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Methodologies for Conducting Market Studies - Note by Lithuania

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More documents related to this discussion can be found at www.oecd.org/daf/competition/market-study-methodologies-for-competition-authorities.htm

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1. The Competition Council (the CC) uses market studies for the purpose of market analysis and subsequent advocacy. The CC has conducted market studies into a great variety of sectors (such as pharmaceuticals (drugs), raw milk and dairy products, waste management, fuel, retail trade)¹ in order to find out whether effective competition is ensured in a particular market. Most of these studies targeted markets which were regulated or related to activities of public bodies. Moreover, market studies are not implemented in order to identify possible infringements. Such findings concerning anticompetitive actions are more of a possible effect, but not really the goal of the market studies.

2. Consequently, problems analysed in a particular market studies tend to be very specific and while the information gathering techniques are rather similar, the information analysis carried out is of very wide range and it is hard to generalise it.

1. Information gathering

3. At the outset of almost every market study, before sending questionnaires or engaging in any other extensive information gathering activities, background research is performed. The background research is done in several stages.

4. Firstly, all publicly available information relevant for the market study is gathered and analysed.

5. When the structure of the market is somewhat clear and main market players are identified, meetings with representatives of different types of companies active in the market are organised. During the meetings one of the main goals is to identify the scope of the problem analysed and the reasons behind it. Checking whether CC's understanding of the market is correct with its participants is vital. This helps to focus on the most important points and to limit the data needed to the optimal minimum.

6. Furthermore, during these meetings draft questionnaires can also be tested and tuned according to the findings. This eases the information gathering and assures that the information can be used for the purposes it was gathered.

7. When the knowledge of the market is sufficient to determine the information needed to carry out the market study, who is best placed to provide it and how to obtain such information, questionnaires are reviewed and finalised. Only once these steps have been taken, the CC engages in intensive information gathering from market participants.

8. The CC has the powers to issue compulsory orders during the information gathering process, which eases the information gathering. This does not depend on the types of information. However, the CC strives not to abuse this power and ask as little information as it is objectively possible. Where possible, public information sources (e.g. department of statistics) or government bodies gathering the information for regulatory purposes are preferred.

¹ Information in English about market studies. Retrieved from: <https://kt.gov.lt/en/our-activities/market-studies/basic-information-7> Information in Lithuanian. Retrieved from: <http://kt.gov.lt/lt/veiklos-sritys/rinku-tyrimai/susijusi-informacija-6/konkurencijos-tarybos-nutarimai-5>

9. As it was mentioned above, the market studies often focus on rather specific subjects, therefore the information gathered can vary greatly. The main types of information gathered include quantitative data (most often pricing and volume data), qualitative information gathered by questionnaires and data from sector regulators or other public bodies. The CC, due to limited resources, does not conduct consumer surveys. However, the CC has used the findings of surveys conducted by other bodies, when the results were publicly available. The information from third-party data providers has not been used by the CC, since there was no market study where this type of information was required. However, due to the lack of need for such information and limited financial resources it is hardly likely that third-party data would be purchased for the purpose of market study.

10. It should be noted that the information gathering methodologies depend on the nature of the relevant market and object of the investigation, and do not differ much from the ones used during the enforcement action. However, during a market study the need for a very detailed data is not as necessary as during the enforcement actions or merger investigations, where precise market definition or effects have to be established. For the latter purposes, direct data collection from market participants is preferred to the publicly available aggregate data. Naturally, background research during enforcement actions is limited (especially contacting market participants), since in such cases the CC mostly relies on the data collected during dawn raids and any indication that the CC is interested in a specific market might harm further investigation.

2. Information analysis

11. The methodologies applied in market studies primarily depend on the objective of the study and the market in question. As it was mentioned above, most of the studies the CC has carried out targeted markets which were regulated or related to activities of public bodies and were not implemented in order to identify possible infringements. Therefore, methodologies applied are very specific to the matter at hand, for example assessment of the impact on competition of specific regulation. Moreover, since market studies are not targeted at detecting possible infringements and most often relate to regulation, sophisticated methodologies (e.g. price concentration analysis), used in merger or enforcement cases to measure market power or define markets, usually are not needed. Therefore, the overlap of methodologies used in market studies and enforcement actions is somewhat limited.

12. The methodologies applied in market studies mainly consist of descriptive analysis and simplistic statistical methods (e.g. correlation analysis). Since the datasets available to the CC usually are not very detailed and the CC does not have in-house econometricians, econometric analysis in market studies has not been used. The profitability analysis is not widely applied. However, in one of the market studies the CC has analysed profitability of different products and companies in general.

13. For more information on methodologies applied in market studies, carried out by the CC, please see the summary of the most recent examples of market studies provided below.

14. It is worth mentioning that the weighing of different types of information and analysis is not somehow specific to market studies. The same general principles are applied in all cases. Normally, there are multiple types of information or analysis. The CC takes into account all of them.

