



COMPETITION LAW ENFORCEMENT IN THE
MEDITERRANEAN COUNTRIES: CHALLENGES
AND FUTURE PERSPECTIVES

1st and 2nd December, 2011



Dear readers,

The Austrian Competition Authority has organised in Vienna during the first and second December 2011 a Round Table on

**"Competition law enforcement in the Mediterranean countries:
challenges and future perspectives".**

This initiative received the support of UNCTAD and OECD institutions. Please find in the following pages the information related to this important regional cooperation initiative.

This report was coordinated by Ms Natalie Harsdorf Enderdorf, member of the International relations team and case handler at the Bundeswettbewerbsbehörde.

We are thankful to the BWB for the Round Table initiative and for sharing the information.

Sincerely,

Juan Antonio Rivière



Participants group with Commissioner Johannes Hahn and Director General Theodor Thanner

BWB

	Round Table Agenda	Pages
	Opening remarks Director General Theodor Thanner, Federal Austrian Competition Authority.	5
	Speech by Commissioner Johannes Hahn European Commissioner for Regional Policy European Commission	9
	The role of competition law and policy in economic development the perspective of North African and Arab countries: challenges and opportunities Hassan Qaqaya, UNCTAD	10
	La promotion de l'outil de la régulation de la Concurrence: Expérience du Maroc Par Abdelali Benamour, Président du Conseil de la Concurrence du Maroc	15
	Relationship between the EU and the Mediterranean countries: Towards a closer Cooperation? Juan Antonio Rivièrre, Adviser DGCompetition, European Commission	17
	NCA's and other State Actors: Understanding and Misunderstandings of Competition Law Marco Botta, PhD (EUI), Akademie der Wissenschaften, Vienna	25
	Fighting Cartels and Abuse of Dominance: Enforcement Challenges faced by the NCAs Prof. Nurettin Kaldirimci, President of Turkish Competition Authority	28
	Les grands axes de la réforme de la loi 06 - 99 sur la concurrence. Par Khalid El Bouayachi Directeur des Instructions du Conseil de la Concurrence du Maroc	35
	Merger control: challenges and opportunities Professor Dr. Maher Dabbah, PhD, Queen Mary University, London.	39
	The Importance of Competition Law and Policy for Investors: Impact on Key Sectors John Davies, OECD, Paris	41
	State Aid Control the way forward in the Mediterranean countries Professor Giorgio Monti, EUI, Florence	43
	State Aid Control the way forward in the Mediterranean countries Dr. Roland Schachl, Head of State Aid Department, Federal Ministry of Economy, Vienna	46
	Closing words Director General Theodor Thanner, Federal Austrian Competition Authority.	49
	List of participants	51
	Programme	54
	OECD guidelines for Multinational Enterprises	56
	Pictures	59
	Speakers CV's	66



Austrian Competition Authority
Praterstraße 31 (Galaxy Tower)
A-1020 Vienna

Telefon:+43 (0)1 245 08 - 0

Fax:+43 (0)1 587 42 00

Mail:wettbewerb@bwb.gv.at

Opening remarks

DG Theodor Thanner, Federal Austrian Competition Authority
Bundeszweibewerbsbehörde

Welcome

I welcome all of you to Vienna, I am very glad that so many of you could follow our invitation.

My special welcome and thanks go to Hassan Qaqaya for the substantial support for this conference. I also especially welcome Mr. Marco Botta who has been of great help in designing the Programme of the conference.

I would also like to welcome very cordially Mr. John Davies from the OECD and Juan Rivière from the European Commission as well as the representatives of the competition authorities of Bosnia, Bulgaria, Cyprus, Egypt, Kosovo, Lebanon, Morocco, Serbia, Switzerland, Tunisia and Turkey.

The idea for this conference was born in Geneva at the last meeting of the Intergovernmental Group of Experts on Competition Law and Policy of UNCTAD in Geneva in July 2011. Competition law and policy has been taking a decisive role in the integration of the EU in the last decades and increased competitiveness of the EU as a market. The future economic and political evolution of the Mediterranean region does represent an issue of major importance to all EU Member States. In a globalised market with internationally acting business players it is very important to cooperate, identify common problems, possible solutions and ensure a certain level of coherence. Cooperation on a regional level allows for best practices to evolve and provide a forum for an exchange of know-how.

The political situation in the Mediterranean region differs from the transition problems encountered in Eastern Europe. Nevertheless some important lessons might be learned from this integration process. If Mediterranean countries follow the approach in economic development that has benefitted Central European and Eastern European countries competition law and policy institutions definitely play a role and can shape the kind of environment businesses will operate in. Now, the States of North African and Middle Eastern countries have developed their own integration approach in this region, the Agadir process in which competition policy plays an important role. To optimise competition policy we must ensure that it fits in the general environment –and we must do this on an international level. The promotion of convergence is the best guarantee to avoid conflicting outcomes. The Round Table format provides a forum for discussion. The objective is to exchange experiences and to learn from each other in a globalised world.

BWB

I hope this roundtable is a first step for future close contacts between Mediterranean, central European and Eastern European countries. I wish us fruitful and open discussions, that we can learn from each other and can take home many new ideas and inspirations.

Thank you!

The BWB

The Austrian Competition Authority (BWB-BundesWettbewerbsBehörde) has started quite a few initiatives to that regard and participates actively in many international fora.

In 2007 the Marchfeld Competition Forum was created

(<http://www.en.bwb.gv.at/InternationalCooperation/MarchfeldCompetitionForum/Seiten/default.aspx>)

and it has proven a very valuable tool for regional cooperation. The BWB has put special emphasis on cooperation with the Eastern European countries including Serbia, Ukraine, Croatia, Russia, Kosovo and many others. Since 2011 the Authority also provides technical assistance to the Republic of Moldova via a Twinning project.

The BWB Round Table initiative is offering a platform for dialogue and expertise assistance in future contacts and regional cooperation. UNCTAD has supported the Round Table action because it is reinforcing the partnership with Southern competition authorities and the OECD has also welcomed BWB's first meeting.

BWB considers that good cooperation between the federal competition authorities all over the world is very important to combat cartels and the abuse of market power. Even the exchange of information in case of merger control is necessary. It is essential that case handlers can exchange experience and expert knowledge. There are many reasons why regional cooperation of Competition Authorities becomes more and more important within a globalised world with globalised enterprises. Questions of competition law and enforcement are not limited by geographical borders. Economies are interconnected (e.g. financial crisis) and authorities face a well informed internationally well connected business community. Therefore there is a clear need for cross-border cooperation and coordination. Looking for common positions on common problems leads to mutual benefit for all partners involved. Developing policy coherence cooperation on a daily basis leads to harmonization on the long term which is beneficial to enforcers and the business community. The benefits of regional cooperation are manifold and include an increase in efficiency of investigative steps, to avoid duplicating work, to avoid the destruction of evidence, to avoid contradicting remedies, to create a transparent legal environment and to strengthen each other's independence.

BWB

BWB has signed today with Turkish President of the Competition Authority a new Memorandum of Understanding to reinforce cooperation between both authorities.

