CTFTC in cooperation with other governmental agencies: Taking the 2019 coordination agreement between the CTFTC and the NCC as an example – the CTFTC started its own research on the relevant issues in as early as 2017. Through a series of consultation meetings, the agreement was finalized and approved by the Commissioners’ meetings of the CTFTC and the NCC. It then took nearly two years before it was published to the public in 2019. Another example relates to the housing market interventions, which include the meetings for a healthy housing market, the preliminary meeting for amendments to the Equalization of Land Right Act and joint on-site inspections of presale cases. Coordinating appropriate responses in this type of the cooperation model is also challenging as it involves effective communication among multiple governmental agencies.

Regardless of which cooperation model and which agency the CTFTC works with, the common goal is to safeguard free markets and ensure fair competition through regular cooperation and close coordination between the competition agency and sector regulators.

Colombia

The aim of the Contribution is to show the usefulness of the SIC's contributions to the regulatory process, through the performance of the competition advocacy role set forth in Law 1340 of 2009. This, through the documents drafted by the Competition Advocacy Group (hereinafter "CAG"), specifically, the competition advocacy opinions, and the studies prepared by the competition authority on certain matters. The Contribution is structured in five (5) sections including conclusions.

In the Introduction of the Contribution, it is stated that there is an intense interaction between regulators and the SIC. This, since the moment in which regulators submit to the competition authority the regulatory projects to be analysed by the SIC. The purpose of this proceeding is that the competition authority may issue recommendations on such project. In this way, it is expected that the SIC's approach to the regulatory project will reduce the risks associated with the so-called "regulatory failures".

Section 2 of the Contribution highlights the fact that the interaction between regulators and the competition policy advocated by the SIC takes place even before the exercise of the competition advocacy role.

Sections 3 and 4, highlight CAG's activity in the drafting of specific studies on certain matters. The election of such topics responds to the capacities achieved by the CAG during the last four years interacting with regulators through the competition advocacy opinions released, and in which numerous recommendations have been issued in order to promote pro-competitive regulation. The main purpose of such studies is to provide to the regulatory authorities' pedagogical tools on free economic competition.

For the specific case of the Contribution, two reference cases are presented. The first one corresponds to the study on Safe Spaces for Regulatory Experimentation (hereinafter "ESSER"). The second case concerns the relationship between technical regulation and free economic competition.

The Contribution concludes by reiterating that the interactions between the regulator and the SIC have given rise to complementary preventive tools that mitigate the risk of regulatory failures.

*Consumers International**

Although economic regulation and competition policy are largely interdependent instruments of economic policy, each aimed at serving a common purpose of enhancing the efficiency with which markets work, there can be, and at times are, tension between those policies. Moreover, there are differences in how those policies work, and in the nature of the process by which decisions are taken and implemented. Recognition of these interdependencies and of the differences leads naturally to a consideration of the institutional arrangements for these policies and specifically, of how they should be coordinated:

- While there can be benefits to integrating responsibility for the enforcement of competition policy and economic regulation within a single institution, the reality is that there will always be limits to the extent and effectiveness of that integration;
- Thus, the nature of these tasks associated with these policy areas differs in important respects; moreover, economic regulation inherently involves a very wide range of instruments, many of which are sector- or industry-specific, and which are not readily brought under a single umbrella;
- As a result, whatever view is taken of the appropriate degree, if any, of institutional integration of competition and economic regulation, an important goal should be as a minimum to ensure that the competition policy authority has the expertise required to monitor developments in the design and administration of economic regulation and to act as an advocate for competition in the economic regulatory process; similarly, economic regulation agencies should arguably have the skills to monitor and assess competition issues. Moreover it is important that processes for communication, coordination, cooperation be optimized.
- It is also likely to be important to ensure that there is within government an entity that has whole of government oversight of competition policy and economic regulation, and that exercises that oversight in a manner mindful of competition and regulation concerns. That entity may also need to keep an eye on turf wars.
- Periodic surveys of particular instruments - such as regulation regarding access to "essential facilities" - aimed at reviewing whether they were consistent with efficient competition, may play a useful and important role in giving structure to this coordination process.

This paper does not seek to nest the relevant issues in a unified conceptual framework. Rather, it proceeds by examining the interaction of competition policy with economic regulation. The paper seeks to explain the nature of the relevant policy area; and on that basis, analyse whether there are 'economies of scope' between the instruments and processes it involves and those of competition policy. It is in the light of those economies (and diseconomies) of scope that the paper considers the institutional linkages that might be defined between economic regulation and competition policy and sets the scene for analysis of day to day interactions between the relevant institutions.

Costa Rica

Costa Rica has two competition agencies, the Commission to Promote Competition (COPROCOM), national authority, and the Superintendency of Telecommunications (SUTEL), for the telecommunications markets, also regulatory body. They both have the power to sign cooperation agreements among them and with public and private entities, national or international.

INTERACTIONS BETWEEN COPROCOM AND SUTEL: Each authority has exclusive powers and competences in their respective markets, although SUTEL with a not binding mandatory consultation to COPROCOM. Competition advocacy may be coordinated when convenient. To fulfil these goals, a Cooperation agreement was signed with valuable results; there is a project to create a protocol to delimit competences aiming to ensure legal certainty and, finally, there is a significant degree of informal coordination between agencies, one of the most effective interacting mechanisms.

COPROCOM´S INTERACTIONS WITH OTHER SECTORAL REGULATORS:

Superintendencies of the financial sector: In merger cases, there is a binding consultation to the highest authority among regulators who can decide to issue the final decision when needed to prevent risks to the entities or the financial system, as well as protecting financial consumers. In anticompetitive conduct investigations that involve a regulated entity, COPROCOM must inform the appropriate financial supervisory body when it is started. Finally, all superintendencies must report anti-competitive practices to the COPROCOM, and the complainant may intervene as an interested party in the proceedings. The parties have been working on an MoU, since the law sets an obligation to establish the coordination mechanisms needed.

Council of Public Transportation: In the public transportation sector, to fulfil effective enforcement of competition policies and rules for the efficient operation of such market, by law, the parties must set the coordination mechanisms needed. Accordingly, a draft of the MoU is being drafted.

