THE EUROPEAN UNION COMPETITION LAW MODEL AND

THE MEDITERRANEAN COUNTRIES:

LESSONS FROM SOUTH-EAST EUROPE AND

THE SOUTHERN MEDITERRANEAN COUNTRIES

WORKSHOP 7

21 – 24 March 2012

ABSTRACTS
## WORKSHOP 7 - PROGRAMME
### ABSTRACTS OF CONTRIBUTIONS

<table>
<thead>
<tr>
<th>Panel I</th>
<th>Competition policy in Euro-Med and SEE countries: similarities and differences between the two regions, and the influence of the EU competition model</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marco Botta &amp; Juan Antonio Rivière</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>Competition Policy Response to Mediterranean Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Juan Antonio Rivière</td>
<td>8</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>Evolution of Competition Law in South East European Countries on the Way Towards EU Membership.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veronika Efremova</td>
<td>10</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>The European Union Competition law Model and the Mediterranean Countries</th>
</tr>
</thead>
<tbody>
<tr>
<td>Abdelali Benamour and Mohamed El Merghadi</td>
<td>12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>Future Prospects of Private Competition Law Enforcement in Egypt.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mohamed El-Far</td>
<td>14</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>The Influence of the EU Competition Law on the Design and Implementation of the Egyptian Competition Law.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Heba Shahein</td>
<td>15</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>Developing competition Policy in Morocco a model for the MENA region?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jaros Krzysztof &amp; Michael Baron</td>
<td>16</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel I</th>
<th>How Foreign Investment and Multinational Enterprises May Help out in Competition Law Adoption and Enforcement in Developing Countries?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mohamed El-Far</td>
<td>18</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Challenges in enforcing competition law: cartels and abuse of dominance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Halil Baha Karabudak</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Competition Policy on the Crossroads: The Case of Turkey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mirta Kapural</td>
<td>20</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Practice of the Croatian Competition Agency In Cartel Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veljko Milutinovic</td>
<td>21</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Penalties and Procedural Safeguards under Serbia's New Competition Law Two Years on.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jasminka Pecotic Kaufman</td>
<td>22</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Building a functioning competition framework in an EU candidate country:private enforcement in Croatia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alexandr Svetlicinii</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Panel II</th>
<th>Abuse of Dominance in South Eastern Europe: Enforcement Priorities and Practices of the national competition authorities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veljko Milutinovic</td>
<td>24</td>
</tr>
</tbody>
</table>
### Pannel III

- **Challenges in enforcing the competition law: market structure and Government failures**
  - Merger Review in South-East Europe and the EUROMED Countries:
    - Lessons from merger control experiences of other emerging economies.
    - Jeronimo Maillo
  - Retail Therapy: Problems and Suggestions.
    - Bagis Akkaya Meltem & Tarkan Erdogan
  - Advocacy Issues in a Young Competition Agency: Market Failure v. Government Failure (Turkish Experience).
    - Yanik Mehmet
  - Energy Sector: Cooperation between the Albanian Competition Authority and the Energy Regulator
    - Ardita Shehaj and Pajtim Melani
  - Palestinian Authority Competition Case
    - Jamal Abu Farha
  - State aid control in Western Balkans: endless transition?
    - Marco Botta

### Pannel IV

General discussion and workshop conclusions

### OTHER ABSTRACTS RECEIVED

- The Egyptian Revolution and Legal Reform: Some Thoughts on Competition Law
  - Ali El Dean Bahaa
- Regulatory Enforcement in Competition Law in Turkey; Successes and Failures of the Last 10 Years
  - Muzaffer Eroglu
- Extraterritorial application of competition laws
  - Serpil Yanik
- The (Broader) Goals of Turkish Competition Law
  - Sirin Gok Gul
- Vertical Restraints - Perspectives from EU, USA and Australia: What Can Mediterranean Countries Learn from Different Approaches?
  - Barbora Jedlickova
  - Fernando G. Cachafeiro
- Albanian Competition Policy implementation in times of crisis
  - Servete Gruda
- Market Economy, competition and its protection in Kosovo
  - Dr.sc.Gani Asllani
- Selective low pricing: infringement or not?
  - Fethullah Güler

### PROGRAMME

LIST OF CONTRIBUTORS
Workshop n. 7

The EU Competition Law Model and the Mediterranean Countries: Lessons from South-East Europe and the EuropeMed Countries

Directed by:
Juan Antonio Rivière,
Directorate General Competition, European Commission
&
Marco Botta,
Institute for European Integration Research, Austrian Academy of Sciences, Austria

Abstract

In the context of the EU enlargement and the Barcelona process/European Neighboring Policy, countries of South-East Europe (SEE) and the EuroMed countries of North Africa have adopted a competition law, taking the EU competition policy as a reference. The workshop aims at establishing a forum of discussion among academics, professionals, government’s representatives and the officers of the National Competition Authorities (NCAs) of the EuroMed and of the SEE countries to debate the common challenges faced in enforcing competition law at the internal level.

The workshop will cover every area of competition law enforcement, including anti-competitive agreements, forms of abuse of dominant position, mergers control, State aids control, and the relationship between competition law and sector specific regulation in liberalized industries, competition advocacy and institutional issues. In particular, analysis of cases of cross-border enforcement of the competition law involving forms of cooperation among the different NCAs of the region, as well as comparative studies on the enforcement of an area of competition law in different countries of the region would be particularly encouraged.

The relevance of the workshop is due to the ongoing enlargement process of the SEE countries to join the EU. In addition, the recent social movements in Tunisia, Egypt, Libya and Syria, may open the door to the adoption of improved market institutions, a stronger role for consumers associations, a strengthened cooperation with the EU, and thus an enhanced enforcement of the competition law in the Mediterranean countries.

Description

During the last two decades several emerging economies have introduced a system of competition law, often relying on the EU competition policy as a reference. Economies in transition which have been subject to broad privatization and liberalization reforms during the last two decades have introduced a competition law in order to establish a more favorable business climate to encourage foreign direct investments (FDIs), and to strengthen the trade links with the EU. In addition, competition law

1 For further information
sanctions the market behavior of private undertakings which harm the consumer’s welfare. Consequently, by increasing the consumers’ welfare, competition law can indirectly favor the economic development of emerging economies.

During the last decade, countries of South-East Europe (SEE) and the countries of North Africa which face the Mediterranean Sea, the so called EuroMed countries, have introduced a competition law system in the context of the EU enlargement and the Barcelona process/European Neighboring Policy. In particular, the importance of adopting a competition law by the EuroMed countries was stressed since the first Barcelona conference in November 1995. In comparison to other projects of regional integration, one of the key objectives of the Barcelona process was to integrate in the long term the EuroMed countries into the EU internal market. In addition, the need to adopt competition legislation has also been stressed by the EU in the context of the European Neighborhood Policy (ENP). During the last decade the majority of the EuroMed countries have passed a competition law at the internal level, though the quality of enforcement of this legislation vary from country to country.

While the EuroMed countries had an incentive to adopt a competition legislation due to the perspective of getting access to the EU internal market, the SEE countries had a stronger incentive, namely a membership perspective into the EU. During the last decade the EU has concluded with the SEE countries Stabilization and Association Agreements (SAAs). The SAAs are the first step of the integration of the SEE countries into the EU: similarly to the EuroMed countries, the SEE countries are required to implement at the internal level the EU internal market acquis, including competition law, in order to establish a free trade area. However, unlike the association agreements concluded with the EuroMed countries, the SAAs explicitly mentioned the possibility that the SEE countries would join the EU in the long term. The transposition of the EU competition law into the SEE countries is quite at an advanced stage. Most of these countries have transposed at the internal level both the EU treaty provisions, as well as the secondary legislation in competition law. Nevertheless, the SEE countries often suffer from a number of problems in enforcing this legislation.

The main objective of the workshop is to compare the experiences of the EuroMed and of the SEE countries in enforcing competition law. Besides the different rationale for the adoption this type of legislation (enlargement v. free trade area perspective), there are two other main differences between the SEE and the EuroMed countries: the independence of the NCA, which is weak or non existent in the non democratic political systems of several EuroMed countries, and the enforcement of State aids rules (enforced only in the SEE countries in the light of the EU enlargement perspective of the SEE countries). Nevertheless, several similarities exist between these two groups of countries; similarities which make worth a comparative analysis. In particular, it is important to point out that both groups of countries are composed of emerging economies, while the EU competition law has been largely designed for the developed economies of the Western EU Member States. For instance, due to the low internal consumption, both groups of countries are characterized by concentrated market structures, which favor collusive practices among the market players and discourage new entrants in the market. In addition, the NCAs of these countries are usually under-staffed, they lack expertise in enforcing the economic principles underpinning competition law, and they also lack credibility in the eyes of the other State institutions, public opinion and business community. In view of these features, it is not unusual in these countries that the local legislation is fully in compliance with the EU competition law, but it remains de facto not enforced.

The workshop aims at establishing a forum of debate among academics, professionals, government’s representatives and officers of the NCAs of the EuroMed and of the SEE countries on the challenges faced in enforcing competition law. The working languages of the workshop will be both English and French, in order to allow a wider participation of speakers from different countries of the Mediterranean region. The workshop will cover every area of competition law enforcement, including
anti-competitive agreements, abuses of dominant position, mergers control, State aids control, and the relationship between competition law and sector specific regulation in liberalized industries, competition advocacy and institutional issues. In particular, analysis of cases of cross-border enforcement of the competition law, involving forms of cooperation among the different NCAs of the region, as well as comparative studies on the enforcement of a specific area of competition law in different countries of the region would be particularly encouraged. In particular, the presentations could fall in the following non-exhaustive list of topics:

1. What are the urgent needs for improving market economy conditions in SEE and EuroMed countries, and how competition policy could contribute to satisfy these needs?

2. Will the recent social unrest in a number of EuroMed countries strengthen the consumers movements, and thus favor the development of free market institutions in EuroMed countries?