Three recent cooperation actions developed by the BWB show international commitments:

1) Twinning with the Moldovan Competition Authority. BWB Director General Dr. Theodor Thanner signed in early December 2010 in Chisinau, Moldova, a twinning agreement between the BWB and the Moldovan antitrust authority. The BWB has pulled together as partner with Competition Authorities in Latvia and in Romania to support Moldova's competition authority. After months of evaluations by the European Commission the authorities from Austria, Romania and Latvia got the award of contract. The project will provide the expert advice in developing an efficient and effective anti-trust authority in Moldova. BWB and the National Agency for Protection of Competition of Moldova signed a Memorandum of Understanding in 2009. Content of the memorandum is the mutual strengthening in competition policy, the fight against infringements of competition and mutual exchange of information and experience.

2) Co-operation with Croatia. In June 2008 a Memorandum of Understanding between the Croatian Competition Authority and BWB was signed in Vienna. Assistance for the development of competition law and policy issues was the main issue. Furthermore importance of information sharing and expert training was emphasized. The cooperation between the two authorities is excellent. Business meetings concerning the exchange of information and experience are taking place. Employees of the BWB organised a workshop on the development of leniency programs in Zagreb for the staff of the Croatian authority. Croatia has signed the accession treaty to the EU in December hoping enter with full membership from July 2013.

3) Co-operation with Serbia. Head of the Serbian Competition Authority, Prof. Dijana Markovic Bajalovic, and BWB Director General Dr. Theodor Thanner, signed the Memorandum of Understanding during the ECA meeting on 10 and 11/06/2010 in Vienna. Serbian competition Authorities from the CPC are improving their enforcement practice and had been submitted to UNCTAD Peer review last July.

At the Austrian Authority the team members dealing with international matters are at the same time case handlers and involved in the investigations and court proceedings: Daniela Trampert

BWB

(daniela.trampert@bwb.gv.at), Natalie Harsdorf (natalie.harsdorf@bwb.gv.at), Anita Lukaschek (anita.lukaschek@bwb.gv.at), Peter Fink (peter.fink@bwb.gv.at) and Sigrid Tresnak (sigrid.tresnak@bwb.gv.at) coordinate the international activities and are points of contact for bilateral cooperation.

**Speech by Johannes Hahn,
European Commissioner for Regional Policy**

The importance of competition law and policy for investors

Dear Director General Thanner, dear Theo!

Dear representatives of the UNCTAD and OECD,

Presidents of the enlarged European family and neighbouring countries (Bosnian, Bulgarian, Cypriot, Egyptian, Moroccan, Tunisian and Turkish Authority)

Members of authorities and ministerial bodies,

Ladies and Gentlemen,

It is a great pleasure for me to address you today at this Round Table, which is organised by the Austrian Authority with support from the UNCTAD. I am very happy that so many representatives from different countries have come together here in Vienna to discuss challenges and future perspectives of competition law enforcement.

Let me just say a few words on the last topic addressed this morning by John Davies from the OECD concerning the importance of competition law and policy for investors.

Single market is cornerstone of EU's achievements

- There is no doubt about that the single market is a cornerstone of the EU's achievement and engine of Europe's prosperity.
- Regardless all the doomsayers the EU is still one of the world's key economic players, accounting for about 30% of global GDP and 20% of global trade flows. The EU has a unique experience in terms of regional economic integration.
- Furthermore, we are benefitting today from highest standards, low infant mortality rates, social and health security for everyone, a European wide ban of death penalty.

- However, these achievements have already been taken for granted and are not attributed to the single market, especially in times of economic crisis where everybody is tempted to refuge in forms of economic nationalism.
- This is probably because "nobody can fall in love with the single market" as Jacques Delors used to say.
- At the same time this is also reassuring as the market is an instrument and not an end in itself. However, we are currently seeing on the ratings of credit agencies what happens if the market is regarded as a superior. Moody's seems to act sometimes moody and much too often I have the impression we have no "standards" just "poors".
- That's why we need to remember that "the market "is a good servant but a bad master".
- We need to frame it; we need appropriate regulation and rigorous supervision. Competition policy in this regard is essential. But it is also essential to raise public awareness of the dramatic consequences that would derive from undermining the Single Market.
- Competition policy is also a good example for illustrating that policies not only works best the more they are integrated they also boost our European strengths on a global stage. A strong competition policy and single market also drives a strong trade policy. A loose common internal and security policy ends up in a loose European defence and foreign policy. So, we need more integration also in the economic field.

EU cohesion policy underpins this policy through investment policy

- One of my objectives in office is to ensure that investments in the regions are maintained, as it is essential to economic recovery and an integral part of the EU 2020 strategy.
- Cohesion policy can thereby be used to increase the economic competitiveness of Europe.
- Cohesion policy is the second biggest position in the EU budget and the biggest European investment in the real economy which generates growth and creates jobs. We know that 34 million citizens are now better off than a few years ago, that 1,4 million jobs have been created through structural funds.

- Through this policy we make sure that also poorer regions are able to benefit from the single market. With our modernized Cohesion policy we want even more to drive growth and jobs by investing more in research and development, small and medium sized companies not only through grants but increasingly through loans and other financial instruments and by investing in energy efficiency and renewable energy.
- Competition and state aid rules are an important factor in all this and need to be respected across the board. That's why we introduced a system of ex-ante conditionalities or success factors as I would rather call them. For example with regard to state aid rules we want regions to establish a mechanism which ensures effective implementation and application of EU state aid law. That includes institutional arrangements, a strategy for training and dissemination of information for staff and measures strengthening the administrative capacity in this regard.

Conclusion

- Let me conclude by saying convergence and integration are key. That includes also our wider European family members. They are the best guarantee to avoid conflicting outcomes. We all followed the events in our Southern Neighbourhood. The developments in the Mediterranean region are at the centre of attention of the EU and all Member States.
- The initiative of the Austrian Authority shows how international cooperation can work in practice and have an impact on a policy and enforcement level. Hopefully this Round Table format provided a forum for discussion and I am confident that this meeting was only a first step and will allow for future cooperation.
- I very much look forward to future exchanges of views.
- Thank you very much for your attention.

**"The role of competition law and policy in economic development
the perspective of North African and Arab countries:
Heads of competition agencies to discuss the challenges and opportunities facing them"**

By Hassan Qaqaya,

UNCTAD Head of Competition law and Consumer Policies Branch

The first session of the Round Table organised by the Austrian competition authority shall provide background information on today's reality faced by competition authorities and ministerial departments that deal with competition issues in Mediterranean in general and Northern African and Arab countries in particular. In this view, heads of competition authorities or ministerial departments from Algeria, Bosnia and Herzegovina, Egypt, Jordan, Kosovo, Lebanon, Morocco, Palestine, Serbia, Tunisia and Turkey will present their responses to the questions below.

1) Description of the political and economic environment in which you operate

Please describe the economic environment in which you operate and the implication of political/social changes in your country for the application of competition law and policy.

Are competition law and policy in your country being perceived as part of broader economic and development policies?

2) Short presentation of national competition law regimes

When was the first competition law adopted in your country? Have there been any significant reforms since then?

Which areas are covered by your competition law (merger control, prohibition of anticompetitive practices, state aid)?

Please describe the body in charge of enforcing the national competition law (independent authority/ministerial department, size, budget, enforcement record).