Ministry of Economy, Industry and Commerce: Parties signed a cooperation agreement so that MEIC provides a series of economical and administrative resources to COPROCOM, as it´s de-concentrated body.

Central Bank of Costa Rica: the law also sets obligation to establish mechanisms for inter-institutional coordination, so an MoU is being drafted

SUTEL'S INTERACTIONS WITH OTHER SECTORAL REGULATORS

Regulatory Authority of Public Services (ARESEP) SUTEL is ARESEP de-concentrated body, so it maintains some administrative powers over SUTEL -that do not directly influence the implementation of competition rules. To facilitate the fulfillment of their objectives, they signed a cooperation agreement with an administrative rather than a substantive scope.

CUTS

Competition law regime of India went through a jurisprudential and philosophical shift, post the economic liberalisation reforms. This ushered in a new era of competition law enforcement against abuse of dominant position, and for the promotion of competition in the market. Another change which was triggered post 1991, was establishment of independent, statutory sector-specific regulatory authorities. These independent regulators are backed by legislation and operate autonomously and with no undue influence from political forces or private entities. Their independence, and relationship with competition authorities, is crucial because their goals are aligned. But, the overlap in their spheres of work, have caused many instances of jurisdictional conflicts, due to a multiplicity of reasons, such as ambiguous legislative framework, regulatory design and judicial precedents. An in-depth analysis of a longstanding issue of conflict in the telecom sector has been presented, by looking at the legislative provisions, judicial pronouncement and recent developments. A change in approach in thus needed in India. The international best practices for cooperation between competition authorities and sectoral regulators, point to various models. The model most suitable for India would be one of mandatory consultations. For this a statutory amendment will be required, along with formal and informal mechanisms.

Ecuador

This document gathers, on one hand, the legal attributions that the Superintendency for Market Power Control (SCPM) haves in order to interact with different regulatory agents in Ecuador, and on the other hand, it shows a concise description of the different cases that have happened in the last years regarding how this interaction executes in practice with different sectors; in this way, we reference the replies obtained from each regulator, as for the results obtained from the cooperation between them and the Ecuadorian competition authority.

Egypt

Sector regulators and competition authorities have different mandates. The main objective of sector regulators is to provide a regulatory framework for a certain industry. On the other hand, the objective of competition authorities is to protect competition by prohibiting anticompetitive practices and promoting pro-competitive state measures in all sectors. As sector regulators and competition authorities may take actions that could alter market structure, their mandates can often overlap.

There are several types of collaborations that competition authorities and sector regulators implement in order to ensure the well-functioning of the market. Cooperation ensures that competition authorities have the technical knowledge about the different industries and that sector regulators act through a pro-competitive lens.

In Egypt, the Egyptian Competition Authority ("ECA") has devised a new strategy for 2021 - 2025, with the effective implementation of the Egyptian Competition Law and the promotion of pro-competitive laws and regulations serving as its two key pillars.

In order to ensure the effectiveness of competition law enforcement and advocacy in regulated sectors, ECA has signed a number of new MoUs as well as enhanced older protocols. The most important protocols were in the gas and telecommunications sectors. Additionally, ECA is a board member in several sector regulators, namely in the gas, media, and electricity sectors.

The Egyptian Ministry of Health and the Egyptian Drug Authority has been requesting ECA's opinion on the impact of economic concentrations in the healthcare sector. Moreover, in order to encourage competitive bidding and ensure a non-collusive environment in the public procurement sector, ECA and the General Authority of Government Services jointly issued a circular regarding the application of competition related provisions stated by the Public Procurement law.

Competition authorities and sector regulators must follow a constructive framework in order for cooperation to be effective. The cooperation will have a considerable positive influence on competition enforcement and regulations, which will lead to enhancing the competitiveness of certain industries.

El Salvador

Promoting competition as an essential value becomes relevant to public authorities that face the complexity inherent to combine different public policy considerations in dynamic markets, but within the limits of their respective attributions. Competition agencies and regulators can bring each one’s specialized knowledge towards more convenient competition conditions in regulated industries, improving economic performance and efficient norms.

The SC intra-government advocacy efforts and its interaction with sectoral regulators were assessed in the 2008 and the 2020 OECD Peer Reviews on Competition Law and Policy. The latest Peer Review sustains the SC has actively used its intra-governmental advocacy role by carrying out market monitoring, opinions and market studies that nurture public policy recommendations in different economic sectors and it noticed that recommendations that have been implemented have led to pro-competitive reforms and to an increased coordination between the Superintendency and relevant regulators.

Even though recommendations and opinions are non-binding the SC has been effective in promoting procompetitive regulatory reforms pursuant market studies findings as well as intra-governmental projects and internationally recommended best practices to foster competition in public procurement through training, intergovernmental projects, and publications that assist public procurement officials to internalize the value of competition as well as the usual red flags for collusive tendering.

The SC interacts more frequently with the following regulators: the General Superintendence of Electricity and Telecommunications (SIGET), the Superintendence of the Financial System (SSF), the Central Reserve Bank (BCR), the Civil Aviation Authority (AAC). Other cooperation relations occur within interagency feedback exercises. The SC success in interacting with sectoral regulators is illustrated in the Global Forum contribution through three examples in the wholesale electricity market (WEM), telecommunications and passenger air transport.

Estonia

Estonian Competition Authority (ECA) was established as an enforcement agency in 1993. Over the years ECA has gained regulatory functions which means today ECA is a multi-purpose agency with antitrust and regulatory functions. The functions of the authority are divided between three divisions, which are Competition Division, Regulatory Division and Insolvency Division. The Competition Division supervises competition, controls mergers, analyses the competition situation in various sectors, and raises competition awareness and also monitors unfair commercial practices. The Regulatory Division supervises and regulates prices in the areas of electricity, natural gas, district heating, and water. The focus of the division is on controlling the markets in these sectors and in the rail and postal services market. Additionally, it resolves disputes related to airport and port fees.

