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Global Forum on Competition

Use of Economic Evidence in Cartel Cases – Contribution from Georgia

- Session III -

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This contribution is submitted by Georgia under Session III of the Global Forum on Competition to be held on 7-8 December 2023.

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

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Use of Economic Evidence in Cartel Cases

- Contribution from Georgia -

1. The Georgian National Competition Agency actively uses economic analysis in cases of concerted practices (cartels). While economic analysis can be helpful in detecting a cartel agreement, it may not always be sufficient on its own. It is often necessary to supplement the decision with additional direct or indirect evidence. Recent decisions from EU and national courts have emphasized this point, especially since economic analysis may not always differentiate between competitive behavior and outright collusive conduct.

2. Georgia also has a similar experience, when detecting a cartel in the motor fuel market, the Competition Agency's 2016 decision was based solely on economic analysis. However, the court deemed it necessary to consider other types of evidence. The Agency conducted a repeated investigation of the case and established a joint action among five large companies based on indirect evidence of market redistribution in 2018 after the draft was returned for reconsideration.

3. I would like to bring to your attention two significant cartel cases in 2023. In these cases, economic analysis plays a crucial role as key evidence. The first case is the investigation of the motor fuel market against the five major distributors. The second case involves the participation of five major pharmaceutical companies in the state procurement program.

1. The case of five major motor fuel companies

4. Based on the Market Monitoring Report, the National Competition Agency conducted an investigation on the motor fuel market in 2022.

5. After performing an economic analysis, we assessed the behavior of five major fuel-selling companies in the market and their concerted practices to keep high prices for consumers in the retail market.

6. During the investigation period, it was revealed that several companies failed to utilize their cost advantage in the face of cheaper imports, thereby avoiding competition with each other and other rival firms. As a result, instead of lowering the retail prices of their products, these companies maintained high-profit margins. Furthermore, some companies were selling fuel in wholesale from their own storage facilities at a significantly lower price than competitors, compared to what they charged in their own network.

7. After conducting an economic analysis and evaluation, it was determined that the action taken by the companies was considered as a cartel, as a result, fine sanctions were imposed on these companies. In order to provide more reliable evidence to the judges, additional research was conducted. During this period, telephone conversations between five companies were recorded, and it was found that the connections between them were very active. The case was completed in August 2023 and is currently awaiting trial.

2. The case of five major pharmaceutical companies

8. The Competition Agency launched an investigation in April 2023 into five major pharmaceutical companies for offering identical prices in public procurement of oncology drugs.

9. We have used economic analysis to gather evidence of cartel activity, based on probability theory and exclusion, it would be impossible for such a coincidence to occur naturally. Except for cases where companies did not know the acceptable and pre-offer price in advance, to make extra profit in the process of public procurement.

10. We have utilized the method of indirect evidence in addition to the economic analysis. This method involves examining the level of communication between the companies during the time the fact occurred. The case is anticipated to be completed by the end of 2023.

11. In cases where we have clear evidence of a cartel, we offer companies the opportunity to participate in the Leniency Program, although such a precedent has not yet been observed in our practice.

12. Just to keep you informed, I would like to share that since the establishment of the Agency in 2014 until 2023, a total of 11 cases related to cartel agreements have been investigated and concluded, which accounts for 26% of completed investigations on various topics. Among them, cartels were identified in the motor fuel and translation sectors. Currently, there are ongoing investigations into two cases of cartels, one in the pharmaceutical market and the other in the online ticket sales market.