3. How to enhance the autonomy of the NCA vis a vis the executive branch, taking in consideration the heritage the government intervention into the economy due to industrial policy considerations?

4. How to strengthen the cooperation between the NCA and the sector national regulatory authorities (NRAs) established to control the liberalized network industries (i.e. electricity, gas, transports, postal services, and telecommunications)?

5. Which should be the key priorities of enforcement of the competition law by the NCA in an emerging economy (i.e. fight against cartels, abuse of dominance, merger control)?

6. How to enhance the forms of bilateral and regional cooperation among the NCAs involved in cross-border cases (i.e. international cartels, review of cross-border concentrations)?

7. How should the NCA of a small concentrated economy take in consideration the high degree of market concentration recorded in several relevant markets in these countries: on the basis of a presumption of dominance which facilitates the NCA analysis, but which may lead to false-negative presumptions, or on the basis of a more sophisticated rule of reason approach?

8. Effectiveness of the twinning programs and projects of technical assistance in the recipient country of the project: benefits v. aspects to improve

If the authors agreed, the papers presented during the workshop could be published either as chapters of an edited book or as articles in a special issue of the Mediterranean Competition Bulletin.
Thursday 22 March, afternoon (09.00 – 13.00)

Pannel I

*Competition policy in Euro-Med and SEE countries:*

*similarities and differences between the two regions, and*

*the influence of the EU competition model*

*Competition Policy Response to Mediterranean Challenges*  
Juan Antonio Rivière

*Evolution of Competition Law in South East European Countries on the Way Towards EU Membership.*  
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*The European Union Competition law Model and the Mediterranean Countries*  
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*Developping competition Policy in Morocco a model for the MENA region?*  
Jaros Krzysytof & Michael Baron

*How Foreign Investment and Multinational Enterprises May Help out in Competition Law Adoption and Enforcement in Developing Countries?*  
Francisco Marcos.
COMPETITION POLICY RESPONSE TO MEDITERRANEAN HALLENGES

By Juan Antonio Rivière
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Since the beginning of 2011 European Institutions are reinforcing their policy vis-à-vis the Mediterranean region. Several policy positions show that they offer a Partnership for Democracy and share prosperity, bring Initiatives on Trade and Investments, talk about Industrial cooperation & charter of SME's and give a response to a changing Neighbourhood.

Policy objectives request:

A medium term strategy until 2020 requires reinforced dialogue with partners asking "more for more", "mutual accountability" and "the rule of Law". A financial support increases for the European neighbourhood policy 2011-2013 is already decided. The Multiannual Financial Framework 2014-2020 for the External Action Instruments has a proposal of 96 billion Euros of which 18 billion for the European Neighbourhood Instrument (ENI) and 14 billion for the Pre-accession instrument (IPA).

The Deep and Comprehensive Free Trade Area remains a priority in the roadmap agenda with the dynamic aim for regulatory convergence in areas that have an impact on trade, in particular, customs, competition policy and regulations and public procurement. The result could lead to a progressive economic integration with the EU Internal Market and the involvement of the business community to bring also into practice the charter of SMEs principles. Cooperation within the Union of the Mediterranean is complementing bilateral relations and supporting regional projects that are results-oriented.

Competition policy will increase his strong role as new facts show:
- Business freedom and economic governance needs a stable regulatory framework
- Morocco's new constitution art. 166 reinforce the role of the "Conseil de la Concurrence"
- Egypt new economic policy debate is pointing on competition policy enforcement needs.
- Algeria's share a twinning programme lead by the French Competition Authority.
- Jordan reviews his competition legislation and practice.
- Lebanon and Palestine draft competition legislation is in the pipe line.
- Regional UfM Union for the Mediterranean projects will need competition policy convergence to be successful.
- Balkan countries prepare for EU membership, their experience is a reference for improvement in other southern Mediterranean countries.

What contribution is needed?

The main goal would be to play a consistent, strong and continuous effort in the coming years, to place Competition policy in the Mediterranean region at the right level of practice and enforcement supporting those general policy objectives taken by the European Institutions and the Mediterranean partners.

After the previous experience of the EuroMed Market programme, in 2009 the first advocacy action was to edit the Mediterranean Competition Bulletin. In the waiting list remains the organisation of a
broad Mediterranean competition network and a strong commitment for training competition experts in close relation with business and professionals, the civil society, the academic world and national authorities to create the Mediterranean Competition Advisory Council. High visibility and strong coordination to face those new challenges ahead is needed.

**How to proceed?**

1) Organise the Mediterranean Competition Council network (MCC) for converging enforcement practices.

2) Close work with UfM Secretariat on regulatory policies for implementing utilities sectors projects.

3) Coordination of National Competition Authorities within the MCC to share technical assistance training experiences including a partnership with international institutions such UNCTAD or the OECD will increasing advocacy support and avoid overlapping actions.

4) Editing the Mediterranean Competition Bulletin as a regional advocacy action.
Evolution of Competition Law in South East European Countries on the Way Towards EU Membership

By Veronika Efremova
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In the last decade the South East European countries (SEE) gone through transformation of their economic systems from a centrally planned economy into a decentralised market economy. One common factor for all these countries, is the central role of competition law and policy in creating economic environment where consumers’ preferences and the efforts to compete with economic operators to satisfy those demands, lead to economic efficiency and welfare. The ambition to approach the EU and the European internal market has stimulated institutional and economic reforms in all SEE countries, but at different pace and to a varying degree. Beside substantial differences in prior economic development, legal systems, traditional cultural and society characteristics of SEE countries, certain elements of national competition legislation and practice are similar and the other differ, especially the issue of enforcement practice.

The Paper implements comprehensive research and comparative analyze of evolution of competition regimes of SEE countries by enclosing evaluation of the three elements which must be in place before an alignment with competition acquis is fully achieved in the process of accession of these countries to the EU: (1) the necessary legislative framework with respect to competition and State aid; (2) an adequate administrative capacity; and (3) a credible enforcement record of the acquis in all areas of European competition policy.

The protection of competition was expressly recognised as a pillar of the sound functioning of the market and development of the economy in these countries. Considering the shared common objective of SEE countries to become EU member states, they faced the responsibility to adopt and to enforce the acquis communautaire in the field of competition before the date of their accession to the EU due to prepare their economies to cope with the competitive pressures of the European internal market. This should, in principle, improve the competitiveness of the economies and benefit the consumers. Specifically, common for all SEE countries is that the competition laws are based on the provisions of Articles 81 and 82 of the EU Treaty. All countries introduced the first competition laws in the second half of 1990s, and than faced with the responsibilities defined in the priority area of the European Agreements/Stabilisation and Association Agreements to harmonise national competition legislation with the EU acquis, as a prerequisite for accession to the EU. As a result, most of these laws were either amended or new competition laws have been adopted.

Following the alignment of the national competition laws with the relevant EU competition acquis, the SEE countries created adequate administrative capacity in order to maintain competition discipline in line with European practice and to create credible enforcement record in all areas of competition policy. The administrative capacity is a competence of independent national competition authorities (NCAs) with sufficient expertise and provided with adequate financial resources. The challenge for NCAs is to participate effectively in extending the scope and reach of competition policy principles while maintaining appropriate independence and impartiality (mainly political) in the core function of competition law administration. The NCAs should have broad powers to investigate and impose sanctions on natural persons and legal entities infringing the competition legislation. The established NCAs have different organisational structure and competencies in enforcing the competition rules. There is significant difference in the number of staff and division within the NCAs, but one common
for all of them is that they have specialization division of tasks related to the competition law enforcement. Related to the issue of independence, all of the NCAs are established as to be free from any political and economic influence, and to be completely autonomous in respect of their organisational, functional, financial and personal tasks. The mandate of NCAs extends beyond merely enforcing competition law. It must also participate more broadly in the formulation of its country’s economic policies, which may adversely affect competitive market structure, business conduct, and economic performance. It must assume the role of competition advocacy, acting proactively to bring about government policies that lower barriers to entry, promote deregulation and trade liberalization, and otherwise minimize unnecessary government intervention in the marketplace. It is especially important for NCAs in SEE countries as developing countries, to engage in competition advocacy. Competition advocacy is together with competition law enforcement a very important pillar relied upon by NCAs when protecting effective competition. Competition advocacy aims to create a competition culture and to enhance public understanding of the benefits the competitive markets create for consumers.

The Paper concludes that from the perspective of future EU enlargement, tremendous progress has been achieved in legislative approximation of the competition legislation and in the creation of market systems in SEE countries. The competition policy regimes in SEE countries indicates that competition policy is an increasingly central feature toward their EU integration. This reflects growing use of competition policy as an instrument of fulfilling Copenhagen Economic criteria. With a tendency to make accession a successful story and to ensure the proper functioning of the EU internal market after enlargement, it is especially important to maintain operationally independent professionalized NCAs, politically autonomous, entrusted with the powers necessary for the full application of the competition regime, guaranteeing further progress and effective enforcement due to create a genuine competition culture through application of competition advocacy instruments.

Ensuring efficient competition on the markets in SEE is a formidable challenge, where NCAs play an essential role. This is how the success of competition policy and ultimately that of the internal market, will be measured. The NCAs are expected to deliver a credible enforcement record. On the other side, the political decision-makers in these countries should secure and develop sufficient resources for the NCAs as they can continue to actively develop their activities. In that respect the NCAs should establish a level playing field for businesses throughout SEE region, to the benefit of consumers, innovation, competitiveness and sustainable growth.
The EU Competition law Model and the Mediterranean Countries

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The competition council of Morocco has been reactivated on August 2009. It had to face problems such as competition regulation organization and supervision.

In fact it was difficult for this institution to deal with all the aspects of the law 06-99—which is the Moroccan competition law, in order to build a viable and efficient body. Indeed, the content of this law was obsolete and no longer able to face both market and economy challenges.