In a small country like Estonia, it is economically reasonable to have several policy instruments within the same agency, as it also enables better synergies between different policies. For example, people working with several functions are better suited to solve jurisdictional questions, find common grounds and solutions. To be more concrete, Competition Division has relied on the financial expertise of the Regulatory Division in the competition cases regarding unfair pricing and pricing related abuse cases, Regulatory Division on the other hand has informed Competition Division of potential competition concerns on energy markets and so on. Also, over the years several cases in the fields of energy and post were proceeded in very close co-operation between the divisions. One of the first analyses made in co-operation just after the authority was merged and it concerned water and sewerage sector. The sector-based know-how and expertise proved to be remarkably useful also in merger cases concerning regulated markets, for example electricity market. Equally important is the daily exchange of know-how that significantly helps to contribute to the speed and quality of the proceedings. The ultimate goal is that undertakings receive feedback to their requests as quickly as possible.

ECA was responsible for regulating part of electronic communications for the years 2008 till 2014. Since 2014 the tasks, rights and obligations of the electronic communications market regulator, which previously had been divided between ECA and the Technical Surveillance Authority (now Consumer Protection and Technical Regulatory Authority), are under the competence of the latter. In relation with these changes, the electronic communications department was also transferred to the Technical Surveillance Authority, but as the people were before part of ECA, the contact is still there which also contributes to better cooperation. Even if regular meetings are not held, the discussions are held between the case handlers of both authorities to address an issue of interest or concern. In several cases concerning telecommunication markets ECA has received valuable technical and sector specific help from the colleagues of Consumer Protection and Technical Regulatory Authority. Recent examples concern broadband services market and cable conduits market.

In addition, Electronic Communications Act regulates the co-operation between Consumer Protection and Technical Regulatory Authority and ECA. The aim of co-operation between the Consumer Protection and Technical Regulatory Authority and ECA in the area of electronic communications is to ensure uniform and consistent interpretation of the competition situation and prevent the passing of contradictory decisions. Therefore, Consumer Protection and Technical Regulatory Authority and ECA have to co-operate in the area of market regulation and exercising of supervision in the electronic communications sector and, if necessary, exchange appropriate information. It can be

considered that the current cooperation between ECA and the Consumer Protection and Technical Regulatory Authority may be assessed positively and is certainly useful for both authorities.

European Union

Competition authorities and sector regulators generally have different tasks: the former are focused on protecting competition in all markets, the latter are dedicated to supervise and intervene in a specific sector to achieve the policy goals set by the applicable regulations. This is true also in the European Union ("EU"), where the European Commission ("Commission") is entrusted with competition enforcement in all markets at EU level, while sector regulators – which operate at national level – are usually tasked with applying their respective sector-specific regulations.

Generally, the enforcement actions taken by the European Commission and the activities of national sector regulators complement each other, but there is also the risk that they could lead to uncoordinated results. This may occur mainly in two instances: (i) when the Commission initiates a competition investigation against undertakings that operate in a regulated sector; and (ii) when a single and specific conduct by one undertaking is the subject of parallel proceedings by both a sector regulator and the Commission.

In such instances, there are good, practical reasons for the Commission and sector regulators to cooperate during the investigations. In fact, the Commission regularly consults sector regulators when its competition investigations concern undertakings operating in a regulated market, with the aim of obtaining inputs and expert opinions that it considers necessary to conduct a proper competitive assessment of a specific conduct. These interactions have an informal nature, which allows the cooperation to be carried out in a flexible manner, as appropriate.

Moreover, in cases where the same facts are assessed by the Commission under competition law and by a sector regulator under sector-specific rules, cooperation is not only welcome but necessary. Indeed, the Court of Justice recently ruled in the Bpost case that cooperation between EU competition authorities and sector regulators is essential to respect the ne bis in idem principle, which bars parallel proceedings against the same conduct.

In conclusion, the Commission (i) believes that cooperating with sector regulators is an effective tool to avoid uncoordinated results, and (ii) routinely cooperates with them during investigations. The recent case law of the Court of Justice in this respect confirms the necessity to cooperate and imposes further reflections on the opportunity of a codified framework for this cooperation.

Fiji

The Fijian Competition and Consumer Commission (FCCC) is the statutory body established under the Fijian Competition and Consumer Commission Act 2010 to act as Fiji's competition authority. In addition to the FCCC's mandate to enforce laws against restrictive trade practices and oversee Fiji's merger control regime, the FCCC has a broad mandate to directly regulate markets where competition is lessened or limited.

When the FCCC regulates markets in which competition is limited, the FCCC is able to make use of powers set out in the FCCC Act 2010 to impose behavioural remedies to protect consumer interests in these markets.

The FCCC's regulatory remit is wide-ranging, and includes the regulation of prices of consumer goods as well as responsibility for regulating telecommunications, pharmacies, electricity tariffs and a number of public services.

The nature of many markets in Fiji increase the importance of robust competition enforcement, and the FCCC applies competition rules across all markets in Fiji. Recent reforms of regulatory regimes in essential markets in Fiji have brought regulatory responsibility for some additional markets under the purview of the FCCC. This has allowed the FCCC to develop a competition focused regulatory regime, intended to pre-empt consumer harm arising from weak competition by putting the promotion of robust competition at the centre of our approach to regulation.

These reforms have allowed the FCCC to address widespread concerns about the potential for the structure of the previous regulatory regime to increase the risk of regulatory capture. This paper presents a case study of a recent regulatory reform which has successfully promoted competition in the market for private pharmacy services and widened access to pharmacy services in remote areas of Fiji.

Georgia

In 2020 the amendments to the Law of Georgia “on Competition” separated competences between the competition authority (GNCA) and sector regulators. According to the amendments, the regulators enjoy exclusive jurisdiction over alleged infringements in their sectors, however, a path for optional cooperation is designated and heavily used in practice.

The law “on Competition” dedicates a separate chapter on co-operation between the GNCA and sector regulators. Accordingly, the GNCA and the relevant regulatory authorities of a regulated sector of the economy shall cooperate in the investigation and prevention of the distortion of competition in the regulated sector of the economy. During the case consideration/investigation, the law indicates the obligation for both – GNCA and sector regulators, to notify and involve each other in the process. The involvement includes the rights to access case materials, participate in explanatory and summary hearings/sessions, express positions on commitments and/or final draft decisions, including fines.

The GNCA has been actively co-operating with all sector regulators in Georgia. The co-operation procedure follows the rules provided by the law and the relevant secondary legislation. The interactions between the authorities show that, together with the official procedures of law/secondary legislation, ad-hoc informal meetings are also useful for effective investigation.