Are any industry areas exempted from the application of the competition law?

Please describe your interaction with other parts of the government. Do you advise on competition aspects of draft laws?

3) Challenges faced and possible solutions

Please describe the major challenges, e.g. high market concentration, ownership structure, close relationships between businesses and government, barriers to market entry, level of understanding of competition law provisions among businesses and other governmental bodies, internal capacity of the competition authority, which you face in the application of competition law and policy and possible solution to these obstacles. Alternatively: Please describe obstacles in the process of adopting a competition law and policy.

Conclusions of the discussion:

Competition policy is a useful tool for our economies and we share a common interest in enforcing rightly in the market economy.

Competition policy is a process. A period of transition is needed before a cartel act can be adopted and acceptance can be achieved. Currently several countries face a crisis. However, a crisis is also always a good opportunity to move forward and change things. There is only one country which reported that things are moving rather backward than forward and they face problems of renationalisation and protectionism.

- We observe that there are different implementation stages to follow in transition economies: The present countries are in different stages: some have mature competition authorities since 15 to 20 years; some have young competition authorities since 5 to 7 years, some have a competition law but few enforcement records and in one country the competition act still has to be adopted. However, all countries go through a process of transition towards a more effective economy:
 - 1) Preparing the competition Laws,
 - 2) Starting Law enforcement within an institution or Ministerial service,
 - 3) Young practice between 5 or 7 years,
 - 4) Mature and experience practice after 15 – 20 years.

There are always indirect needs or challenges to overcome during the general economic transition in a framework of crisis in the country but sometimes those circumstance become opportunities for competition policy initiatives.

A broad agenda to work in a political framework has to consider:

- Institutional building,
- Drafting the Law,
- Corporations and business need to learn competition,
- Cross border external challenges appear,
- Monopolists face competition,
- Rule of Courts bring interpretation and case law guidance,
- Public interest must be preserved,
- Political stability offers the necessary support of enforcing policy,

BWB

- Lacking understanding of competition policy needs advocacy actions,
 - Sector studies are useful to guide future enforcement practice,
 - Careful consideration needed when facing protectionist means,
-
- Capacity building on competition policy for judges support in their work is helpful. Some competition authorities provide training for judges, but one country reported that judges are rather unwilling "to be trained". Also establishing a relation to international bodies, but especially to other state agencies and regulators can be helpful for support and building up capacity.
 - All these are also closely related to political stability as the development of competition policy and enforcement is much more difficult if eg governments change frequently. One possibility to improve the effectiveness of a competition authority is to evaluate it externally. The use of peer reviews in OECD or UNCTAD proved to be a good instrument.

La promotion de l'outil de la régulation de la Concurrence

Expérience du Maroc

Par Abdelali Benamour,

Président du Conseil de la Concurrence du Maroc

Trois questions importantes: genèse difficile – militantisme – Evolution positive et situation prévisionnelle

***Genèse du Conseil de la Concurrence et les difficultés émanant du texte actuel.**

- Adoption de la loi 06-99 sur la liberté des prix et la Concurrence en 2000 avec un chapitre réservé au Conseil de la Concurrence
- Bon texte sur le plan de principes, mais conseil consultatif sans réels pouvoirs de régulation
- Après deux mois de fonctionnement, gel des activités du Conseil en raison des difficultés liées à son bon fonctionnement
 - Pas de compétence générale
 - Pas d'indépendance
 - Pas de statut décisionnaire
 - Pas d'auto-saisine
 - Pas de possibilité d'enquête
- Aout 2008: nomination d'un nouveau président par le Roi avec volonté de faire avancer le dossier
- Janvier 2009: Installation des membres
- Mais difficultés à faire passer la réforme

***Militantisme**

- Préparation du Conseil
 - Renforcement institutionnel
 - Formation
 - Jumelage avec l'Autorité Allemande de la Concurrence et à la nécessité de la réforme
- Sensibilisation au droit de la concurrence et à la nécessité de la réforme

- Opinion publique
- Médias
- Institutionnels: gouvernement – Parlement – Magistrature – Monde économique - Universités

***Evolution positive et situation prévisionnelle**

- Mouvement du 20 février et captation intelligente du message par le Roi
- Dans la foulée: Audience accordée par le Roi au Président
- Annonce de la constitutionnalisation du Conseil
- Annonce de la réforme conformément aux normes internationales
- Le Conseil est une constitution d'Etat → explication
- Les prérogatives du Conseil vont au-delà des normes internationales
- Prévisions
- Nous attendons la loi d'application
- Vers le premier quadrimestre 2012

**"Relationship between the EU and the Mediterranean countries:
Towards a closer Cooperation?"**

By Juan Antonio Rivière

Adviser Directorate General Competition, European Commission

I – Introduction

The Mediterranean region is going through a major phase of development, releasing fresh energy in the countries on the southern and eastern shores. Competition law and enforcement is vital discipline of good economic governance, it allows enterprises to operate on a level playing field with other companies when competing for the same business; moreover, it is a precondition for free and fair competition with incumbents in countries that are en route to opening up their economy.

EU was seen requesting the Southern Mediterranean partners towards opening their economies in the association agreements. First protecting free competition as far as trade between the respective partners is concerned; competition and State aid rules are following the EU model and second encouraging national competition legislation. Most Mediterranean countries have enacted competition laws which apply to their national markets as well as to trade with the EU; moreover, most countries have started to enforce the laws, but major efforts remain to be made on the effective enforcement of competition.

New partnership objectives bring our attention on the following:

1) A new EU medium term strategy is needed to be implemented until 2020. Bilateral dialogue is asking "more for more" and "mutual accountability" between partners.

2) Financial support for 2011- 2013 ENP-European Neighbourhood Policy is nearly 7 billion Euros.

"Implementing the new approach of the neighbourhood policy based on mutual accountability and a shared commitment to the universal values of human rights, democracy and the rule of law requires additional resources of up to EUR 1242 million until 2013. These resources are in addition to the EUR 5700 million provided under the European Neighbourhood and Partnership Instrument for 2011-2013".

3) The cooperation within the UfM is reframed to support regional dimension.

"The Union for the Mediterranean (UfM) which complements the bilateral relations between EU and partners should enhance its potential to organise effective and result-oriented regional cooperation. It further ensures the inclusive character of regional cooperation in the Mediterranean by including actors such as Turkey and the Western Balkan countries. The High Representative and the Commission are ready to play a bigger role in the UfM in line with the Lisbon Treaty. Revitalising the UfM requires a switch to a more pragmatic and project-based approach."

4) A Deep and Comprehensive Free Trade Area FTA remains in the agenda.

"The main and most effective vehicle for developing closer trade ties is the Deep and Comprehensive Free Trade Area (DCFTA) that provide for the gradual dismantling of trade barriers and aim for regulatory convergence in areas that have an impact on trade, in particular sanitary and phytosanitary rules (SPS), animal welfare, customs and border procedures, competition and public procurement. They are designed to be dynamic in order to keep pace with regulatory developments in the EU's Internal Market. For the most advanced partners, a DCFTA can lead to a progressive economic integration with the EU Internal Market. Through progressive approximation of EU rules and practices, DCFTAs require a high degree of commitment to complex and broad-ranging reforms. This requires strong institutional capacity. The reforms can be politically challenging and require the involvement of the business community as well as other interested parties".