In terms of competition regulation, the law 06-99 was not explicit concerning coordination between economic regulator and “sectoral” regulators. Moreover, the competition council has only a consultative role and did not receive an update of its legislative framework. It was also not able to participate in changing the foundations of competition policy in Morocco. So it was really necessary to change this legislative and regulatory framework.

Actually, Morocco did not benefit from competition culture, instruments and principles of competition policy, because of the “truncated” enforcement of the law 06-99 and the limited role of the competition council.

This is how we have faced the passage from a first model inspired by the French experience before 1995 to a model closer than international standards and best practices relative to organization of competition authors.

This vision arose in Morocco not long ago, especially that the main association agreement with European Union is mentioning a convergence with “acquis communautaire”. It is very important to show that this association agreement constitute a very strong potential concerning the advanced status.

The search for this convergence was a very important stimulant concerning the definition of the contours of the expected reform.

All the issues relative to this convergence were done gradually through a twinning project. Indeed, European Union financed a twinning project which it aimed to assist competition authorities in Morocco.

But the most important push for this reform is connected to reforms and innovations adopted by the kingdom of Morocco nowadays. Section 166 of the new constitution dedicates the new status of the competition authority.

Actually, we can present some directions of the law 06-99 reform:
- creation of a competition authority
- recognition of legal personality and financial autonomy
- extending the number of bodies able to refer matters to the competition council
- omni competence concerning competition issues
- recognition of the right of self referral
- decision-making authority
- discretionary power
- review of the status and organization of the new authority
- creation of an investigation department and strengthening case handlers power
- new threshold concerning merger control
- study of competitive balance and economic balance
- right of government opposition
- sanctions review
- Publication of authority’s decisions, opinions and recommendations
Future Prospects of Private Competition Law Enforcement in Egypt

By Mohamed El Far
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Private enforcement of competition law has been gaining attention from scholars and practitioners worldwide. However, it remains quite underdeveloped in the vast majority of developing competition regimes. Nevertheless, given the numerous benefits that private enforcement may also deliver within the developing competition contexts, it becomes essential to address this issue as well.

In the first part of this paper there shall be a focus on the expected benefits arising from having an efficient private enforcement regime. It should be noted that beside the general benefits, there are several others which are more relevant for Egypt and other developing countries. Among these benefits is that private enforcement has the potential to enable the victims of anticompetitive conducts to avoid the enforcement inefficiencies of the Egyptian Competition Authority. This would be through seeking redress on their own in stand-alone or follow-on actions. As a result, the adverse effect of the Authority’s incapacities will be minimised.

Moreover, there shall be an exploration of the different methods of private enforcement in Egypt. It shall be noted that it differs significantly from most of the other international experiences in that it is possible before both civil and criminal courts and not only through the former. However, it is similar to most international regimes where the classical three requirements for establishing tortuous liability should be met (fault, damage and causal link).

In addition, the reasons why private enforcement is currently underdeveloped in Egypt shall be highlighted. Some lessons shall be drawn from the Cement Cartel case where after the decision of the criminal court a follow-on action was initiated. However, since then, it has been pending before the court (more than two years so far). This suggests that in practice, private enforcement seems to be facing serious challenges. As will be shown, one of these hindrances is the difficulties that face courts on the different stages of enforcement. For example, they are not familiar with the competition law principles and theories of harm. Moreover, they do not have sufficient knowledge on the means by which harm may be quantified in competition law cases. This indicates that competition enforcement in general and private in particular may be hindered by the incapacities facing the judiciary.

Nevertheless, the Egyptian Revolution brought more hopes and aspirations to the people. The public together with the civil society is now more eager to ensure the establishment of rule of law and avoid the consequences of market manipulations and abuses. Therefore, one may argue that the civil society has to be given more room in order to be able to play a more positive role in competition law enforcement. This will not only increase the general awareness of the public but also significantly enhance competition enforcement. In practice, a new competition NGO was established so it is of vital importance to address these challenges promptly for it to have means to succeed.

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The Influence of the EU Competition Law on the Design and Implementation of the Egyptian Competition Law

By Heba Shahein
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The widespread waves of trade liberalisation either multilaterally or regionally, to a great extent opened up national borders to multinational firms, and encouraged the adoption of liberal policies by Euro Med countries in Africa in the late 1980s and early 1990s. The proliferation of competition legislations in these jurisdictions has been highly influenced by this wave, whether these laws have grown organically or as a result of external pressure (i.e. free-trade agreements with the EU). A number of studies have examined the development of competition laws in Euro Med countries. This awakening in this field of research, however, has not been accompanied by much thinking about how external pressure and domestic forces, whether combined or not, trigger the adoption of competition law in a particular jurisdiction and how they affect its design and enforcement. Studies investigating into the causes and consequences of factors in regard to the design and implementation of competition laws in these countries have lagged behind, and no single work can be mentioned, especially for Egypt. Therefore, this paper is both an extension of, and a departure from the previous literature on competition law in Euro Med countries. It has two interrelated aims: firstly, to analyse the common competition provisions contained in the Agreement and to inquire how they have directly or indirectly pressed Egypt to develop a domestic competition law; secondly, to investigate the influence of the EU model on the Egyptian competition substantive rules.

The analysis in this paper shows that though the association agreement with the EU did not impose an obligation on Egypt to adopt domestic competition law in line with the EU’s, the Agreement was a significant stimulus for bringing forward the competition legislation in 2005. The influence of the EU to stimulate the adoption of the competition law in Egypt was revealed in two ways: first, the Agreement as a whole recommended faster liberalisation, which stimulated Egypt to adjust its economy more quickly than it otherwise would have; second, the obligation on Egypt to abide by the common competition provisions contained in the Agreement and to inquire how they have directly or indirectly pressed Egypt to develop a domestic competition law; secondly, to investigate the influence of the EU model on the Egyptian competition substantive rules.

The paper is structured as follows. Section 1 discusses briefly the scope and rationale of the Agreement and analyses the reasons for the EU’s insertion of common competition provisions. Section 2 assesses the design and effects of the common competition provisions integrated in the Agreement, by examining the implementation and enforcement rules to be applied in Egypt. Section 3 investigates the influence of the EU competition model in general, and the Agreement in particular, on Egypt’s adoption and design of its competition legislation. The conclusion in Section 4 shows that the Agreement has had an impact on the development of Egyptian competition law and policy. It, firstly, compelled Egypt to opt for a competition law that did not exist at the time of signing this Agreement. Secondly, the Agreement encouraged Egyptian domestic competition law to be formulated in a high degree of details in order to fill some of the gaps identified in the Agreement, in a way suited to the Egyptian economy. Thus, the Agreement was interpreted by Egypt as merely setting out a flexible framework to design its national law, and as a loose rather than hard imposition of a set of rules.

3 Councel at Shalakani Law < hebashahein@shalakany.com>
Developing competition Policy in Morocco a model for the MENA region?

By 4 Michael Baron, michael-baron@gmx.de & Jaros Krzysztof, kjaros@web.de

Almost exactly ten years after the entry into force of the Competition Act – La Loi sur la Liberté des Prix et de la Concurrence –, competition policy in Morocco takes a big step forward: On June 17, 2011, King Mohammed VI announced the imminent reestablishment of the Competition Council – Conseil de la concurrence – as an independent executive body with investigatory powers. As a part of the comprehensive constitutional reforms launched at the beginning of this year in response to the common requests for better governance during the so-called Arab Revolution, this step marks the happy end of a lengthy process of legal and institutional reforms in the competition field. In fact, this institutional division between the Government responsible for competition policy and an independent body in charge of competition law enforcement has for many years been requested and actively supported by the European Commission, most recently within the framework of a twinning project carried out together with competition authorities from Germany.

Assuming a successful referendum 5 on July 1st, the empowered Competition Council will soon figure prominently within the new Constitution as one of the main actors in charge of improving public governance, together with the Central authority for the prevention of corruption – Instance centrale de prévention de la corruption. In this respect, the establishment of the Competition Council obviously plays an important part within the strategy to strengthen public governance in Morocco, as the Government seems to be well aware of the fact that, in general terms, competition policy proves to be ineffective in economies that have a poor record of governance.

Nevertheless, all legal and institutional changes are only the beginning and continuing efforts will be necessary to render competition policy effective. Accordingly, further institution building in terms of strengthening case-handling, procedural rights of the parties to procedures, transparency and strong engagement in competition advocacy will be indispensable in order to enhance the effectiveness and standing of the Competition Council. Moreover, competition policy must be better linked to other sector specific policies and institutions in charge thereof, not to forget that a coherent and effective judicial control needs to be established simultaneously. In the very end, it is only through delivering clear benefits to consumers and weak market participants such as small and medium-sized enterprises that competition policy enforcement will become commonly accepted as a sound pillar of national economic policy and, by this, gain more credibility.

In preparation of the comprehensive reforms to come, the Moroccan and German competition authorities have successfully co-operated between October 2007 and July 2010 in the framework of the twinning project organized and financed by the European Commission. The team has worked out and implemented an extensive comprehensive program aimed at strengthening the administrative and institutional capacities of the national competition authorities. Numerous experts from Germany and other European countries took part in a wide range of workshops, seminars and training sessions with the objective of preparing government institutions for the enhanced co-operation in the framework of

4 Both speakers, Michael Baron, Twinning Project leader and Krzysztof Jaros, Twinning Residential Adviser, have held a leading position in the co-operation with the Moroccan authorities within the twinning project, being the Project leader and the Residential Adviser. Both have also experience in the co-operation with Eastern European countries in the field of competition policy during the adhesion process, especially in two extensive twinning projects with Poland. Michael Baron furthermore headed a twinning project with the Macedonian competition authority which even resulted in a change of the Macedonian constitution.