Greece

I. Introduction: competition and regulation as antagonistic fields

Competition law and economics literature has always conceived the relation between the principle of competition and government action in antagonistic terms, based on the assumption that the "state" is juxtaposed to the "market," the two forming different conceptual categories. In this regard, the fact that the principle of free competition, as laid down in the EU Treaties, is a primary objective governing all action of the Union implies that in the presence of a conflict between regulation enacted by the Union or its Member States and the principle of free competition, the latter should take precedence. Competition law applies to state intervention in markets (Article 4 (3) TEU in conjunction with Articles 101/102 TFEU, Article 106 TFEU) and the EU Courts have affirmed the absence of any competition law immunity for sector-specific regulation.

II. Competition and regulation as complements: The Digital Economy Toolkit Approach

On the other hand, regulation may have a complementary role to competition law. The regulatory framework put in place by the EU for the digital economy, including, inter alia the DMA, forms a characteristic example in this regard. It is true, however, that the adoption of the DMA and its enforcement in EU Member States, along with competition law, sets interesting challenges as to the appropriate institutional design, especially in view of the recent case law of the EU courts regarding the ne bis in idem principle.

III. Ex ante regulation and quasi-regulatory competition law enforcement: Article 11 of Law 3959/2011 (the Greek Competition Act)

An interesting paradigm of the complementarity between ex post competition law enforcement and ex ante regulation may be found in the provisions of the Greek Competition Act. In addition to its powers to enforce competition law through the ex post prohibition of anti-competitive behaviors, the HCC is also entrusted by law (Article 11 of the Greek Competition Act) with the power to enact regulatory measures so as to re-instate conditions of effective competition in sectors of the economy, if and to the extent that the rules governing ex post competition enforcement do not suffice to this end. The HCC has already made use of such power (2008/2022- regulatory measures in the petroleum products and the press distribution sectors respectively, 2021- market investigation in the construction sector1).

IV. Interaction between the competition authority and sector-specific regulators in Greece - allocation of competences

In Greece, the competence to apply competition law lies primarily with the HCC. However, several sector regulators are entrusted -mainly, but not exclusively- with the ex ante application thereof, in special sectors, such as telecoms, energy, transport etc.

The issue of the allocation of powers between the HCC and sector specific regulators has been clarified to a significant extent following the amendments recently introduced into Law 3959/2011 (the Greek Competition Act)2, expressly vesting the HCC with the power to enforce competition in all sectors and markets nationwide with the sole, yet notable,

[1] Final decision pending.

[2] Article 14 para 1 of Law 3959/2011, as in force following the amendments introduced by Law 4886/2022.

exception of telecommunication and postal services. However, due to lack of a clear, uniform criterion for the allocation of powers among the HCC and sector regulators (e.g. ex ante – ex post application), ambiguity as to the delineation of competencies is not entirely avoided.

V. The Interaction between the competition authority and sector-specific regulators in Greece – co-operation

In view of the aforementioned, co-operation between competition authorities and sector regulators is of utmost importance. It enhances effectiveness in the exercise of the authorities' powers and minimizes costs related to possible conflicts of competencies. In Greece, there is no umbrella legislative framework providing for the details of such co-operation, nevertheless, provisions on certain aspects thereof are included in the Greek Competition Act and in sector-specific legislation.

With an aim to intensifying co-operation, the HCC has entered into -non binding- MOUs with regulatory authorities, elaborating on further practical aspects of cooperation, such as the exchange of know-how and the set-up of joint working groups. The HCC has also organized an International Conference on "The intersection between Competition and Regulation: Prospects for Reform", where, inter alia, the creation of a national competition and regulatory authorities network was discussed, and it has commissioned a study intended to shed light on the optimal delineation of competences.

Hungary

The present analysis gives an overview into the institutional, legal, and practical aspects of cooperation between specific sector regulators and the Hungarian Competition Authority.

The first section discusses the regulatory and legal context of the subject-matter and explains the underlying idea behind the need for cooperation. It is highlighted that the sole enforcer of competition law in Hungary is the competition authority, but the sectoral regulators have strong role in providing sector-specific expertise and cooperation.

The second section provides a detailed description of the basis of cooperation and makes a distinction between three separate categories: (i) cooperation required by legislation, (ii) cooperation on the basis of formal agreements and (iii) ad-hoc cooperation. It is shown that cooperation is achieved mostly because of requirements by sectoral legislation or by means of formal agreements, out of which bilateral agreements are the most typical. Ad-hoc cooperation without any of the above-mentioned bases is less common.

The third section deals with the practical aspects of cooperation and distinguishes between its direct effect on competition proceedings in specific enforcement cases as well as its indirect effect on competition enforcement in sector inquires and accelerated sector inquires. It is shown that the most common ways of cooperation take the form of data-sharing, consultation and by providing sector-specific expertise.

India

Pursuant to the 1991 liberalisation policy, several sector regulators were established in India, some of which, considered in this article, have an interface with the Competition Commission of India (CCI). These sector regulators are Insurance Regulatory and Development Authority (IRDA), Reserve Bank of India (RBI), Telecom Regulatory Authority of India (TRAI), Securities and Exchange Board of India (SEBI), Petroleum and Natural Gas Regulatory Board (PNGRB), Central Electricity Regulatory Commission (CERC), etc. CCI was established under the Competition Act ('Act') to prohibit anti-competitive practices in markets in India.

The Act has recognised the need for interaction between CCI and sector regulators under the provision of Section 21 and 21A of the Act. Further, the Competition Amendment Bill, 2022 has proposed to enlarge this scope of interaction.

Further, the Hon'ble Supreme Court of India, in Civil Appeal No. 11843 of 2018 CCI v. Bharti Airtel Limited & Others, has delineated the scope of interaction between CCI and sector regulator.

CCI has been in regular interactions with sector regulators. However, given the statutory landscape of framework, there appears a potential for challenges as sector regulators and CCI may exercise concurrent jurisdiction in some of the matters before them. From this perspective, comity amongst sector regulators and CCI may mitigate potential challenges.

Kazakhstan

Timely provision of medicines to the population directly affects the state of protection of the health and well-being of citizens, and its quality affects the level of national security.