15. Information sources that can be subjective are treated with caution, therefore qualitative data provided during interviews or by answering questionnaires are always weighted against quantitative data. If the analysis of quantitative data provides us with evidence inconsistent with the views of companies that can be subjective, the former is considered to be more reliable. However, this preference is not automatic as sometimes the quantitative data is not detailed enough and the decision is made considering all evidence gathered.

16. Regarding the consumer surveys and information provided by companies during interviews and by answering to questionnaires, the more reliable is considered to be the results of consumer surveys. Weighing importance of the information gathered in the form of interviews during meetings is somewhat complicated, since while the contribution is not in written form, interviewees tend to be more open. On the other hand, often the interviewees provide partially false or unfounded information more freely.

17. In general, the experience of the CC shows that companies tend to be very subjective, in particular when the object of the market study is directly related to them and the findings of the study can affect them.

18. As it was mentioned above, the CC has not applied econometric analysis in market studies, therefore the answer to the question about weighing econometric analysis and simple quantitative indicators can be answered only on the theoretical level. The CC believes that robust econometric analysis should be preferred to simple quantitative indicators.

3. Case studies

19. The most recent examples of the market studies are the following cases. Please note, that detailed lists of the findings and recommendations of the studies are not included in the summaries.

3.1. The market study on parallel import of drugs (2013)²

20. The CC aimed to evaluate the situation within the pharmaceutical market in Lithuania, to ascertain major reasons for small sales volume of parallel import of drugs within the Lithuanian pharmaceutical market and to suggest the ways to encourage competition within this market.

21. The CC found that the Description of the Calculation of Basic Prices for Reimbursed Drugs (the Description) approved by the Government unreasonably impeded competition between pharmaceutical companies (suppliers) as it provided that the declared selling prices of parallel imported reimbursed drugs have to be at least 4-10 per cent lower than the declared selling prices offered by official distributors (marketing authorisation holders) for the same drugs. Parallel importers were banned from selling those drugs that were, although cheaper than the drugs by the official distributors, nonetheless not cheaper than the required minimum of 4-10%. Therefore, this part of drugs was not a parallel import, and the consumers were deprived of an opportunity to choose a cheaper drug. Having evaluated the findings of the study, the Council submitted a proposal to the Government suggesting to abolish the aforementioned provisions.

² Information about the market study in English. Retrieved from: <https://kt.gov.lt/en/news/competition-council-suggests-to-liberalize-pharmaceutical-market-2>

22. Prior to launching this study the CC concluded a background research, which was focused on getting the views of parallel import companies about the barriers that stop them from operating effectively and increasing the volumes of their business.

23. The main focus of the market study, as mentioned above, was to assess the effects of the minimal requirements for prices of parallel imported drugs, indicated in the Description, on the competition between parallel import companies and official distributors and evaluate the effects of possible reversal of these requirements. This was important, since the Ministry of Health of the Republic of Lithuania argued that if the requirements would be removed, the prices of parallel imported drugs would rise and the overall effect of reversal on the patients would be negative.

24. It was fortunate that there were two separate markets of drugs: reimbursed drugs, for which the price requirements were applicable and which was regulated and non-reimbursed, for which such requirements were not applied. During the study, the CC collected the data on prices of parallel imported and officially distributed drugs in both markets. The CC made an assumption that the price level of parallel imported drugs (in relation to the prices of officially distributed drugs) in reimbursed market after the reversal of requirements for prices would be in line with the situation in non-reimbursed market. For this purpose, the CC grouped the drugs in both markets according to the prices and used weighted averages of price differences between parallel imported and officially distributed drugs. This allowed the CC to estimate whether the increase in volumes of parallel imported drugs (which would be cheaper than sold by official distributors) would outweigh the possible increase of prices of the parallel imported drugs (where prices of parallel imported drugs were not lower than required by the Description).

25. The CC came to the conclusion that the positive effects of liberalisation would outweigh possible negative effects if the volumes of parallel import would increase at least 13,38 – 23-19 % and this increase in volumes could be reasonably considered as achievable.

3.2. The market study into the raw milk and dairy products‘ market (2015)³

26. The market study was launched due to problems in the raw milk production sector caused by the dairy embargo of Russian Federation. It was suspected that due to the uneven bargaining power of milk producers and processors all the negative effects of the embargo were shifted to the milk producers and due to that the prices of raw milk drastically decreased.

27. The CC analysed all four levels of dairy industry – raw milk production, purchase, processing and distribution.

28. The CC has found that the price of the raw milk mainly depends on the bargaining power of the milk seller, which in turn depends on the quantity of raw milk being sold. The Competition Council indicated the ways and mechanisms in place for small farms to collectively increase the quantity of raw milk in the raw milk sellers’ disposal and therefore improve their bargaining power.

³ Information about the market study in English. Retrieved from: https://kt.gov.lt/uploads/documents/files/Milk_summary.pdf

29. At the outset of this study, the CC sought to get as much background information as possible and meetings with representatives of different dairy sector levels were organised. Representatives of raw milk producers and raw milk processors indicated the main problems they faced and the possible reasons behind these problems. During the meetings draft questionnaires were introduced and tuned accordingly to the observations of the representatives. This helped to better understand the views of the players active in the market and to organise the study more efficient.