5 July referendum was succesfull
the Free Trade Area between Morocco and the EU to be established in 2012. In addition, political
groups, consumers, market participants and media representatives in Morocco were informed of the
necessity and the advantages of an efficient implementation of competition policy. A substantial part
of the project was devoted to the analysis of the institutional basis for effective competition
enforcement in Morocco. To this end, the twinning team has elaborated a comprehensive draft of a
new Moroccan competition law based on the creation of an independent competition authority. This
draft has been taken as a model for the preparation of a new Moroccan competition law by a newly
established special Government Committee.

Taking Morocco as an example and based on the lessons learned from the cooperation in the
framework of the twinning project, the intervention will present the appropriate efforts and strategies
for creating a more competitive environment and invite to a discussion on whether and how the
Moroccan experiences may serve as a model for other countries in the MENA region.
HOW FOREIGN INVESTMENT AND MULTINATIONAL ENTERPRISES
MAY HELP OUT IN COMPETITION LAW ADOPTION AND
ENFORCEMENT IN DEVELOPING COUNTRIES?

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This paper provides a comprehensive view of the relationship between Multinational Enterprises (MNEs) and competition laws compliance, reflecting on their legal strategies on those developing countries lacking an effective competition law regime and the influence MNEs’ may have in the adoption of indigenous competition legal rules in those jurisdictions.

The role and influence of non-state players in the adoption and development of competition laws in developing countries is normally understated. MNEs are a non-state player that performs a relevant role in spreading business culture in emerging markets. They assist and promote in the adoption of market policies in developing countries. The evidence of that influence covers several business related legal areas. Most of their influence is spontaneous and indirect, coming from their presence, their strategies and actions there.

From the perspective of competition law, we tend to look to MNEs’ negative face and to the effects of their anticompetitive actions in those developing countries lacking competition law, calculating the detrimental impact of their actions in consumer welfare, but such a picture is far from complete.

This paper explores an encompassing view of MNEs and their relationship with competition laws, particularly regarding cartel behavior in countries lacking an effective competition legal regime. Several arguments support the thesis that they have strong incentives to carry along with their activities good antitrust and regulatory practices that they are required to follow in most advanced jurisdictions without organizing and taking part in hard-core cartels.

Indeed, MNEs influence will help in silently spreading competition culture, providing a source of inspiration and stimulus to many developing countries in their way to establishing an effective competition policy. There are positive spillovers of MNEs’ conducts and strategies in encouraging free competition or promoting the adoption of competition legal rules, especially on developing countries without competition regimes or where, despite existing, they’re not been enforced.
Thursday 22 March, afternoon (15.00 – 18.00)

Pannel II

Challenges in enforcing competition law:
cartels and abuse of dominance

Competition Policy on the Crossroads: The Case of Turkey
Halil Baha Karabudak

Practice of the Croatian Competition Agency In Cartel Case
Mirta Kapural

Penalties and Procedural Safeguards under Serbia's New Competition Law Two Years on.
Veljko Milutinovic

Building a functioning competition framework in an EU candidate country: private enforcement in Croatia
Jasminka Pecotic Kaufman

Abuse of Dominance in South Eastern Europe: Enforcement Priorities and Practices of the national competition authorities.
Alexandr Svetlicinii
Competition Policy on the Crossroads: The Case of Turkey

By Halil Baha KARABUDAK
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Under the OECD’s Regulatory Reform Program, a preliminary assessment of Turkey’s competition law and policy was completed in 2002, which concluded that the Turkish Competition Authority (TCA) had made a good start since it began operations in late 1997. The 2005 OECD peer review report, “Competition Policy in Turkey”, after reviewing the recommendations of the previous work, also concluded that the Authority continued to make excellent progress. In the latter, it has been stated that the TCA advanced its competition advocacy activities within the government (in the privatisation process and elsewhere), assured timely resolution of merger review proceedings, sought to improve coordination with sector regulatory agencies in Turkey, and attempted to expand cooperative relationships with competition agencies in other countries. Thus, TCA is said to have developed a reputation as one of Turkey’s most effective autonomous agencies, winning respect and support from leaders in the business community and playing a critical role in moving the Turkish economy forward to greater reliance on competition-based and consumer-welfare oriented market mechanisms. However, it has been also stated in the same report that, TCA faces a number of obstacles of the kind that often confront competition agencies in economies with a long tradition of strong government control. Public understanding of and appreciation for competition policy is deficient, agency law enforcement efforts are slowed by inexperienced judicial review organs, and support from other parts of the government – especially from the sectoral regulators - is less than complete.

In this paper, the current situation vis-a-vis the OECD proposals and recommendations designed to address the competition law and policy issues in Turkey will be examined, with the emphasis on the relations between the sectoral regulators and TCA, from the point of view of competition advocacy.
PRACTICE OF THE CROATIAN COMPETITION AGENCY
IN CARTEL CASES
By Mirta Kapural
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Introduction
Competition policy is not brand new in Croatia considering the first Competition Act was adopted in 1995 and Croatian Competition Agency (Agency) was established already in 1997. In those fourteen years, lot of work has been done to enhance effectiveness of competition enforcement and thus, to contribute to overal economic prosperity. One of the priorities in those efforts is certainly to build stronger anti-cartel practice. The purpose of this paper is to present how far Croatian Competition policy has come with emphasis on recent developments regarding legislation, enforcement record of the Agency and remaining challenges in the pursue of hard core cartels.

I Relevant legal framework and provisions
After first Competition Act from 1995 amanded in 1998, further changes in the competition law were introduced in 2003 by adopting new Competition Act and finalized with latest Competition Act from 2009 which is completely aligned with EU competition rules. The new Competition Act introduced several important changes which should further enhance effectiveness of the anti-cartel implementation in the work of the CCA. The main provision defining prohibited agreements is fully aligned with relevant Article 101 of the Treaty on Functioning of the EU. New relevant provisions relate to the introduction of leniency and competence of the Agency to impose fines.

II Relevant case law
There are several cases which marked practice of the Agency in the filed of anti-cartel enforcement in last couple of years. There were two cartels discovered in the media sector in 2010. One related to the price fixing by publishers of daily newspapers and another one concerned market of weekly magazines where again publishers agreed on prices. The second case is particularly interesting because the evidence was obtained from another ongoing criminal proceeding. The three decisions of the Agency from 2009 establishing cartel agreements between managers of property buidlings and cartel between driving schools on local markets are additional cases worth mentioning. Besides efforts to develop credible anti-cartel enforcement by adopting final decisions establishing this infringement, importance of competition advocacy should not be underestimated. In this respect, the Agency is mostly by its expert opinions supplementary contributing to the anti-cartel culture.

III Challenges faced and ahead
Main challenge faced so far in the implementation of the anti-cartel policy has been to obtain relevant evidence and to have deterrent effect by significant fines record which was previousy in the competence of the courts. The internal reorganization of the Agency by establishing separate Cartel Unit, imposition of high fines by the Agency and obtaining evidence through leniency are main tools to be used in further dealing with cartel cases. Another important factor which will contribute to the effective cartel enforcement is future membership of the Agency in ECN (Europan Competition Network). Altough Agency is already actively involved in the international cooperation with other countries (via ICN or bilateral relations), possibility to excange case-related information and to assist other European authorities in investigation will be crucialy significant in fight against hard core cartels.
Penalties and Procedural Safeguards under Serbia's New Competition Law Two Years on

By Veljko Milutinovic
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In November 2009, Serbia's new Competition Protection Law ("CPL") came into force. In a significant legal "coup", the new CPL swept away the most important "handicap" of the old CPL: the inability of the Commission for the Protection of Competition ("Commission") to impose fines on its own. Instead of having to request fines before a court, the Commission now controls the entire public enforcement chain, thus enabling an automatic linkage between the finding of infringement and the imposition of a fine. In order to further "streamline" enforcement and make it more effective, the new CPL took away many of the procedural safeguards that existed under the old CPL inspired and/or conditioned by the famously "defendant friendly" General Administrative Procedure Law.

In the wake of the adoption of the new CPL, which envisaged a four-month transition period between adoption and application under an overwhelming fear of directly imposed fines, a very large number of undertakings decided to take the last chance to "confess their sins" under the old CPL and the safety of its essentially ineffective fining mechanism. They did so in reliance on the provision of the new CPL that states that the old CPL would apply to all proceedings initiated before 1 November 2009. Much to the dismay of undertakings and their counsel and for no apparent reason, the Commission decided to "hold on" to some leniency applications and deliberately initiate proceedings after 1 November-under the new CPL. The uncertainty that arose in late 2009 recently turned into what may be termed outright unconstitutionality. In late 2010, the Commission stirred up legal and political controversy by adopting a separate decision imposing fines (under its new powers) in a case that was concluded under the old CPL, thus, in effect, applying the new CPL retroactively.

The period since the enactment of the new CPL also saw the “re-election” of judges, under a procedure that was heavily criticized by the EU and other international organizations (and is being partially reversed as a result, at the time of writing). One result of this “re-election” was the creation of the Administrative Court, which replaced the Administrative Chamber of the Supreme Court as the court of judicial review for, inter alia, competition cases. Following the establishment of the new court, the Commission's previous dismal losing streak of all to nothing turned into a stunning winning streak of, again, all to nothing.

After examining the main problems consequent upon the enactment and initial application of the new CPL, the proposed paper would examine the way in which the Commission's new, “EU-style” powers are being used. As all final decisions are subject to judicial review, the work of the new Administrative Court would be scrutinized with particular attention, in order to form an initial conclusion as to the possible roots of the current winning streak of the Commission. One possible outcome of the analysis could be that, in an accelerated mimic of the evolution of EU competition law, Serbia has resolved (for better or worse) the basic legal issues that lay in the way of “streamlined” enforcement and is now poised to tackle cases that are complex in terms of economic analysis.
Building a functioning competition framework in an EU candidate country:
private enforcement in Croatia

By Jasminka Pecotic Kaufman
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Since the Croatian Competition Agency started functioning in 1997 public enforcement of competition law has been the norm in Croatia. There are several pending cases with plaintiffs claiming damages before commercial courts, mostly as stand-alone claims, but none of the cases is yet res iudicata. The existing legislation in the area of competition law makes no effort to incentivise private enforcement. There are no specific rules in the Competition Act 2009 dedicated to this issue, except one provision that assigns jurisdiction over damage claims to the commercial courts. Although this was a welcome explicit inclusion of the notion of private damage claims after a thorough reform of Croatian competition legislation which came in force in 2010, jurisdiction of commercial courts for such claims was already well-known as it was governed by general rules on jurisdiction of courts.