5) The rule of Law applied for business under the SME's charter.

"All countries of the UfM should further coordinate their laws, regulations and standards applicable to the business community, as well as policies and programmes for enterprises and economic governance."

II -Recent developments have provided a fresh impetus for competition law.

a) Morocco gives constitutional nature to its Competition Council. Changes to the competition legislation are contemplated, following a twinning project between Moroccan and German authorities. Some new legislative proposal could be ready at the end of 2011

b) Egypt as well is debating the nature of competition policy as an instrument for economic policy.

c) Algeria has started a twinning project lead by the French Competition authority in coordination with the Italian and German competition authorities. The Competition Council remains without staff to enforce the competition law that has been updated, but the latest news with the Decret 11-241 from 10th July 2011 related to the organisation and function of the Competition Council, and a new appeal that is underway for candidates at the Competition Council opens new hope for future enforcement.

d) Jordan is reviewing its competition legislation and practice and Lebanon and Palestine have draft legislation but need more encouragement.

e) Lebanon and Palestine had draft legislation (in the pipeline waiting several years)

III – Action that could be considered

a) The European Commission and competition authorities from the EU countries have assisted the partner countries over the last fifteen years in institution building, drafting of legislation and training officials. Different programmes conclusions request that training and large technical assistance to continue. TWINNING projects are underway and encouraged, with the aim to train a large number of officials directly in their home country and improve national legislation (see countries in the annex). TAIEX programmes are also playing their part.

b) Southern Mediterranean Competition authorities are aware of the need to foster advocacy and exchange of good practices promoting improvement practice between partners. The dissemination of information is supported by several European authorities. Advocacy activities must promote convergence and understanding. The coordination of NCA's of the region could result in a broad Civil Society group aware of Mediterranean Competition policies, in place to be a reference of advice and expertise.

c) Competition policy in the Mediterranean countries also needs to better take into account the growing number of economic sector rules and regulators. Strong dialogue must be put in place between competition authorities and utilities regulators within each country to build a convergence practice in the deregulation of services.

d) Competition policy enforcement is a key policy for the success. Also the EU Member States competition authorities could offer their experience to Southern Mediterranean partners in order they understand better the application of State Aids regime. Cooperation actions have already been implemented with the Balkans countries and Turkish authorities.

IV –Conclusion

Competition policy is an essential component of good governance. It is politically important to set up an EFFECTIVE competition (and State aid) enforcement regimes in Southern Mediterranean. Expertise of competition is well installed in the EU member states competition authorities and cooperation assistance could be offered by them to our partners.

There are encouraging bilateral cooperation relationships between EU and individual countries in the region. Good examples of an effective bilateral cooperation practice in the region (Morocco, Tunisia, Algeria, Lebanon, and Palestine) Twinning & TAIEX programmes.

It is for each country an opportunity to move forward. The situations are diverse, some will probably advance, whilst this may be more difficult in others, that means a gradual response and approximation guided by the bilateral process will have a convergence long term result.

Annex: Some recent Twinning actions and programmes.

ALBANIA

070701 Support for the Development of Competition Policy and State Aids in Albania to meet EU Standards and Practises¹. 3 years - € 1. 900 000. The project supported the strengthening of administrative capacities in Albania through the achievement of the following specific objectives.

In the area of competition legislation, to:

- Ensure the alignment of the Albanian competition legislation to the Acquis, in order to meet criteria set by the European Union and to support the implementation of legislation;
- Strengthen the system of competition regulation through the establishment of a trained Independent Competition Authority;
- Support the formulation and monitoring of the mid-term strategy of this authority;
- Ensure the follow-up of case handling by the Competition Authority;
- Raise awareness of competition rules amongst the business community and economic operators in general;
- Improve and reinforce the system of competition through the training of judges in competition ruling according to EU Acquis, in particular the Court of First Instance and Court of Appeal dealing with competition;
- Improve the quality of data collection and the sharing of information.

In the area of state aid, to:

- Support the development of a legal framework on state aids according to EU requirements;
- Support the establishment of an independent state aids authority;
- Raise awareness of state aid requirements and control.

ALGERIE

110201 -Projet de jumelage dans le secteur de la concurrence² dans le cadre des activités du P3A en Algérie, pour se jumeler l'autorité de Concurrence française avec l'autorité de concurrence du Ministère du Commerce algérien pour une durée de dix huit (18) mois et doté de 870.000 euros. Démarrage le 1er février 2011. Ce projet de jumelage pour le secteur de la concurrence s'inscrit dans le cadre de la coopération économique prévue au titre de la mise en œuvre de l'Accord d'Association (article 49) ; technique prévue dans l'annexe 5 de l'Accord d'Association ; et administrative relative à la mise en œuvre des législations respectives en matière de concurrence, de facilitation des échanges entre l'Union européenne et l'Algérie et d'encouragement des échanges d'informations.

Il a comme objectif la mise en œuvre efficiente des règles de la concurrence pour contribuer :

- 1) à la consécration d'un marché concurrentiel et compétitif,
- 2) au renforcement de la protection des intérêts économiques des consommateurs,
- 3) à l'émergence d'opérateurs économiques performants.

BOSNIA AND HERZEGOVINA

¹<http://www.humandynamics.org/reference/support-development-competition-policy-and-state-aids-albania-meet-eu-standards-and>

² Bulletin Méditerranéen de Concurrence n° 2 , page 18

IPA 2008. Support for Trade Policy and Capacity building in BiH³. (€2,000,000). The main goal of this Project is to ensure that MoFTER will be able to implement relevant policy reforms in the area of Foreign Trade in order to enable the BiH economy to maximize the benefits from economic integration processes. **Competition policy** is a cornerstone of the creation of the internal market. Introducing a competition policy and effectively enforcing it must therefore be considered a precondition for the opening up of the wider internal market and ultimate accession to the Union.

The European Commission regards both Competition and State Aid as essential pillars of the development of a functioning market economy in BiH, based on competition and respecting the necessity of a competitive market structure that maximises consumer welfare. The European Partnership calls for BiH to improve existing anti-trust legislation in line with the requirements of the SAA and strengthen the administrative capacity of the Competition Council. The European Partnership calls for BiH to accelerate preparations in the field of State Aid, notably by adopting the necessary legislation, by establishing an operationally independent public State Aid monitoring authority and by ensuring the transparency of all aid granted in BiH.

Full accession to the WTO, in turn, will require further regular reporting on industrial subsidies; primarily in the context of the WTO Subsidies and Countervailing Measures Agreement. Recognizing the importance of reform in this area the BiH authorities are determined to create an adequate State Aid system and further develop institutional underpinnings for the implementation of a sound competition policy with the major policy aim of approximation to EU norms and practices in this area.

Past assistance⁴. An EU funded project €1.5 million, supported development of the capacity of the BiH governmental system to regulate competition and to facilitate the establishment of a State Aid System in order to strengthen the functioning of the BiH single market in line with EU law and policy, thereby leading to improved trade and investment for BiH.