30. During the study, qualitative and quantitative data was gathered from various sources. Since the dairy market in Lithuania is heavily monitored by government institutions, there was a lot of data readily available. Therefore, the CC's goal during the data gathering stage was not to burden the recipients of questionnaires with requests to provide data that was available from public sources. However, this was not possible in all cases, since some data was needed in greater detail than it was stored by public bodies.

31. Apart from legislative framework and dairy sector structure analysis, the study focused on the assessment of bargaining powers of different levels of the dairy sector. Views of recipients, gathered by sending questionnaires, were weighed against analysis of quantitative data and other evidence (e.g. analysis of contract clauses).

32. The analysis of the determinants of raw milk prices was performed, which showed that the main way to increase the bargaining power of milk producers, ensure long-term agreements, build up immunity for market swings and boost export opportunities was to accumulate larger quantities of milk.

33. During the study, it was analysed whether the changes in the structure of final prices of dairy products (in respect of the portions assigned to different levels of dairy products distribution) were objectively justified and changes in raw milk prices in Lithuania were in line with global trends. During this stage, profitability analysis of raw milk processors was analysed.

3.3. The market study on the municipal waste treatment (2015)⁴

34. The sectorial inquiry was started in response to a high number of investigations into municipal decisions concerning waste management. The aim of the inquiry was to analyse the sector and to suggest improvements to the waste management system in Lithuania. The findings of the study showed that one third of Lithuanian municipalities ignored competition and granted exclusive waste management rights to municipal companies without any tender procedure. In some of the municipalities public tenders for waste management services had not been organised for seven years or even longer.

35. During the study, the CC analysed the prices in different municipalities, taking into account the density of population and distance to landfill. The analysis showed that differences in prices in the municipalities, that undertake a competitive selection process to choose the waste manager and those that do not, range from 5 to 100%. The CC provided a set of recommendations for municipalities, namely, to ensure transparent and open conditions for all suppliers; to organise public tenders; to organise tenders for well waste management and transportation services only.

⁴ Information about the market study in English. Retrieved from: <https://kt.gov.lt/en/news/sectorial-inquiry-into-waste-management-proves-lack-of-competition-and-transparent-pricing>

3.4. The market study on the reimbursed pharmaceuticals (2016)⁵

36. This study was aimed at finding out if the current legal regulation of reimbursable pharmaceuticals created obstacles and market presence, and whether competition in the market was sufficient.

37. The findings of the study showed that legal regulation in the market of reimbursable pharmaceuticals was inefficient since it restricted the entry of analogous but cheaper generic pharmaceuticals. Besides, the legal regulation created favourable conditions for the manufacturers who were offering more expensive pharmaceuticals compared to their competitors, which resulted in weak competition in the market.

38. Another problem indicated during the market study was that the prices of pharmaceuticals reimbursed by the Compulsory Health Insurance Fund (so called “base” prices) were calculated on the basis of publicly declared but not factual prices (prices after an applied discount), which enabled manufacturers to manipulate the system of reimbursable pharmaceuticals and maintain higher declared prices.

39. In addition, commercially sensitive pricing information had been disclosed through the platform of discounts, created by the Ministry of Health. This in turn was indicated as a threat to the competition among the manufacturers of pharmaceuticals.

40. According to the Competition Council, it was likely that inappropriate regulation of reimbursable pharmaceuticals would result in higher prices of pharmaceuticals, lack of variety and inefficient use of the budget of the Compulsory Health Insurance Fund.

41. Due to the fact that the market of reimbursed pharmaceuticals was highly regulated, almost all the quantitative data needed for the study was present at Ministry of Health. Therefore, mostly qualitative data was gathered from market players by sending questionnaires. Qualitative data on the other hand was mainly gathered from market participants by sending questionnaires.

42. During the study, the effect of requirements for prices of new pharmaceuticals (to be a certain percent cheaper than drugs present in the market) on the barriers of entry was analysed. It was found that the recent tightening of these requirements led to a drastic decrease in the quantity of new pharmaceuticals. In addition, the analysis showed that the requirements for new pharmaceuticals had no positive effect on prices, when applied to the groups of pharmaceuticals, where more than three manufacturers were already present.

43. In addition, analysis of differences between prices of analogous pharmaceuticals (originators and generics) and declared and factual prices was carried out, which showed that there was a major gap between prices of analogous pharmaceuticals and that declared prices (used to calculate base prices) often were far from factual.

⁵ Information about the market study in English. Retrieved from: <http://kt.gov.lt/en/news/competition-council-calls-for-opinions-regarding-market-study-report-on-reimbursable-pharmaceuticals> Press release. Retrieved from: <http://kt.gov.lt/en/news/final-conclusions-of-market-study-on-reimbursable-pharmaceuticals>