When faced with a claim for damages on the basis of a competition law infringement, before deciding on the issue of the liability of the defendant for damages, the commercial court will first have to deal with a prejudicial issue whether a breach of Competition Act occurred at all. If no decision of the relevant authority (Competition Agency) is available in this regard, the court may solve the prejudicial issue on its own with the effect only in the concrete case. In other words, both in situations where proceedings before Competition Agency have not ended yet with a res iudicata or where proceedings have not been instituted at all before the Agency, the court would have to inquire whether the conduct of the defendant amounted to breach of competition rules. Due to low level of understanding of competition rules, this scenario entails a danger that conduct that is not anti-competitive might be declared as such, or vice versa. Also, when compared to ex officio proceedings led by the Competition Agency in administrative proceedings, it may be cumbersome and time-consuming for the plaintiff, who bears the burden of proof, to adduce evidence of breach of competition rules on the side of the defendant before the court. On the other hand, the court may decide to halt the proceedings and wait for the decision of the Competition Agency. However, it may take several years to wait for the res iudicata because of the appeal process option before the Administrative Court. However, if a res iudicata is available as regards the issue of competition law infringement, the court is not authorised to decide on its own and it must follow the decision of the Competition Agency. However, short limitation periods proscribed for damage claims by the Obligations Act severely diminish the possibility of the plaintiff to succeed. Since to obtain res iudicata may take several years, limitation period for damage claims could lapse in the meantime.

In order to prove damages general tort law is applicable. Here a number of issues arise, mostly due to the complexity of cases in this area, which have been well described in the White Paper on Damages Actions for Breach of EC Antitrust Rules (2008). The level of uncertainty as regards the outcome of the claim is high and it seems that special rules will be needed in Croatia to make the position of the injured side less difficult.

As regards active legitimation, it is dubious whether consumer associations could play any role as regards collective claims. However, the 2011 amendments to Civil Procedure Act introduced an 'action for protection of collective interests and rights' which might serve as an impetus for a more vigorous private enforcement.
Abuse of Dominance in South Eastern Europe: Enforcement Priorities and Practices of the national competition authorities

By Alexandr Svetlicinii
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The envisaged paper (work in progress) represents a case study of the enforcement practices of the national competition authorities (NCAs) in the South Eastern European (SEE) states aspiring for the EU membership: Bosnia & Herzegovina, Croatia, Macedonia and Serbia. These ex-Yugoslavian Republics have been continuously reforming their competition laws and secondary legislation, harmonizing it with the EU standards and practices. References to the EU legislation and Community jurisprudence are being increasingly used by the NCAs in their decision-making process. In the recent years these countries have substantially revamped their competition law framework, significantly enhancing the enforcement powers of the NCAs. Increasingly overloaded with merger applications due to the low notification thresholds, flooded with individual competitors’ complaints and being unable to impose fines directly on undertakings found in violation of the competition rules, the NCAs had little resources and expertise left for the hard core antitrust violations: cartels and abuses of dominance. One of the reasons behind this reform, besides the formal adoption of the EU standards in the field, was the willingness to enhance the investigative and prosecutorial powers of the NCAs and make competition law enforcement more selective, targeting the most harmful anticompetitive practices.

Particularly in the field of the unilateral anticompetitive practices (abuse of dominant position) on the EU level the European Commission has firmly established its enforcement priorities in the Guidance on application of the Article 102 TFEU to the conduct of the dominant undertakings. The emphasis of the Commission’s enforcement activity in relation to the exclusionary conduct is on safeguarding the competitive process and preventing the dominant undertakings from excluding their competitors by means other than competition on the merits. Hence, the Guidance promotes the effects-based assessment of exclusionary anticompetitive conduct of the dominant undertakings. Based on the objective of the specified legislative reforms undertaken in the target SEE countries, it was initially expected that the enforcement practice of the NCAs in the field of abuse of dominance would become more selective focusing on high-impact cases. The adherence to the EU concepts and standards in this field could also make the assessment of conduct of the dominant undertakings “more economic” or effects-based thus estimating the anticompetitive effect of such conduct. Interestingly enough, the preliminary analysis of the enforcement practices in the target SEE countries indicates that by prioritizing consumer welfare and according special attention to the socially sensitive markets (such as utilities, communications, transport, etc.) the NCAs have been increasingly prosecuting exploitative abuses of dominance, where consumers were affected directly and in the absence of any competitive process. The proposed case study will present a comparative analysis on enforcement practices of the SEE NCAs in the field of abuse of dominance. It shall provide a critical analysis on how the enforcement priorities of NCAs resulted in the increased “direct” consumer protection activities as opposed to “indirect” safeguarding of the competitive process thus contributing to the consumer welfare. The paper shall also address the economic grounding of the NCAs’ decisions in the exploitative abuse cases, particularly the extent of the “special responsibility” of the dominant undertakings and types of conduct, which is considered to be abusive.
Friday 23 March, morning (9.00 -13.00)

Pannel III

Challenges in enforcing the competition law:
market structure and government failures

Merger Review in South-East Europe and the EUROMED Countries: Lessons from merger control experiences of other emerging economies.
Jeronimo Maillo

Retail Therapy: Problems and Suggestions.
Bagis Akkaya Meltem & Tarkan Erdogan

Advocacy Issues in a Young Competition Agency: Market Failure v. Government Failure (Turkish Experience).
Yanik Mehmet

Energy Sector: Cooperation between the Albanian Competition Authority and the Energy Regulator
Ardita Shehaj and Pajtim Melani

Palestinian Authority Competition Case
Jamal Abu Farha

State aid control in Western Balkans: endless transition?
Marco Botta
Merger Review in South-East Europe and the Euromed Countries: Lessons from merger control experiences of other emerging economies

By Jerónimo Maillo
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Merger control is an essential pillar of Competition Law systems of developed economies. Is it (or should it also be) a priority in Competition Law of developing countries? This will be the starting point of this contribution. Advantages and disadvantages will be discussed taken into consideration other emerging economies case studies. It will be submitted that the advantages (in terms of collecting useful data on the structure and functioning of markets in the different sectors, preventing anticompetitive market structures and future anticompetitive practices that not always could be easily stopped and condemned later on, and promoting awareness of Competition Law and therefore contributing to an increase of competition culture in that country), will likely compensate possible disadvantages, in particular if merger control is well designed and does not impose an excessive burden on the Competition Authorities.

The paper will then proceed analysing ‘selected key factors’ in the design and enforcement of a merger control system in emerging economies, such as the ex ante/ex post compulsory notification dilemma (including suspension or not of the operation and fining policies in case of infringement), jurisdictional criteria and thresholds, timing, transparency policy, and also key substantive assessment issues such as the choice of the legal test to prohibit or to authorise a concentration (precise or open? should we give more or less discretion to the Competition Authorities?), the role of efficiencies, the choice, design and control of remedies, and finally the interaction with industrial policy concerns. The author is conscious that a lot of these issues will be strongly influenced by the institutional design and resources of the Competition Authority and intends to take these aspects into consideration along the paper without, however, focusing directly and extensively on it.

The paper just aims at offering some lessons and suggestions to SEE and EUROMED countries on the basis of the analysis of merger control systems in other emerging economies. The author will use his experience as a consultant and speaker in conferences and projects in emerging economies as well as his recent analysis of the Chinese experience (see my recent paper Understanding China’s Competition Law & Policy: Merger Control as a Case Study, WP 30/2011, Competition Policy Series, Instituto Universitario Europeo, Universidad CEU San Pablo, altogether with interesting case studies on merger review in emerging economies (eg. Botta, M., Merger Control Regimes in Emerging Economies, A Case Study on Brazil and Argentina, International Competition Law Series, Wolters Kluwer, 2011, The Netherlands).

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Retail Therapy: Problems and suggestions
By Meltem Bagis Akkaya, mbagis@rekabet.gov.tr & Tarkan Erdogan, terdogan@rekabet.gov.tr
Turkish Competition Authority,

This paper attempts to focus on the concept of “abuse of superior bargaining power” by large retailers in relation to their suppliers in the Turkish retail sector of fast moving consumer goods market (FMCG). The paper will be based on the findings and the research of the retail market inquiry which have been carried out by the Turkish Competition Authority since 2010. In this regard, the data obtained from the retailers and suppliers of FMCG that operate in Turkey as well as likely competitive problems in the retailer-supplier relationship will be studied. Additionally, the retail sector structure, legislation and practices of many countries, particularly those of the United Kingdom, France, Italy, Portugal, Spain, Germany, the Scandinavian countries and Australia, will be examined. A special emphasis is placed on the Mediterranean countries like France, Italy, Spain and Portugal which have similar market conditions but different regulation.

The paper will also give examples from practices of those countries that can be adopted as a model for Turkey and for the North African countries. Thus, it aims to focus on specific competition problems of the retail market by giving economic evidence in order to ease the tension between the retailers and the suppliers within the boundaries of competition law.

Turkish FMCG market differs from the Europe since it has two different sides: first and the traditional side is the unregistered, untaxed traditional part that resembles to the North African countries dominated by open bazaars and convenience stores. The second side which has been increasing its share within the whole retail sector is the modern organized retail part which resembles to the European FMCG markets. In the organized retail side, there are various European large retailers like Tesco, Carrefour, Real as well as Turkish companies.