As to the development of a BiH State Aid System, the Project substantially helped the BiH Government with proposals for State Aid legislation, a State Aid inventory and Mapping Reports and a Model for future Annual Reports to Brussels in this field. The necessary legislation and the establishment of one operationally independent state authority for the control of State Aid in line with article 71.4 of the SAA remain outstanding.

Cards 2005 Project: EU Support for Competition and State Aid in BiH. (€1,359,760).

Overall objective: The overall objective of the assistance, bearing in mind the long-term partnership of BiH with the EU, is to contribute to progress in the Stabilisation and Association Process and foster institutional development and economic growth in BiH.

CROATIA

070100 -Support to the Development of Competition Policy in Croatia in Line with the EU Standards and Practice⁵. Further Strengthening of the Croatian Competition Agency and Implementation of Competition Law and Policy⁶. 2,5 years – 1million €. The project aimed to improve the implementation and enforcement of competition law and policy in Croatia, in the process of the country's integration into the EU and its alignment with the Acquis Communautaire. Two target areas were addressed under two different project components: the Public Administration and

³ <http://www.europa.ba/?akcija=clanak&CID=83&jezik=2&LID=0>

⁴ http://www.europa.ba/?akcija=clanak&CID=83&jezik=2&LID=0#_ftn4

⁵ <http://www.humandynamics.org/reference/support-development-competition-policy-croatia-line-eu-standards-and-practice>

⁶ <http://www.humandynamics.org/reference/further-strengthening-croatian-competition-agency-and-implementation-competition-law-and>

the private sector on the one hand (Component 1); the Croatian Competition Agency (CCA) on the other hand (Component 2). In his first stage the project set out to provide the Agency for the Protection of Market Competition (APMC) with the tools necessary to meet its objectives as set out in the present Croatian legislation and flowing from the agreements between Croatia⁷ and the EU. Starting in February 2003.

EGYPT

111116 – Project "Building the Capacity of the Egyptian Competition Authority"

Open call for 3 candidates experts on competition

E1 - Economics Expert – Team Leader (Senior) 40WD-working days

E2 - Human resources and Institutional Building Expert (Senior) 40 WD

E3 - Legal Expert (Senior) 30 WD

Objective of the project: The global objective of this assignment is to evaluate and to draft a Twinning Fiche (from 9 January to 14 June 2012) to enhance the institutional performance of the Egyptian Competition Authority, whereby it can contribute to promoting a competitive economic environment in Egypt based on the principles of free market and fair competition, in line with EU legislation, rules and standards.

Specific objectives:

To assess the ECA's technical and institutional capacities to support its role in setting, applying, and developing free competition practices in line with EU best practices.

To review the Egyptian competition law in relation to similar EU Member States' competition laws and, to provide recommendations that aims at harmonization with the EU *acquis communautaire*.

To draft a twinning project fiche for building the capacities of the Egyptian competition authority in setting, applying, and developing free competition rules to promote market performance and economic efficiency, in line with EU legislation, rules and standards.

110400 -Twinning Project for the National Telecommunications Regulatory Authority of Egypt

Started in November 2008. The purpose of the project was to improve the efficiency of the NTRA by providing capacity building in areas of organizational management, competition and regulation to ensure fair competition in a de-regulated market.

Objectives of the project:

- to contribute to the growth of Egyptian Telecommunications markets, increase of telecommunication services, enhancing competitive telecommunications environment and granting high quality services in affordable prices for all citizens

- to improve the efficiency of the National Telecommunications Regulatory Authority by providing capacity building in areas of organizational management, competition and regulation to ensure fair competition in a de-regulated market

EU Twinning⁸ in Egypt: In 2004, the Association Agreement (AA) between Egypt and the European Union entered into force, enabling an enhanced state of partnership between both contracting entities. The AA provides for a wide scope of cooperation in diverse areas including, among others, trade, industry, customs, social development and education. The AA will greatly help in increasing dialogue and cooperation between actors on both sides in the political, economic and social spheres.

In this context, the European Commission and the Egyptian Government have signed a €25 million Institutional Twinning program that will provide direct support to the implementation of the AA through promoting the institutional strengthening of Egyptian Public Institutions involved in the implementation of the AA. The Program also aims at legislative approximation of the sectors included

⁷ See Mirta Kapural article in Mediterranean Competition Bulletin MCB 1 page 63
http://ec.europa.eu/competition/publications/mediterranean/mcb_1.pdf

⁸ http://www.tra.gov.eg/english/DPages_DPagesDetails.asp?ID=144&Menu=7

into the AA. The support will be based on models which proved highly successful when implemented during the enlargement process in what were then the candidate members of the EU.

The overall objective of twinning is legislative approximation between Egypt and EU to facilitate trade and promote the participation of the Egyptian authorities in the EU market and vice versa, to the benefit of the citizens and free movement of goods and services.

NTRA views “institutional twinning” as an efficient tool to enhance its capacity as telecom regulator through legislative approximation with EU Regulatory bodies and through the application of EU best practices that is best suited for the Egyptian context. Seeing that a large number of European countries went through similar experiences of having dealt with liberalizing telecom sectors dominated by monopolies without endangering the social aspects or compromising consumer concerns is also an added advantage to the foreseen cooperation with European counterparts.

MAROC

Dans le cadre de la coopération avec l’Union Européenne, le Conseil de la Concurrence du Maroc a bénéficié d’un projet de jumelage avec l’autorité de la concurrence allemande, le Bundeskartellamt. Par le biais de ce projet de jumelage institutionnel, intitulé “Appui au renforcement des autorités de la concurrence du Maroc”, le conseil a ainsi pu bénéficier de:

- formations animées par des experts européens
- assistance technique dans l’élaboration des procédures
- visites d’études au sein d’autorités de la concurrence européenne

100700 – Competition Twinning with Morocco⁹

In order to support the government and to take part in the preparation of a large scale reform of the legislation in force, a large twinning-project designed to **support the competition authorities** has been carried out in Morocco between October 2007 and July 2010. Entirely funded by the EU and carried out under the co-responsibility of the Federal Ministry of Economics and Labour as the German partner administration, this project put a large number of competition experts from Germany and various other EU Member States at the disposal of the Moroccan partner institutions for different purposes. At the occasion of the projects’ completion, this article gives an overview of the legal and institutional framework for competition enforcement in Morocco, provides first statements on the accomplished twinning project and highlights focal points of the proposed reforms.

SERBIA

110713 _ Capacity Building and IT Assistance to the Commission for the Protection of Competition; IPA Instrument for Pre-Accession Assistance project¹⁰. 3 million €. The overall objective of this EU external aid project is to increase the ability of the Republic of Serbia to assume the obligations stemming from the Stabilisation and Association Agreement in the field of competition. The purpose of the project is to strengthen the institutional capacity of the Commission for Protection of Competition (CPC) for more efficient enforcement of competition policy, with expected economic benefits for consumers and market participants.

Expected Results:

- CPC expert service and CPC Council to acquire expertise, ability and capacity for conducting proper investigations during dawn raids, while administrative judges become knowledgeable on the value of direct and circumstantial evidence in competition law cases and undertakings become fully aware of the negative effects of cartel agreements

⁹ Competition Policy in Morocco and its support by the EU. Article by Krzysztof Jaros MCB 2 page 90.