The coronavirus infection pandemic in 2020 became an indicator that opened up problematic issues in the pharmaceutical industry in Kazakhstan, which led to speculation about increased prices for anti-covid drugs.

In this regard, for the purpose of more precise control over the regulation and approval of prices for medicines, the antimonopoly authority (the Agency for Protection and Development of Competition of the Republic of Kazakhstan) in 2020 became a co-regulator of marginal prices for medicines.

In accordance with the instruction of the Head of State, the Ministry of Health of Kazakhstan, together with the Agency, is conducting step-by-step work on balanced regulation of prices for medicines and medical products with the suppression of anticompetitive actions of pharmaceutical market participants.

As part of the ongoing work, in January 2022, amendments were made to the Code of the Republic of Kazakhstan “On the Health of the People and the Healthcare System” in terms of securing the authority to coordinate marginal prices for medicines with the antimonopoly authority, as well as to the Rules of Regulation, the formation of marginal prices and Margins for medicines, as well as medical products within the guaranteed volume free medical care and (or) in the system of compulsory social health insurance, in terms of the procedure for the formation and approval of the draft list of medicines, subject to price regulation for wholesale and retail sales. According to the new edits, regulation is subject to:

- prescription medicines;
- over-the-counter medicines having no more than 3 trade names of medicines within one international nonproprietary name and (or) having no more than 3 manufacturers of trade names of medicines within one international nonproprietary name;
- over-the-counter medicines included in the list of medicines and medical products purchased from a single distributor and (or) in the list of medicines and medical products for free and (or) preferential outpatient care for certain categories of citizens with certain diseases (conditions).

Currently, the Agency is working to regulate prices for medicines and medical devices and to curb anti-competitive actions of pharmaceutical market participants.

Kenya

The Competition Act of 2010 ('the Act') empowers the Competition Authority of Kenya ('the Authority') to safeguard and promote competition in all sectors of the economy and protect consumers from unfair and misleading conduct. Specifically, Section 10 of the Act sets out the composition of the Authority. It consists of: a non-executive chairperson; the Permanent Secretaries responsible for finance and trade; the Government's chief legal advisor; and the Director-General of the Authority. Pursuant to Section 5 of the Act, the Authority has the primary jurisdiction to deal with all matters concerning competition and consumer protection in the national economy. This section further obliges sector regulators with concurrent jurisdiction on competition regulation matters to establish a Working Framework with the Authority. Such joint framework is expected to: identify and establish procedures for the management of areas of concurrent jurisdiction; promote co-operation; provide for the exchange of information and protection of confidential information; and ensure consistent application of the principles of the competition Act. The co-operation between the Authority and the sector regulators is voluntary based on the desire to realize each other's mandate and for the shared good of the stakeholders. However, in some instances, the primary Statutes and sectoral regulations require the sector regulator to cooperate or establish a co-operation mechanism with the Authority on competition matters. The co-operation agreements between the Authority and the sector regulators have provisions that address specific issues. Some pertinent issues addressed in the MoUs, among others, include; the manner of co-operation and consultation in carrying out investigations, conducting merger analysis (in the case of telecoms sector) and information collection, conducting market studies, drafting and informing new legislations and regulations, staff exchange programmes, conducting joint capacity building in areas of concurrent jurisdiction, or mutual benefit. The existing MoUs are implemented jointly by the two institutions by creating a joint team with the representations of the parties, and each two co-chair persons who report to the institutions on matters discussed and agreed upon by the joint committee. The committee develops annual work plans on joint activities, which is informed by their institutional work plans. The work plans are reviewed annually and signed by the two institutions prior to implementation. The Authority's submission discusses how these co-operation frameworks have enabled the Authority effectively achieve its mandate, illustrated using cases.

Latvia

The goal of this paper was to give an overview of the CC's practice in cooperation with sector regulators. The CC cooperates with sector regulators through meetings, written opinions, exchange of experience, exchange of data and views on different issues. Cooperation can be unofficial or official – depends on the circumstances.

In this paper the CC shared some of the more interesting cases of cooperation between the CC and sector regulators to give an insight about the topics where the entities cooperate and the ways the cooperation is executed. The CC cooperates with sector regulators in case investigations, consulting experts when reviewing mergers or when defining markets in abuse of dominance cases. The CC also cooperates with sector regulators when carrying out market monitoring and when expressing views on the regulation. Cooperation between the CC and sector regulators helps to protect, maintain and develop free, fair and equal competition in the interests of the public in all economic sectors.

There is a clear distinction between the competence of the CC and regulators and the competencies do not overlap. The national case law states that the CC is the only public institution that can give the evaluation whether an action by an undertaking is in compliance with the Competition law. The CC cannot evaluate whether an agreement or any other action by an undertaking is in compliance with the sector regulation since it is not its competence. At the same time, it is not a breach of the non bis in idem principle if the CC evaluates an undertakings action and its compliance with the competition law if these actions have already been evaluated by a regulator in the scope of sector regulation.

The CC cooperates with sector regulators mostly on the basis of the Section 53 of Administrative procedure law. The only official cooperation agreement is with Public utilities commission. The cooperation usually is easy and effective since the regulators are willing to cooperate. Since there are no major issues in the cooperation, there are no discussions about a need for a formal cooperation agreement.

Even though there are some challenges, e.g., the exchange of commercially sensitive information is not always easy, there are not always enough resources to offer the needed opinion or data in short time, overall the cooperation with sector regulators is easy, the competencies are clear and even if the opinions of experts sometimes differ, the opinion of the CC is always respected and valued by the regulators and vice versa.

Malaysia

The Competition regulation in Malaysia is quite dynamic and unique in nature, where it has a dual regulatory system. The Competition Act 2010 (CA2010) which enforce by The Malaysia Competition Commission (MyCC) covers all commercial activities within and outside Malaysia.

Nevertheless, the legislation excludes the Energy Commission Act 2001, the Malaysian Aviation Commission Act 2015, the Communications and Multimedia Act 1998, as well as the Petroleum Development Act 1974 [Act 144], and the Petroleum Regulations 1974 [P.U. (A) 432/1974] in so far as the commercial activities regulated under this legislation are directly in connection with upstream operations comprising the activities of exploring, exploiting, winning, and obtaining petroleum whether onshore or offshore of Malaysia since all these Acts have their own competition regime.