The suggestions to the problem of unbalanced bargaining power will largely be based on the findings and country experiences provided in the Report. The first suggestion which will be discussed in depth in the paper is the reduction in turnover thresholds concerning the notification of concentrations specifically for the retailing of FMCG. Within this framework, concentrations which are called creeping acquisitions will be examined. The cumulative effect of these types of small-scale acquisitions may bring about competitive concerns over a period of time. The said acquisitions are likely to remain below the current notification thresholds due to their turnovers. In order to rule out this handicap, the notification threshold for the retailing sector can be set lower than the normal threshold, as in the example of France.

The second suggestion is the introduction of code of conduct and the ombudsman system. The code of conduct system is a method that has been introduced in response to the shift in the power balance of supplier-retailer relations in many countries such as particularly the United Kingdom, as well as Australia and Portugal, in order to solve the competitive problems arising from purchasing power, and that has been reinforced by being revised occasionally. The gist of the system is based on the compliance of the sector parties with the predetermined set of ethical/equitable rules without any public intervention.

The last option to sort out this tension is the forwarding of the supplier-retailer agreements to the competition authority on an annual basis. This method aims at the monitoring of the organized retail market through the forwarding of the supplier-retailer agreements to the Competition Authority on a regular basis, as applicable to those retailers that are larger than a certain size and in categories where supplier-retailer relations are problematic.
Advocacy Issues in a Young Competition Agency: Market failure v. Government failure (Turkish Experience)

By Yanik Mehmet7, Turkish Competition Authority, myanik@rekabet.gov.tr

According to Art. 167 of Turkish Constitution date to 1982: The government has a duty to prevent cartelisation in goods, services and capital markets. Despite this provision, no act was enacted to this end until 1994. Why? Because business world like in other places of the world has sufficient power and competency to defend their interest against the consumers and citizens. They ensured the postponement of any legislation aiming to prevent cartels and trusts. The big incentives for the legislation was customs union agreement. According to protocols, enactment of a competition law was a condition and just after the customs union agreement, competition law was enacted. Black clouds didn’t disappear even after the enactment. And executive body didn’t come up with. Three year later finally a board is composed and after almost one year the Authority started to work. Business community didn’t want and didn’t like Competition Authority. Even after the legislation is completed, the organisation couldn’t be established until three years. The Competition Authority was established under these conditions. Unexpectedly it performed excellent works during the first years. However, competition advocacy was always neglected and is still being neglected despite it is almost equally important issue as enforcement issues.

Why competition advocacy? In fact, the competition laws are mostly based on enforcement issues. But enforcement is not solely sufficient for full-fledged competition. The competition is such a concept which should have demanding parties who wants to benefit from its advantages. If these potential customers of competition are not aware of its gains, the competition laws will have meaning for a limited community like lawyers. Therefore if it is wanted that the competition for all, the competition authorities should enlarge the demanders’ basis.

Whos and whats are going to be targets of advocacy activities? First of all, its targets should be the subjects of any action to which any forcement couldn’t be exerted like legislation activities of parliament, decisions of ministries, municipalities and the even courts. The competition agencies should engage in legislative processes, processes of judicial organs and administrative bodies to inject to competition values in these actions. We believe that the competition is benefit of all. So the relevant authorities should make the every party of the society believe the virtues of competition.

Turkish Competition Authority has some experiences of advocacy issues and I want to tell these cases. However I want to dwell upon the lessons that can be extracted from Turkish experience as what was done and undone. In fact it is always difficult to describe the undone things. But if we determine a strategy formulation and if we apply this formula to the performance of an Authority, we can better understand the lacks of it. However we have some good cases like Çaykur, TDI (Turkish Maritime Company), and also another state owned enterprise of aviation and airports. We can infer good lessons from these cases too.

Finally, a strategy formulation for competition advocacy of general nature will be tried in my presentation. In this formulation 4 I’s analysis will be made, and also suggestions for effective use of media and other related policies will be presented.

7 Ankara University, faculty Political Sciences
Energy Sector in Albania and the Cooperation between the Albanian Competition Authority and the Energy Regulator

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Energy sector is one of the key sectors of the economy due to its role in determining the costs of activities of the undertakings, the efficiencies of the undertakings and public services, and also the costs and quality of the consumer’s life.

During the latest years, the Albanian institutions have implemented an action plan for the gradual liberalization of the energy market and its integration in the regional and European market. The challenges toward liberalization/privatization and a number of problems presented in this market, such as the limited supply of energy, the high level of prices, high barriers to enter the market etc. have been a major concern for politicians, business and consumers.

The monopoly position of the Albanian Energy Corporation, the high level of concentration of the market, the vertical integration of the energy infrastructure, technical and non-technical barriers to enter the market, made the energy sector non efficient and not affected by competition. In this paper, we will present the market structure of the energy sector in Albania and we also will analyze the design of legal and institutional framework for the liberalization of the energy sector in the country. Structural, legal and tariffs reforms will be part of the analyses and will be compared with the principles of the European legislation in the energy sector. We will evaluate the degree of liberalization of the energy market and the competition problems that this market still faces. In 2007, a new market model for the energy sector in Albania was implemented; its characteristics will be presented in the paper.

During the last years the Albanian Competition Authority has cooperated with the Energy Regulator Entity to enforce the competition rules in the energy sector. The cooperation between the Albanian Competition Authority and Energy Regulator Entity is very important for detecting the problems in the market and finding the best solution in order to control the liberalized markets. The paper will analyze the degree of cooperation between these two entities and it will provide some recommendations to improve such cooperation.
Palestinian Authority Competition Case

By Jamal Abu Farha
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I. - General Introduction about the competition status in Palestine:

The legislative council passed since 1996 laws such the investment law, the revenue tax law, and the labor law to name a few.

The draft of the competition Law was presented in May 2003, knowing that the Palestinian economy is compromised mostly of micro SME.s and with the open market policy giving ample opportunity for direct imports, and as part of the Palestinian authority reform policy, we worked immediately on privatizing the few monopolies that we have in our economy. The 2010 draft has been finally prepared taking into account to harmonize the legislation with the Euro med area legislations. A public relations campaign is required with vigorous training for future staff of the competition commission. The paper will explain the legal and institutional framework.

II. - Introducing Competition in the Palestinian Telecommunications Sector: key issues and possible recommendations for policy and regulatory reform.

The paper will take account of the results of close consultation and cooperation with all stakeholders. The Palestinian telecommunications sector is characterized by the presence of a private regulated monopoly, unauthorized competition, and overall weak governance and regulation. Increasing competition and efficiency in the telecommunications sector will have far reaching effects throughout the Palestinian economy. The sector legal framework is defined by Telecommunications Law 3/1996 and by regulatory provisions under the Oslo Agreement. The complex nature of the regulatory relationship between the PA and GOI has given rise to several areas of concern. In addition to the unauthorized competition in mobile and data,

The paper main policy recommendations could include:
(a) Speeding the release of the frequencies.
(b) Promote technical cooperation between Israeli and Palestinian technical teams.
(c) Strengthen MTIT's institutional, regulatory and enforcement capacity and create a regulatory unit within MTIT.
(d) Improve tax collection and governance.
(e) Increase the overall transparency and improve the governance of the sector.
State Aid Control in Western Balkans: Endless Transition?

By Marco Botta
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During the last decade, the EU concluded Stabilization and Association Agreements (SAA) with the countries of South-East Europe (SEE). The latter were the first step towards the long term EU membership for the countries. The SAA included the obligation for the SEE countries to introduce and to enforce a competition law regime, including a system of State aid control. In particular, SEE countries were required to establish monitoring authorities in charge of reviewing the aid schemes notified by the other State bodies until the accession of the country to the EU. From the moment accession to the EU, the new aid schemes would be notified to the European Commission. While the SAAs required SEE countries to implement the entire substantive EU State aid acquis during the pre-accession phase, they left to the SEE countries autonomy about the institutional design of the new State aid monitoring authorities.

The paper aims at analysing the ability of the State aid monitoring authorities established in the SEE to effectively enforce a system of State aid control during the pre-accession phase. Since the Treaty of Rome, State aid enforcement was delegated to the European Commission. By delegating the enforcement of State aid control to a supranational authority, Member States could resist the lobby pressures from national interest groups, potential aid recipients. The decentralization of the State aid enforcement in SEE does not follow this rationale. It is questionable that a newly established monitoring authority can manage to effectively control the aid schemes granted by other State bodies. In particular, the extension of the pre-accession phase that SEE are currently experiencing might undermine the political authority of the monitoring authorities vis a vis the other State institutions. In a nutshell, a “temporary” national State aid monitoring system becomes de facto enforced over an endless period of time. The paper will focus on the main institutional difficulties faced by the monitoring authority vis a vis the other State bodies, rather than on the question whether a system of State aid control is suitable to answer the economic development needs of these countries. From a theoretical point of view, the relationship between monitoring authority and other State bodies will be assessed under the principal-agent theory.