¹⁰ http://www.ukti.gov.uk/fr_fr/export/sectors/ict/softwarecomputerservices/businessopportunity/165100.html?null

- Sophisticated econometric methods in market analysis to be introduced during investigations and in support of CPC decisions with full understanding of economic concepts expressed in the judgements of the Court when deciding on the merits of the case. Regulators to acquire knowledge on the economic assessment of mergers in regulated and network industries
- Case handlers to be trained on the early discovery of secret cartel agreements and parallel behaviour for complex merger analysis and enforcement of issued merger conditions with officers in the public procurement office trained on the discovery of collusive tendering
- The market participants and regulators in Serbia to acquire general knowledge in the practice of the EU Commission, European Court of Justice and the Court of First Instance, as adopted in EU Commission decisions and judgments on competition law
- Database containing the set of documents established, ie requests of the parties, decisions and opinions of the CPC since its establishment
- Forensic software to be developed and implemented;

110100 EU project "Technical Assistance to the Commission for the Protection of Competition"¹¹. The EU CARDS project was carried out from during three years starting in January 2008 by an international consortium managed by the IRZ Foundation. (€ 2 million), within the framework of the EU Stability and Association Agreement. Three components: a) strengthening of the institutional capacities of the Competition Commission; b) armonisation of legal structures in the field of competition and implementation in the acquis communautaire and c) Strengthening of public perception of competition policy.

TUNISIE

"Dans le cadre du programme européen MEDA qui permet à l'Union européenne d'apporter une aide financière et technique aux pays du sud de la Méditerranée, le Ministère du Développement et de la Coopération Internationale de la République tunisienne a signé avec la Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF) et le Conseil de la Concurrence français, et au profit de la Direction générale de la concurrence et des enquêtes économiques (DGCEE) et du Conseil de la Concurrence tunisien, une convention de jumelage visant le renforcement des capacités de ces deux institutions chargées en Tunisie de la mise en oeuvre de la politique de la concurrence. Le programme de jumelage qui a été réalisé du 19 mai 2006 au 18 décembre 2007a prévu des prestations de diagnostics des aspects organisationnels ou institutionnels nécessitant un renforcement ou une évolution." dans le "**Le programme de jumelage concurrence Tunisie-UE: expérience réussie**" par M. Khalifa Tounekti au Bulletin Méditerranéen de Concurrence BMC 1 – page 51.

¹¹ <http://www.irz-stiftung.de/en/stiftung-projects/westenbalkan/serbia/>

**National Competition Authorities and other State Actors:
Understanding and Misunderstandings of Competition Law**

**By Marco Botta PhD (EUI),
Akademie der Wissenschaften, Vienna**

The models of institutional relationship between the NCA and other State actors which may be involved in competition law enforcement differ widely. Such models have important consequences in terms of competition law enforcement. Three issues were discussed in the presentation:

Independence v. autonomy of the National Competition Authorities:

Independence means that a NCA defines its enforcement strategy autonomously and enforces the competition law in a fair and objective manner in order to maximize consumers' welfare, without taking in consideration other policy objectives. According to Gal, the main indicators of independence are: 1) having a separate institution from the relevant Ministry 2) the members of the NCA are selected for a long mandate, not renewable 3) transparency of NCA's decisions/proceedings 4) involvement of consumer groups 5) automatic judicial scrutiny of NCA's decisions 6) criminal sanctions against cartels reduce political pressures on the NCA.

Nevertheless, a fully independent NCA may run the risk to become an isolated institution within the State administration; this is the case especially in countries which lack a competition culture. On the other hand, a NCA placed within the Ministry of Economy/Commerce might rely on its institutional affiliation in order to carry out activities of competition advocacy *vis a vis* other governmental bodies (i.e. carrying out a competition assessment of new draft regulations). However, its enforcement strategy may be influenced by industrial policy concerns of the Ministry of Economy/Commerce.

Most of the NCAs of the Mediterranean countries currently keep links/are part of the Ministry of Economy/Commerce (i.e. Morocco, Algeria, Tunisia, Egypt, Syria, Jordan). On the other hand, on the basis of the analysis of the competition law, the NCAs of the South-East European countries (i.e. Albania, Serbia, Kosovo) and the Turkish NCA satisfy most of the independence criteria identified by Gal. However, it is important to bear in mind that this analysis was exclusively based on the text of

the competition law; further research is needed to assess the degree of *de facto* independence of the NCAs of these countries.

Relationship of the NCA with the judiciary:

The judiciary plays an important role in the enforcement of the competition law, by reviewing the NCAs' decisions and by having jurisdiction in cases of private enforcement of competition law. Judicial review increases procedural fairness of NCA's decisions. However, courts usually do not review the economic models relied by the NCA in its analysis, but they rather check the reliability of the evidence put forward by the NCA to show the existence of an anti-competitive practice. The inherent risk of judicial review is that national judges may misinterpret the objectives and the rationale of the competition law.

Three institutional models are usually implemented throughout the world:

- 1) every court of the country can review NCA's decisions;
- 2) a new specialized tribunal with sole jurisdiction in competition law enforcement is established;
- 3) the competition law assigns exclusive jurisdiction in reviewing the NCA's decisions to an existing tribunal.

While the first institutional model does not allow for a specialization of the judges in the field of competition law, the second model increases the quality of judicial review, but it is a rather expensive solution since it requires the setting up a new court. The third model achieves a balance between the exigency of improving the quality of the judicial review and minimizing the management costs of the court. This is the reason why most of the competition law of the Mediterranean countries follow the third model (i.e. Algeria, Morocco, Serbia, Tunisia, Turkey, Cyprus, Jordan and Albania).

Relationship between NCA and the NRAs:

Most of the Mediterranean countries have established NRAs in charge of regulating network industries (i.e. electricity, gas, telecom); industries which have been subject to privatization and liberalization programs during the last two decades. While in some countries the NCA is the only institution in charge of enforcing the competition law, in other countries some NRAs have competence in enforcing the competition law within the network industry that it regulates. The advantage of the second model is that the NRA can take in consideration the existing regulation in

designing the competition law remedies. In addition, the NRA has usually more resources and a better knowledge of the peculiarities of the industry than a newly established NCA. Nevertheless, the negative side of this institutional model is that the NRA can be more easily subject to regulatory capture in comparison to the NCA, which enforces the competition law throughout different industries.

While in the countries of South-East Europe and in Turkey the NCA has usually exclusive jurisdiction in enforcing the competition law, in several North African countries the NRAs have often jurisdiction in enforcing the competition law. This is the case, in particular, in the countries where the NRAs were established before the NCA (i.e. Egypt and Jordan). However, irrespective of the institutional model adopted, in most of the Mediterranean countries the NCA and NRAs cooperate by exchanging opinions and information in relevant cases, after having concluded memorandums of understanding.

Fighting Cartels and Abuse of Dominance: Enforcement Challenges faced by the NCAs

Prof .Nurettin Kaldirimci
President of the Turkish Competition Authority

Distinguished Colleagues,
Dear Guests, Ladies and Gentlemen,

It is a great pleasure and honor for me to make the opening speech of today's session on "Fighting Cartels and Abuse of Dominance - Enforcement Challenges faced by the National Competition Agencies." First of all, I would like to congratulate the Austrian Federal Competition Agency for organizing such a great event on this very important topic in this magnificent city.