For the past ten years of ongoing the CA2010, MyCC acknowledged the importance of interactions between competition authorities and sector regulators. To ensure the balance between these authorities the MyCC has formed a platform known as the Special Committee Meeting with the objective to gather all sector regulators to interact on matters related to competition law. Since the formation of the meeting in 2014, the MyCC has conducted a total of eleven (11) meetings; as of today, nine (9) members including the MyCC. The main objectives of the meetings include (i) providing a platform to discuss the recent developments in competition law and policy across key sectoral regulators while ensuring consistency in the application, terms, and principles of the law; (ii) exchanging input and gain support from other key sectoral regulators to ensure the harmonization of competition principles and robust enforcement of competition law; (iii) to carry out joint educational activities and media campaigns on competition-related issues, if necessary, to the public; and (iv) to provide the necessary support to MyCC and vice versa to the respective sector regulators at any national and international forum on the competition.

Furtherance to the Special Committee Platform, MyCC has recently conducted a round table discussion with sector regulators like the Cyber Security Department, Department of Personal Data Protection, and Malaysia Digital Economy Corporation to discuss the development of the digital economy guideline which is in the pipeline for MyCC.

To further strengthen the working relationship between MyCC and other sector regulators, MyCC has also inked several Memorandum of Understanding (MOU) with sectoral regulations such as the Central Bank of Malaysia, Malaysian Communication and Multimedia Communication, and Malaysian Anti-Corruption Commission. These MOU aims to further promote cooperation and coordination between MyCC and the other sector regulators.

Moving forward, MyCC hopes to continue contributing significantly to the roundtable of the Global Forum on Competition.

Mexico

Federal Economic Competition Commission (COFECE or the Commission)

This contribution presents the experience of the Mexican Federal Economic Competition Commission (COFECE or Commission) the competition authority that has the mandate to safeguard the conditions of competition in all markets of the Mexican economy, except for the telecommunications and broadcasting sector, for which the Federal Telecommunications Institute (IFT) is responsible. Specifically, it describes the cooperation agreements and sectoral regulation that facilitate coordination between COFECE, sectoral regulators and other public authorities; it also provides examples of collaboration between the competition authority and regulators; and in the last two sections it describes the main challenges of such collaboration; as well as lessons learnt and areas of further collaboration.

Federal Telecommunications Institute (IFT)

The IFT has a dual constitutional mandate as economic competition authority and as a regulatory authority of the telecommunications and broadcasting (T&B). It is responsible for the convergent enforcement of the Federal Economic Competition Law (LFCE) and the Federal Telecommunications and Broadcasting Law (LFTR). It is empowered to balance competition and regulation, to impose pro-competitive ex ante regulation and enforce competition law, giving certainty to investments and ensuring consumer welfare in services such as mobile telephone, internet access, TV, and digital services.

The legal framework is applied convergently in radio spectrum management; public bidding process for the frequency bands of the radio spectrum; the granting of concessions; the duties established to concessionaires and authorized entities that provide internet access services; public telecommunications networks design, and assignment of rights, which show a very close relation between regulation and competition principles when the IFT exercises its powers. Furthermore, the concept of preponderance exemplifies how regulatory measures can integrate economic competition concepts, benefiting users and audiences of the T&B sectors.

In addition, the IFT has collaboration agreements with the Office of the Federal Prosecutor for the Consumer (PROFECO) and the National Institute of Transparency, Access to Information and Personal Data Protection (INAI) to improve compliance and to strengthen its functions as a regulator and competition authority.

Moldova

The Competition Council of the Republic of Moldova is the autonomous authority responsible for the application of the competition legislation in Moldova. In addition to traditional areas of competences, the Council also exercises specific powers in the advertising sector and soon will get additional regulatory functions in railway transport. Meanwhile, other public authorities act as sector regulators in the areas in which the Competition Council may exercise its supervision and enforcement powers as the competition authority. They also have the task of promoting competition in their relevant industries.

Certain questions, therefore, may arise where the legislation can create premises for parallelism in the activities of the competition authority and sector regulators, particularly where the sector regulations may lead to some limitations of competition, or where the Council itself may assume certain regulatory powers. Therefore, the issues of delimitation of powers with the respective sector regulators and the limits of involvement of the Council are of particular importance.

Furthermore, the Competition Council has additional powers to supervise the actions of public authorities which may lead to the distortion of competition in relevant markets. It allows the Competition Council to intervene and make relevant prescriptions to restore the normal competitive conditions and even to make submissions in the court-of-law in this regard. These powers of the Council are of general nature and may even concern the activities of sector regulators.

However, they shall be exercised with caution in order to the Council not to exceed their limits and not encroach on the regulatory powers of other authorities and substitute them. This is particularly relevant in areas where the markets are not fully liberalized and sector regulators may introduce additional limitations to competition depending on the current state of the relevant sectors.

In this submission, we provide details on two sectors where there are sector regulators with substantial regulatory powers and where, at the same time, the Competition Council is also expected to play a particularly active role: energy sector and audiovisual media services. We then also touch upon two areas where the Council has additional regulatory powers (advertising and railway transport) and also discuss the role and importance of cooperation agreements with sector regulators.

Paraguay

Paraguay’s competition law was enacted in 2013 under No. 4956. In addition to setting the first legal framework in the country on matters of mergers and anticompetitive practices (abuse of dominance and anticompetitive agreements or cartels), it established a national competition authority for the first time: CONACOM. There was no prior institution or office that filled the role of a competition authority in the country.

Its relationships with regulators are governed by the competition law, which provides for the basis of the regulator’s duties to collaborate with the provision of information upon request and to report alleged infringements detected in their activities. Subsequent agreements have followed-up the provisions of the law. In terms of mergers, the law does not provide for joint proceedings or a single point of contact for companies for the notices.

Despite the regulatory framework and the agreements, cooperation in terms of enforcement requires raising awareness on competition, as experience has proven that the law and agreements are sometimes not effective by themselves, requiring follow-up meetings and calls for cooperation to be successful.

When it comes to the provision of information, results of requests have historically been mixed and there have been no cases opened due to a notice from the regulator.