The challenges faced by the State aid monitoring authorities of the SEE will be analysed through a case study concerning the Rep. of Macedonia. The latter established a State aid monitoring authority in 2005, in order to implement the obligations deriving from the SAA. In 2006, the enforcement of the State aid control was transferred to the Macedonian Commission for the Protection of Competition. Through the analysis of the legislation, regulations, decisions of Macedonian NCA in the last five years, and interviews with officers of the Macedonian competition authority, the main challenges faced by this institution will be identified. In the final conclusions, a number of lessons applicable to the other SEE will be drawn on the basis of the case of the Rep. of Macedonia.
Friday 23 March, afternoon (15.00 -18.00)

Pannel IV

General discussion
&
workshop conclusions
OTHER ABSTRACTS RECEIVED

The Egyptian Revolution and Legal Reform: Some Thoughts on Competition Law
Ali El Dean Bahaa

Regulatory Enforcement in Competition Law in Turkey; Successes and Failures of the Last 10 Years
Muzaffer Eroglu

Extraterritorial application of competition laws
Serpil Yanik

The (Broader) Goals of Turkish Competition Law
Sirin Gok Gul

Vertical Restraints - Perspectives from EU, USA and Australia: What Can Mediterranean Countries Learn from Different Approaches?
Barbora Jedlickova

Why do local markets matter? A comparative analysis of regional competition authorities in Spain and Germany.
Fernando G. Cachafeiro

Albanian Competition Policy implementation in times of crisis
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Market Economy, competition and its protection in Kosovo
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PROGRAMME
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The Egyptian Revolution and Legal Reform: Some Thoughts on Competition Law

By Ali El Dean Bahaa
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The Egyptian Revolution of 25 January 2011 is changing the political, social and economic face of the country; such changes shall inevitably be reflected in a new constitution as well as new laws and regulations that should come into effect in the coming year. Several political parties and presidential candidates are arguing that Egypt needs a market economy that aims at achieving “social justice” or at least does not neglect the needs. The exact meaning is unclear and no attempts have been made to describe how such a principle can be reflected in a given economic legislation.

The status quo, can lead to either: a) postponing discussions about the new Egyptian legal and regulatory system until the ideology and policy choices of the new holders of power (Parliament and President) becomes clear; or b) discussion needs to immediately take place to serve as the basis for the changes to take place once the political institutions are in place. The writers are of the latter view.

It would be difficult to set out a complete list of the political, social and economic reasons that have led to the Revolution, yet there are several possible economic causes of the Revolution being discussed by the public, including, first, thought economic indicators appeared to be improving, the general public did not feel any improvement in their living conditions, to the contrary it was perceived that the poor were getting poorer. Second, the inherent conflict of interest between the private businesses of government ministers and the absence of any laws regulating such a conflict has resulted in their ability to shape the legal and regulatory system in a self serving fashion. One of these laws is competition law. Third, the general public felt that laws and regulations affecting the economic environment were not subject to any form of public debate. Fourth, economic regulators were seen as arms of the government as opposed to being independent regulators. Fifth, economic efforts ignored the needs of the small business and the great number of economic activities operating through the informal sector.

The purpose of our paper is twofold: first to provide a critique of the Egyptian Competition Law (ECL) of 2005, as we believe that the starting point for any reform proposals is understanding existing shortcomings; and second is to provide specific reform proposals.

The paper shall first address the existing shortcomings of the ECL in terms of its substantive provisions and the powers it grants to the Egyptian Competition Authority (ECA) that would enable it to undertake its role efficiently. Together with an assessment of the ECA’s enforcement policy.

Second, we shall propose specific reform proposals. The essence of the proposals are, introducing several new provisions that aim at granting more operational and budgetary independence to the ECA, introducing a merger regulation and addressing the challenges of informal sector in Egypt. The adoption of these reforms are challenging within the Egyptian legal traditions.
Regulatory Enforcement in Competition Law in Turkey; Successes and Failures of the Last 10 Years

By Muzaffer Eroglu
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The aim of the presentation is firstly to discuss the adoption of competition law in Turkey. However, the paper aims to go beyond the issue of the adoption of competition law to share experiences with the build up of regulatory capacity and enforcement activity. In Turkey, the practical application of competition law and role of the Competition Board are considered as a success. The history of competition law in Turkey is not more than 15 years but there is a well articulated regulations and a fully functioning Authority with highly qualified work force.

Turkish Competition law are considered up-to-date and efficient enough to prevent anti-competitive behaviours in the market. Moreover, from the first introduction, the Authority constantly develops by-laws to improve the competition enforcement in Turkey. While acting as enforcement body, the Authority have played an important role in shaping the market especially regarding privatisation, mergers and acquisitions and as competition advocate.

However, there have also been several problems regarding enforcement of competition regulation in Turkey. These inefficiencies are especially apparent regarding breaches of core competition rules, such as cartel and misuse of dominant positions. Additionally, regulations regarding private enforcement of competition law in Turkey have failed. Even though, new penalty and leniency communiqués were adopted recently, the application of these communiqués has been problematic. The Authority issued conflicted decisions while applying penalty and leniency communiqués. There should be close examination of the recent decisions of the CA to understand the current problems regarding competition enforcement and propose reforms in this matter.

The practical application of competition law requires a well articulated laws and regulations outside of competition law and well-functioning judiciary. The inefficiencies of spreading the idea of competition law to other branches of law and inefficiencies in judiciary are the current problems in Turkish Competition Law.

In this presentation, we will evaluate the success and failures of the competition enforcement in Turkey. We will especially examine the practical application of current penalty and leniency communiqués as an important case study. Secondly, we will look at how competition laws are absorbed by other branches of law and the judiciary. We propose that even though, adoption of laws from the EU helps to built relatively successful competition law enforcement in Turkey. Turkish Law should additionally consider her inside economic, social and legal dynamics to improve competition law enforcement.
Extraterritorial application of Competition Laws

By Yanik Serpil
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In our global world in which cross border business activities become widespread due to reduced trade barriers, technological progress and increasing globalization, competition laws are gaining more and more international dimension. As trade barriers set up by states are being removed and markets are being opened up, cross border competition increases and the effect of anticompetitive practices and cross-border mergers may spread across different countries.

Nations facing with the trans-border competition problems feel the need to expand the scope of their competition laws to foreign conducts in order to protect domestic consumers and producers. Extraterritorial application of domestic competition laws has been largely accepted to catch anticompetitive foreign conducts that affect a nation’s territory. But it may create the problem of violation of foreign sovereignties. In this context, it is likely that a country will be reluctant to permit the enforcement of foreign countries’ antitrust laws in its own territory. Moreover, the conflicting interests of countries may lead to diplomatic and economic disputes over extraterritorial application of antitrust laws.

When we look at the practice, the US applies its antitrust rules extraterritorially based on effects doctrine. The US antitrust laws are applied not only to foreign conducts that have impact on US consumers, but also to behaviors restricting US producers from entering into foreign markets. On the EC side, the ECJ does not explicitly adopt effects doctrine; instead, it has relied on single economic unit and implementation doctrines. But in the merger control area, its approach is indistinguishable from effects doctrine.

Effects doctrine seems to have legitimate basis to assert jurisdiction over conducts abroad. But in practice the problems concerning national sovereignty and national interest arise.

Faced with the problem of extraterritorial application and enforcement of competition laws, international cooperation, convergence or harmonization of national laws and global antitrust enforcement by an supranational authority have been seen as possible means of solution.

One of the most common types of cooperation is bilateral agreements. They contain provisions regarding the information sharing, comity, notification of any antitrust enforcement actions by one country that may affect the interests of the other, consultations regarding notified actions and mutual assistance in enforcing one country’s antitrust law within the other country’s territory. Although these types of agreements may have limitations in achieving effectively application of domestic antitrust laws to foreign conducts, they seem to be more realistic solution in comparison with other options.

The aim of the present study is to examine the extraterritoriality problem in competition law, and to discuss the existing and possible resolutions to the problem. With this framework, in this study after it is tried to explain the problem of the extraterritorial application of competition laws and effects doctrine in light of US and EC cases, it will be mentioned how the effects doctrine is reflected to the implementation of competition rules in Turkey and which problems are encountered in practice. Finally the possible solutions to the problem will be discussed.
The (Broader) Goals of Turkish Competition Law

By Sirin Gok Gul
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The European Council Presidency Conclusions of the Helsinki summit 1999 recognized the Republic of Turkey (Turkey) as a candidate to the European Union (EU) on an equal footing with other candidate countries. The Accession Partnerships with Turkey issued thereafter by the European Council explicitly require Turkey to incorporate relevant EU acquis communautaire into its legislation, and to harmonise the implementation and enforcement of its domestic law with that of the EU as a prequisite for membership. In accordance with the Helsinki Conclusions, Turkish Council of Ministers has issued three decisions for the adoption of three individual ‘National Programme in Regard to the Adoption of the Acquis Communautaire’. All three documents constitute primary law in Turkey, and lay down the time frame and the scope for the approximation of domestic Turkish laws with that of the EU.

The proposed paper aims to examine the goals of competition law in Turkey against the backdrop of the scope of convergence required from Turkey in the field of competition law. The underlying idea is to explore the extent to which the goals of competition law between the two jurisdictions are consistent. Such a comparison clarifies the existing contradictions and potential divergences on the goals of competition law, and delineates possible country-specific and unique goals followed by the Turkish competition law regime. In this context, the paper argues that competition law does not stand in isolation but rather is part of a wider framework which incorporates social, economic and political elements of the jurisdiction concerned. It explores the link between the surrounding factors and the goals of Turkish competition law, and reveals that due to distinct social, economic and political conditions prevailing in Turkey goals of domestic competition law are much broader than those of the EU. The analysis points out that competition law in Turkey has been used as a tool to assist in achieving over-riding political goals such as joining the EU as a Member State, providing a fair distribution of wealth among its citizens, and facilitating economic development of the country. The paper concludes with the remark that, although the required approximation of Turkish competition law with that of the EU has been achieved to a large extent the goals ascribed to Turkish competition law are much broader than the goals pursued by EU competition law. Thus, the proposed paper aims to evaluate the merits of incorporating broader goals within Turkish competition law, and the impact of (potential) conflicts between these goals in the course of harmonising domestic competition law with the relevant Acquis.
Vertical Restraints - Perspectives from EU, USA and Australia: What Can Mediterranean Countries Learn from Different Approaches?

By Barbora Jedlickova
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EU, US and Australian Competition/Antitrust-Law systems were introduced based on different circumstances and situations in different legal systems. US Antitrust Law influenced the existence of both EU and Australian Competition Laws. Recently, EU Competition Law and US Antitrust Law have been interacting; and both systems have had arguably a significant impact on Australian Competition Law.