As we all know, from the mid-1990's, many developing countries, including the Mediterranean countries, started to adopt competition laws. To that end, those countries put into effect their competition legislation by taking the European Union as a model. In line with this, those countries established their competition agencies to apply competition legislation. Although the scope and the level of implementation regarding legislation differ in those countries, we can say that there are common problems that all competition authorities face in terms of implementing the legislation.

Turkey also struggled with challenges in this process following the enactment of the Competition Act in 1994. Indeed, 17 years ago when the Competition Act was adopted in Turkey, very few people hardly knew about it. When the Turkish Competition Authority finally started its activities in 1997, the situation was not any better! But with the hard work and belief, the Turkish Competition Authority has overcome those challenges to a great extent. Thus, the Turkish Competition Authority has been brought to its distinguished place not only among the government institutions within Turkey but also in international for a.

At almost every opportunity, Turkish Competition Authority underlines the importance of the development of social understanding and sensitivity to make the competition culture more institutional.

The Experience of the Turkish Competition Authority:

Considering Turkish experience so far, I can summarize the challenges faced and the methods to be followed by competition agencies in the field of fighting against cartels and abuse of dominant position as follows:

- **Lack of Competition Culture**

At the outset, I believe that the most significant challenge for a competition agency, where competition law enforcement is relatively new, is the lack of a sufficiently developed competition culture among the public authorities, society and the business community.

Accordingly, one of the common challenges is that legal regulations are drafted without taking competition concerns into account. Such regulations might create barriers to the establishment of a competitive market structure or might facilitate anti-competitive conduct by undertakings or associations of undertakings. Since such regulations cannot be interfered with through competition law instruments in many jurisdictions, competition advocacy seems to be the only method for competition agencies to ensure that they are abolished or reviewed by considering competitive constraints. In fact, Turkish Competition Authority has used this method for many regulations mainly in the form of opinions prepared on the drafts of the legal texts such as laws. However, I should say that the weakness of such opinions used as part of the competition advocacy tools is the fact that they are not binding for other public institutions in Turkey. Therefore, it is possible to get effective results from this method only if there is sufficient level of competition awareness among other public agencies.

Lack of competition culture is a challenge in the relations between competition agencies and undertakings and associations of undertakings as well. That is to say, in the first years of enforcement, similar to many competition agencies, the Turkish Competition Authority frequently encountered conduct that undertakings and associations of undertaking carry out with the understanding that "competing is betrayal" without being aware that such conduct is indeed "illegal". Unfortunately, interference in those types of conduct by competition law instruments is short-term, has narrow scope, and is insufficient to solve the problem that is widely seen in a large part of markets for goods and services permanently. At this point, we see competition advocacy as an important instrument. Another challenge in front of a competition agency with respect to its relationships with undertakings is that undertakings are not familiar with the competition agency or

the competition law enforcement. Consequently, they may not behave in a friendly manner to assist the competition authority in its inquiries which leads to certain difficulties during the process of on-the-spot inspections, or the so-called dawn raids, and information gathering. Although there are sanctions in competition laws with respect to these issues, I believe that the problem can only be solved permanently if we foster competition awareness among undertakings and inform them about the aim, function and powers of the competition authority.

Another group that may not be familiar with competition culture is consumers. If we raise competition awareness among consumers and tell the functions of the competition agency properly, we could make them drive the competition investigations. As a result, this could serve for enforcing competition law effectively as well as for reducing the workload on the competition agency by minimizing the number of irrelevant complaints.

Raising competition culture and explaining the aim and function of the competition agency should be a priority for competition agencies in order to solve the challenges stemming from the lack of competition awareness. This would also contribute to maintaining competition law enforcement with sound relations with public authorities, consumers and undertakings. Actually, the Turkish Competition Authority attaches special importance to this point and makes great efforts to institutionalize competition culture within Turkey. Examples of those efforts can be listed as follows:

- > the Competition Letter, the Competition Handbook, the Competition Glossary which have been issued annually since 2009 and which constitute a link between the Turkish Competition authority and its stakeholders, symposiums jointly organized by universities,
- > supporting post-graduate courses in universities,
- > participating in fairs related to SME's,
- > links on our website such as "frequently asked questions" and "online complaint" that aim to facilitate access for consumers.

- **Uncertainties between Competition Agencies and Sectoral Regulators**

The problems encountered within the scope of the relations with other public institutions are not limited to lack of competition awareness. That is to say, competition law aims to protect competition in all markets for goods and services regardless of the sector. However, certain sectors are subject to economic regulation due to market failures. This leads to uncertainties between sectoral regulators established to regulate and supervise those sectors and competition agencies regarding powers to solve competition problems in the sector in question. Similar uncertainty is seen with regard to regulatory institutions having specific duties for conduct such as bid rigging, which also constitutes an

infringement of competition. This uncertainty causes risks such as the cases where both institutions hesitate to take initiatives or an institution interferes with a matter for which the other one may bring a much more effective solution. Those risks can only be eliminated by solving conflicts of power and drawing a frame that is able to regulate the relations between institutions. To this end, Turkish Competition Authority and Public Procurement Authority signed a protocol to take joint action for creating, developing and maintaining a fair and sound competition environment in public procurements on October 14, 2009. Similarly, a protocol with Information Technologies and Communication Authority was made on November 2, 2011 regulating information sharing, taking opinions, coordination and cooperation. Moreover, currently, there are efforts within Turkish Competition Authority to create a mechanism for cooperation, information sharing and coordination with Energy Market Regulatory Authority.

- **Other Challenges: Related to the Competition Law Regulations**

Problems related to competition law regulations constitute another dimension of the challenges that the competition agencies may experience in competition law enforcement. Existing regulations may become insufficient in time or there may be unregulated fields, which complicates enforcement by competition agencies. Especially, the fact that secondary legislation is insufficient or deficient may prevent a competition agency from taking uniform decisions and reduce its credibility before undertakings by creating uncertainty. We should eliminate deficiencies in regulation and issue explanatory texts in the form of guidelines to overcome this problem and ensure uniformity, transparency and predictability in enforcement activities. Accordingly, Turkish Competition Authority has been concentrating on updating and making up the deficiencies in the legislation during the recent years. Within this framework, amendments were made in the Competition Act in 2003, 2005 and 2008. Besides, many Communiqués, Regulations and Guidelines were put into force. A large number of studies related to secondary legislation are still in progress.

Another challenge that may be regarded as the result of competition law regulations is the fact that the power to collect evidence is limited. This power is necessary, especially within the scope of cartels. As we know, the sole instrument of competition agencies to detect and investigate cartels that are secret in nature is on-the-spot inspections. However, the powers of a competition agency to carry out on-the-spot inspections are not only limited but also uncertain with respect to scope. This fact is a huge problem in front of competition agencies taking into consideration fast improvements in information technologies and prevents competition authorities from carrying out their main tasks. Applicability of forensic IT techniques in competition law to overcome this problem is one of the most debated issues recently.