Although CONACOM can impose penalties on staffers from regulators for the noncompliance with the requests of information, the competition authority has adopted a softer approach in this initial stage in the implementation of competition law. So, it has promoted the execution of agreements, approached regulators with meetings and training and patiently reiterated requests for information. This advocacy work with regulators has started and will require time and resources. This fact does not rule out imposing penalties in the future.

Serbia

Cooperation between competition authorities and sectoral regulators is desirable, if not proclaimed by law. Inherent to sectoral regulation is the limitation on the free functioning of the market and conduct of its participants, which could hinder competition. In order to alleviate such potential effect, sectoral laws often proclaim that regulation is to be based on the principle of competition and/ or that it ought to ensure effective market competition. At the same time, competition aims to ensure a level playing field between market participants and increase society welfare. It is this overarching goal which creates space for mutual cooperation and interaction between competition authorities and sectoral regulators, which is sometimes not just desirable, but even necessary for the achievement of better market outcomes.

In the case of Serbia, there is an independent competition authority (Commission for Protection of Competition- the CPC) in charge of enforcing antitrust and merger rules against practices of market participants which affect or could affect competition on the territory of the Republic of Serbia. There are also sectoral regulators set up with the task of administering and regulating key sectors of the economy, such as the financial markets, energy, telecommunications, etc.

The cooperation and interaction between the Serbian competition authority and sectoral regulators is often envisaged and mandated by law. As is shown in Sections I and II of the Contribution, both the Law on Protection of Competition and numerous sectoral laws envisage cooperation between them as part of the general legal provisions on cooperation between authorities with public competencies. Some sectoral laws go further in that they envisage specific cases where cooperation of a particular sectoral regulator with the CPC is necessary.

Section III of the Contribution focuses on the tools the Serbian competition authority and sectoral regulators have developed in practice, to provide a framework for their interaction, regulate specific details of mutual cooperation and create conditions for more efficient implementation of the respective laws which they enforce. Those tools are mutual cooperation agreements (memoranda or protocols), requests for information and opinions of the CPC on different types of acts. Yet another tool for mutual interaction, generally considered of a more informal character and a useful competition advocacy tool (from the CPC’s perspective), is the participation of the competition authority and sectoral regulators' representatives in joint seminars and conferences. This tool may have suffered the most in the face of the corona virus pandemic, but its continuity had been enabled through the switch of format from in-person to the hybrid and online one.

Despite some challenges, all the tools mentioned above remain important for the interaction between the Serbian competition authority and sectoral regulators. However, as all other types of interaction, it is a live and moving category, which depends not only on the legal framework and legal possibilities, but also the socio-political and economic circumstances of the time and the approach of individual institutions to mutual cooperation.

Türkiye

As it is stated in the Background Note of OECD on this topic, the subject matter of competition authorities and the sector regulators may overlap. As a consequence of playing in the same field inconsistent decisions may arise. Thus, inconsistency in the relevant sector may harm legal certainty. In order to eliminate inconsistency and to strengthen the legal certainty, interaction between competition authorities and sector regulators is precious. However, the primary concern of competition authorities and the regulating bodies may differentiate from time to time. While the competition authorities seek to enhance competition in all sectors unexceptionally, the sector regulators may take sector specific precautions opposing the general norms of the competition law. In the case of Türkiye, such an opposing practices of both parties in the field of music industry entail collaboration between Turkish Competition Authority and the Ministry of Culture of Republic of Türkiye.

There are seven professional associations in music industry and their primary concern is to protect the copyrights of their members. In Türkiye, there are seven professional associations in music industry established pursuant to code regarding the intellectual property rights. In general, these associations are obliged to protect the interests of their members composing of authors, creators, performing artists, producers of phonograhms etc. Through a license agreement, the owner of an intellectual property right gives permission to associations to use the rights for a period of time without any permission. Therefore, the license allow the associations to legitimately use and sell the artworks protected by intellectual property rights and collect the money on behalf of its members. In return, the members of the associations take their shares from the pool as a royalty payment.

In the early 2000s several applications arrived to the Turkish Competition Authority claiming that these seven associations determine the reselling conditions of the licenses all together. Under ordinary circumstances these allegations may ring the cartel bells, however, the code regarding the intellectual property rights gives permittion to seven professional associations in music industry to jointly determine the reselling conditions of the licenses. This kind of permittion may seem contrary to the substantial rules and the essence of the competition law, however, it is granted by the legislation of the parliament.

When the interaction begins between Turkish Competition Authority and the Ministry of Culture?

The code regarding the intellectual property rights provides that if a dispute arises among the associations while determining the resale conditions, the reconciliation commission come together to negotiate the conditions. In this commission the Ministry of Culture has one representative, the Turkish Competition Authority has two representatives and each one of thes association has one representative.

As it is guessed, the Turkish Competition Authority does not suggest any certain price to the associations as a competitive price. On the other hand, with the initiatives of the Ministry of Culture, as a part of its advocoy policy the Turkish Competition Authority brings representatives of the associations together and inform them about the pricing strategies under collective dominancy circumstances.

Thanks to cooperation between Turkish Competition Authority and the Ministry of Culture, associations set their prices in consideration of competition rules.

Ukraine

Among the components necessary for the effective functioning of the economy of any state, we believe that the following are important: firstly, the state policy aimed at developing competition and sectors of the economy, at stimulating and encouraging the emergence of new players in the markets. Secondly, capable institutional regulators responsible for certain areas of economic development. Thirdly, cooperation between a strong and capable competition authority with an effective enforcement mechanism and regulators responsible for the development of competition in the relevant sectors

The AMCU was one of the initiators and driving force behind the creation of sectoral regulators. As a result, Ukraine has national commissions in such areas as communications and informatization, energy and utilities, securities and stock market.

At the same time, despite all the efforts of the AMCU, the commission in the field of transport has not yet been established. Today, the functions of the transport regulator are performed by the Ministry of Infrastructure of Ukraine. As a result, AMCU had several cases against MoI, in particular:

1. in the market of pilotage services
2. in the market of rent of state real estate
3. in the field of air navigation services for aircraft

Additionaly, AMCU has interacted with regulators through the mechanism of approval of their regulations that may affect competition:

1. interaction with the regulator in the field of securities circulation and stock market
2. interaction with the regulator in the energy sector

Also, following, the OECD recommendation of 2008, we would like to consider the issue of establishing administrative liability for officials of regulators (public authorities) responsible for the actions of these regulators (authorities) for violation of part four of Article 20 of the Law of Ukraine "On the AMCU" (failure to coordinate with the AMCU draft regulatory legal acts affecting competition).