Nevertheless, these systems, their approaches and policies differ. Thus, what can Mediterranean countries learn from these interactions, similarities and differences? The paper answers this question based on critical survey and comparison from the perspective of one part of competition law - vertical restraints. The approach to vertical restraints has not been settled not only in these Competition-Law systems but also and arguably globally. Therefore, highlighting differences and similarities and their critical analysis can unveil the right direction for Mediterranean countries towards this issue and offer the opportunity for their policies to be innovative and leading rather than to follow in this area of Competition Law.
Why do local markets matter?  
A comparative analysis of regional competition authorities in Spain and Germany

By Fernando G. Cachafeiro
Competition Council of Galicia (Consello Galego da Competencia), fgarcia@udc.es

This paper makes a comparative analysis of the functions attributed to regional competition authorities in Spain and Germany, arguing that it is necessary to vindicate the role of these authorities to ensure the effective functioning of competition in markets eminently local.

Both in Germany and Spain, their Constitutions reserve to the Federal Government legislative competence in matters of economy and trade, so this Government has a central role in the application of antitrust law through the Comisión Nacional de la Competencia and the Bundeskartellamt. However, the Constitution of both countries confers State Governments all the powers not expressly assigned to the Federal Government, hence also coexist antitrust enforcement by regional authorities.

In Spain, twelve of the seventeen regions have created their own regional competition authorities, some with an independent status with respect to their regional governments; others instead integrated into their respective governments. In Germany, however, all regional competition authorities have dependent nature of their respective ministries or regional economy senates of the city-states (Berlin, Hamburg and Bremen) by operation of Art. 48.1 of the federal law (Gesetz gegen Wettbewerbsbeschränkungen, GWB). According to the author of this paper, it is important to ensure that competition authorities have an independent status to prevent the companies under investigation may put pressure on regional governments to avoid penalty.

As to their competences, federal law regulating the matter in Spain (Ley de Coordinación en material de Defensas de la Competencia, LCDC) provides that regional authorities can only prosecute cartels and abuses of dominant position, leaving aside the merger control and public aids for federal authority. In Germany, the GWB deprive the competition authorities of regional powers in two specific cases: the control of pricing agreements for magazines and newspapers (art. 30.3) and merger control (Article 35). The author is in favour of the solution adopted in both countries, given the complexity of mergers and the scarcity of resources available to regional authorities.

As for the delimitation of powers between federal and regional authorities, both the LCDC and the GWB limit the competences of regional authorities to conducts that have effects only in the territory of its region. When anticompetitive conduct restricts competition in more than one region, the matter goes directly into the hands of the Comisión Nacional de la Competencia or the Bundeskartellamt. The author of the paper argues that this interpretation is too restrictive, and advocates for a more decentralized system similar to that adopted at Community level by Regulation 1/2003. Consequently, regional authorities should have jurisdiction until an issue affects more than three regions, unless the federal agency decides to assume jurisdiction over a case because of its implications to the national economy.

Finally, the author claims the important role that Spanish regional authorities play at present, despite its limited scope, in the application of antitrust law to local markets, often strongly cartelized. Noteworthy among others, the sanctions imposed on professional associations or local business associations.
Albanian Competition Policy implementation in times of crisis

By Servete Gruda 8
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The current global crisis has had profound consequences for most of the world’s economies including the region of Western Balkans. It has been debated a lot if the crisis has affected Albania or not and at what extend. Despite these discussions the two main effects of the crisis have been the decrease of remittances and the availability and cost of credit to both households and businesses.

The implementation of competition policy during the crisis has raised many concerns and criticism. Critics focus on “classic Anti-Antitrust” arguments or they cite the US experience dealing with the “Great Depression”. However the positive effects of competition outcome the possible negative effects. It is shown from different studies on the “Great Depression” as well as from the experience of countries with a planned economy like Albania when the productivity was very low due to lack of competition.

In times of crisis competition authorities have different approaches. It might be a strict application (“business as usual”). This means that inefficient players unable to cope with competitive pressure should go out of market. Another approach is “loose” application of competition rules. It means that a more lenient competition policy might prevent companies to fail. In this way probably in short – term, this policy could help to overcome negative consequences of the crisis.

The third way, suggests that competition authorities should examine in detail the potential or real effects of the practices and transactions. Therefore competition policy should be implemented in a way that meets the need for speedy and flexible action.

As a response to the need for flexibility and effectiveness, in the framework of European integration and approximation with the Acquis, Albanian Competition Authority has started a reform in it competition legislation. It proposed a set of amendments to the law that were subsequently approved from the Albanian Parliament. Also the Secondary legislation (regulations and guidelines) is in a reform process. These changes include specific regulation of the services of general economic interest, the setting of fines, merger control test and procedures, the implementation of a “de minimis” regulation, block exemption regulations etc.

These measures will allow for a more flexible implementation of competition law and policy in Albania. In this way the Albanian Competition Authority will have a more active role as a real partner to the business community, to act as a “watchdog” of the market and signal about anti-competitive measures from private parties as well as from the government. In this way the Albanian Competition authority has to focus on Advocacy and raising competition culture alongside with the effective fight against cartels, monopolists and the control of mergers.

The implementation of competition policy in Albania during the crisis will be examined as well in the light of the interventions of the Albanian Competition Authority in the banking sector. In this case the Authority had to overcome the challenge of performing his duty to protect free and effective competition without causing any panic in this delicate sector.

8 University of Tirana
Market Economy, competition and its protection in Kosovo

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At the transition economies as the economy of Kosovo is, the activity for protection of competition is faced with many challenges. Those challenges result also from the issue that Kosovo was the last country in South-eastern Europe to start implementing the principles of a free market economy after 1999. Like other Western Balkan countries, which are well on their path toward European integration, competition remains a challenge for Kosovo.

The importance of protection and development of competition in Kosovo is seen as an issue that should be the basis for determination of the quality of goods and services, the competition brings dynamism, therefore competition has to ensure that businesses to be in continuous pressure in order to offer the best possible goods and services for consumers and with the best possible prices. Competition also obliges the enterprises to improve its products and to induce development of new technologies and finally the development of competition makes obstruction for creation of monopoles that are damaged phenomenon for the economy and consumers.

To economies in transition, three types of anti competition practices that are object of the Law on competition draw particular importance. Those anti-competition practices are: prohibited agreements-cartels, mergers of enterprises and misuse of dominant position of the enterprises that have relevant influence on the market.

Competition damage in those economies may be done in two directions: from the side of enterprises that make agreements, mergers, abuse with the dominant position and in these activities they damage the market structure, at the other hand the state by creating legal monopoles, giving the exclusive rights and other activities that may create discrimination as well as from the non-transparency of the politics of state aid.

This paper investigates development and protection of competition in Kosovo, legislative aspect of its adjustment, the most sensitive sectors where the competition is damaged and finally are presented the measures on improvement based on the EU practices.
Selective low pricing: infringement or not?

By Fethullah Güler

Turkish Competition authority, fguler@rekabet.gov.tr

There are different approaches in the competition law practices of the United States, the European Union and Turkey, as to the issue of whether the selective low pricing behaviour of a dominant firm is an abuse of dominance, and therefore a competition infringement.

When competition law practices are examined, it appears that the selective low pricing behaviour of a dominant firm is evaluated as legitimate according to the United States practice, is characterized as an infringement if it exists alongside other types of competition infringements in the European Union practice and is evaluated as a stand-alone infringement in the Turkish practice.

Although there are many views in the relevant literature beside the differences in practices, it is believed that the selective low pricing behaviour of a dominant firm should not be qualified as an abuse. The evaluation of whether selective low pricing is a competition infringement or not is the subject of our study.
Programme

Thursday 22 March, morning (9.00 – 13.00)
Panel I: Competition policy in Euro-Med and SEE countries: similarities and differences between the two regions, and the influence of the EU competition model

- Competition Policy Response to Mediterranean Challenges. Juan Antonio Rivière
- Evolution of Competition Law in South East European Countries on the Way Towards EU Membership. Veronika Efremova
- Future Prospects of Private Competition Law Enforcement in Egypt. Mohamed El-Far
- The Influence of the EU Competition Law on the Design and Implementation of the Egyptian Competition Law. Heba Shahein
- Developing competition Policy in Morocco - a model for the MENA region?. Jaros Krzysytof & Michael Baron
- How Foreign Investment and Multinational Enterprises May Help out in Competition Law Adoption and Enforcement in Developing Countries? Francisco Marcos.

Thursday 22 March, afternoon (15.00 – 18.00)
Panel II: Challenges in enforcing competition law: cartels and abuse of dominance

- Competition Policy on the Crossroads: The Case of Turkey. Karabudak Halil Baha
- Practice of the Croatian Competition Agency In Cartel Case. Mirta Kapural
- Penalties and Procedural Safeguards under Serbia's New Competition Law Two Years on. Veljko Milutinovic
- Building a functioning competition framework in an EU candidate country: private enforcement in Croatia. Jasmina Pecotic Kaufman
- Abuse of Dominance in South Eastern Europe: Enforcement Priorities and Practices of the national competition authorities. Alexandr Svetlicinii

Friday 23 March, morning (9.00 -13.00)
Panel III: Challenges in enforcing the competition law: market structure and Government failures

- Merger Review in South-East Europe and the EUROMED Countries: Lessons from merger control experiences of other emerging economies. Jeronimo Maillo
- Retail Therapy: Problems and Suggestions. Bagis Akkaya Meltem
- Advocacy Issues in a Young Competition Agency: Market Failure v. Government Failure (Turkish Experience). Yanik Mehmet
- Albanian Competition Authority Energy sector in Albanian and the cooperation between Albanian Competition Authority and Energy Regulator Entity. Ardita Shehaj and Pajtim Melani
- Palestinian Authority Competition Case. Jamal Abu Farha
- State aid control in Western Balkans: endless transition?. Marco Botta

Friday 23 March, afternoon (15.00 – 18.00)
Panel IV: general discussion and workshop conclusions
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Information related to the WS 7