And finally, the AMCU in order to improve the exchange of information, develop common approaches to market research and enforcement, has concluded memoranda of cooperation with a number of regulators:

1. Memorandum of cooperation with the National Securities and Stock Market Commission
2. Memorandum with the energy regulator (NERC)

In general, the AMCU's activities as a competition advocate continue to be positively perceived by the regulators, and the AMCU's recommendations are seen as reflecting a correct understanding of the relevant regulatory context, even if the regulator does not agree with the AMCU's position. This, in turn, is the result of the AMCU's efforts to hold various consultations with regulators to explain its position.

Therefore, despite certain differences in views on market development between the AMCU and regulators from time to time, we believe that cooperation between the AMCU and regulators is an inevitable fact. We believe that without cooperation between the

competition authority and the regulators it is impossible to develop effective competition in the relevant sectors of the economy.

United Kingdom

Almost every household and business in the UK relies on the services provided by regulated industries, including energy, water, telecommunications, transport and financial services such as banking, insurance, and payments. Spending on these services forms a large part of the household budget (particularly for low-income families). It is therefore vital that consumers of these services enjoy the benefits that competition generally brings, in terms of downward pressure on prices, and upward pressure on service and quality standards. Cooperation between the UK's sector regulators and the Competition and Markets Authority (CMA), in its role as the UK's principal competition authority, plays an important part in delivering effective regulation, whether via ex post enforcement of antitrust laws or ex ante pro-competitive regulation.

In the UK, certain competition law enforcement powers are shared between the CMA and the regulator responsible for the sector concerned. The sharing of enforcement powers is referred to as 'concurrency', or the 'concurrency arrangements'. The sector regulators have a knowledge and expertise of the sectors they regulate, including the participants, technologies, commercial relationships and regulatory framework. On the other hand, the competition authority has an in-depth competition experience and economy wide-perspective. Concurrency aims to make best use of the complementarity of skills of both the CMA and sector regulators.

The concurrency arrangements involve a number of mechanisms for the CMA and sector regulators to co-ordinate their use of their powers, and cooperate and support each other in carrying out their work. These include mechanisms for deciding who should take action, where one or more regulator shares the relevant powers. They also include mechanisms for the CMA and sector regulators to share staff and expertise to support each other on enforcement.

The UK's contribution describes the UK's framework for facilitating cooperation between the sector regulators and the CMA, with a particular focus on the UK's competition concurrency arrangements. The contribution describes the policy background for the concurrency arrangements, as well as illustrating how they operate in practice. The contribution also describes how the CMA cooperates with sector regulators on matters outside the area of shared powers, including merger control and the CMA's decisions following market investigations.

United States

The U.S. contribution to the 2021 Global Forum on Competition roundtable on competitive neutrality focused on President Biden's July 2021 Executive Order on Promoting Competition in the American Economy ("EO"). The EO calls for a novel "whole-of-government" approach to promoting procompetitive policies and markets across the United States. It has enhanced opportunities for the U.S. antitrust agencies (the Department of Justice ("DOJ") and Federal Trade Commission ("FTC"), collectively "the Agencies") to partner with federal agencies and collaborate across government both to address the need for more vigorous competition in the U.S. economy and to promote fair competition.

This submission discusses recent developments relating to the interaction between the Agencies and sector regulators following the EO's promulgation. It describes the EO's objectives and the infrastructure established to facilitate interagency cooperation, and identifies actions for outreach and implementation of the EO. It concludes by highlighting specific interactions between the Agencies and the U.S. Department of Agriculture and the National Labor Relations Board.

*Uzbekistan**

Large-scale reforms are being implemented in all spheres of the economy of Uzbekistan to create a favorable investment environment, to move to market mechanisms in some sectors and large enterprises, and to develop competition. In particular, in order to develop a competitive environment and attract investments in fuel and energy networks operating in natural monopoly sectors, the sector has been reformed, new enterprises providing services to entrepreneurs and consumers have been established and are operating effectively, and it is defined that competition is developing in these sectors.

In the course of these active reforms, in order to introduce transparent mechanisms to regulate the industry, develop a healthy competitive environment, and provide equal opportunities to all participants, the Antimonopoly Committee, the Ministry of Energy, the United States Agency for International Development (USAID) after studying the experience of developed and developing countries with advanced foreign competition and consumer protection mechanisms, are working on the implementation of the Institute of Independent Economic Regulators in the field of energy, where the network infrastructure exists.

Currently, the Antimonopoly Committee has established the draft resolution of the President of the Republic of Uzbekistan "On the introduction of the Institute of Independent Market Regulators and additional measures to improve the regulation of natural monopoly entities" and it is being agreed with relevant ministries and agencies.

Furthermore, according to the Decree of the President of the Republic of Uzbekistan No. 145 dated May 31st 2022 “On Additional Measures to Ensure Price Stability in Consumer Markets and Increase the Effectiveness of Antimonopoly Measures”, the Antimonopoly Committee of the Republic of Uzbekistan is enhancing cooperation capacity with 25 government bodies and organizations through establishing the web-service to advance the cooperation level between relevant authorities and to simplify the information exchange between them.

Transformation process has begun in the variety of large industrial and infrastructure sectors of our country's economy, including the fuel and energy, air and railway sectors operating under conditions of natural monopoly. Their main goal is to increase the efficiency and transparency of the sectors to create a fully competitive environment including technical regulation of access to markets and attracting direct investment at the expense of improvement. These reforms require the introduction of new effective mechanisms in these areas based on the experience of developed countries.

The Antimonopoly Committee of the Republic of Uzbekistan is actively working in the field of international cooperation. Within the framework of the UNCTAD Intergovernmental Group of Experts, the International Competition Network, technical assistance projects are being implemented in cooperation with the World Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, USAID, and the OECD.The Antimonopoly Committee of the Republic of Uzbekistan also actively cooperates with the European Economic Community (EEC) in the “5 + 1” format, as the Committee participates in meetings of the Commission, including thematic discussions, as well as public receptions.