As it is very hard to detect cartels with existing powers to collect evidence, to offset this disadvantage, competition agencies put leniency programs into action. Those leniency programs provide immunity from or reduction of fines to those who actively cooperate with competition agencies to detect and investigate cartels. In fact, Turkish Competition Authority started to implement its leniency program actively after the Regulation on Active Cooperation for Detecting Cartels was put into force on February 15, 2009.

However, at this point, there is lack of regulation concerning the status of undertakings benefiting from leniency programs with respect to an anti-competitive conduct which also constitutes an offense before other laws such as bid-rigging. This poses a problem for competition authorities and may lead to inefficient operation of the leniency mechanism.

- **Other Challenges**

Beside the power to make on-the-spot inspections, power to request information is also an important instrument of competition agencies. Hence, agencies frequently resort to requesting information from undertakings in practice. However, the need of information is not limited to information about the undertaking under investigation for most of the time. Competition agencies often need information and statistics about the market where the investigation is conducted within the scope of competition law inquiries. This information may be requested from the competitors, providers and customers of the undertaking under investigation as well as certain association of undertakings or public institutions. Nevertheless, in most of the sectors, it is not possible to obtain sound, compiled and retrospective information from the actors of the sector in question or relevant public institutions. This may complicate the investigation or mislead the competition agency during the process.

The lack of information creates barriers in using economics in competition law inquiries. Taking into account the increasing importance of economic methods and researches in modern competition law and policy enforcement, the fact that relatively young competition agencies have limited resources in this respect and they cannot integrate economics into decision-making process is a deficiency in enforcement. Within this framework, providing the necessary institutional infrastructure to eliminate this deficiency should be a priority. Thus, Turkish Competition Authority issued a directive to put the role of the Economic Research Department in decisionmaking process and other competition policy practices in writing.

Undoubtedly, the need for competition agencies to establish priorities and allocate resources accordingly is not limited to integrating economic research into decisionmaking process. Prioritization may be regarded as a part of strategic planning for competition agencies. It means determining where human resources, time and energy will be directed and developing enforcement policies correspondingly. Prioritization may be made on the basis of competition law enforcement as well as sectors. However, competition agencies with less experience in competition law enforcement may have difficulty and make mistakes in prioritization because they do not know sufficiently the sectors they address and they are not familiar with the legislation regulating those sectors and their dynamics. This issue can only be solved by knowing sectors thoroughly and penetrating into the functioning of the sector. In line with this, we have organized the enforcement units on sectoral basis and we believe that this enables Turkish Competition Authority to better know the sectors. Moreover, to this end, there are many sector inquiries completed or in progress within the Authority.

Of course, gaining knowledge about sectors is not the only aim of sector inquiries. In some sectors, competitive problems do not stem from competition infringements but from the regulations or structural problems in that sector. This makes it impossible to solve the problem with competition law instruments and renders competition authorities remediless. To overcome this challenge and create permanent solutions for competition problems in sectors, competition authorities may resort to sector inquiries. In fact, Turkish Competition Authority has initiated sector inquiries to eliminate failures to be detected in many sectors by focusing on the development of long-lasting efficient measures and has tried to solve competition problems with this perspective.

• Challenges arising from internationalization of competition laws

As a final remark, I think it is worth noting that another challenge for national competition authorities in enforcement is the problems arising in investigating international cartels and lack of cooperation between national authorities. International cartels become more and more common in the globalizing economy. However, there are significant uncertainties in those kinds of infringements regarding which country's authority will be entrusted to make an investigation, which powers it can use against which undertakings, how it will coordinate with other relevant competition agencies and which sanctions will be used against undertakings found to violate the competition rules. Actually, Turkish Competition Authority experienced such problems during two of its investigations in markets regarding import coal and glass container materials. I believe that eliminating this regulatory deficiency and establishing the necessary cooperation between competition agencies immediately are crucial because it is inevitable that competition agencies will deal with such international cartels in economies that are rapidly globalizing.

In conclusion, it is obvious that relatively young competition agencies experience many common challenges especially in the first years of enforcement. However, it seems possible that those difficulties can be resolved in a short time with the efforts of competition agencies. I believe that regular cooperation as well as sharing information and experience is important to accelerate this process.

I wish you a fruitful discussion.

Thank you for your attention.

Les grands axes de la réforme de la loi 06-99 sur la concurrence au Maroc.

Par Khalid El Bouayachi

Directeur des Instructions du Conseil de la Concurrence au Maroc

Axe de la réforme Contenu de l'amendement	Motifs
Elargissement du champ d'application de la loi 06-99 Application des dispositions de la loi sur la concurrence aux personnes publiques qui assurent une mission de service public.	<ul style="list-style-type: none"> • Elargissement du champ d'application de la loi 06-99 aux missions de services publics qui revêtent un caractère industriel ou commercial et qui opèrent dans un marché concurrentiel, et permettre ainsi au Conseil de la Concurrence d'analyser les situations soulevées au cas par cas. • Garantir l'égalité de la concurrence entre les personnes publiques et privées
Mise en place d'une Autorité de la Concurrence aux pouvoirs élargis et à compétence générale <ul style="list-style-type: none"> • Mise en place d'une Autorité de la Concurrence unique et indépendante dotée de la personnalité morale et de l'autonomie financière. • Doter l'Autorité de la Concurrence d'une compétence générale en matière de mise en œuvre des règles du droit de la concurrence • Octroyer à l'Autorité de la Concurrence le pouvoir décisionnaire. • Révision de la composition du conseil de l'autorité de la concurrence et des modalités de prise de décisions au sein de la future autorité de la concurrence. • Reconnaître à la future Autorité de Concurrence la faculté de s'autosaisir si elle constate des dysfonctionnements sur les marchés et de mener des actions d'advocacy. 	<ul style="list-style-type: none"> • Renforcer l'indépendance de la future autorité de la concurrence afin de garantir sa neutralité vis-à-vis des pouvoirs publics, économiques et politiques ; • Doter la future autorité d'un statut et de moyens suffisants pour exercer efficacement sa mission de régulation concurrentiel du marché; • Eviter le chevauchement de compétences entre la future autorité et les différentes autorités de régulation sectorielle ; • Assurer la cohérence et d'efficacité au niveau de l'interprétation et d'application des règles du droit de la concurrence. • Doter la future autorité de la concurrence de la possibilité d'adopter une démarche proactive vis-à-vis du marché en appréhendant les éventuelles pratiques anticoncurrentielles sur lesquels elle pourrait ne pas être saisie
Pouvoir discrétionnaire <ul style="list-style-type: none"> • Reconnaître à la future Autorité de Concurrence un pouvoir discrétionnaire lui permettant de décider souverainement d'engager ou non l'instruction des dossiers qui lui ont été soumis et ce en fonction de leur importance ; 	<ul style="list-style-type: none"> • Assurer l'efficacité de l'autorité de la concurrence en lui permettant de se focaliser sur les dossiers les plus importants en terme de leur impact sur le marché et les consommateurs.
Renforcement des mécanismes de contrôle de l'Autorité de la Concurrence <ul style="list-style-type: none"> • Permettre à l'Autorité de la Concurrence de rendre compte de ses activités au parlement les recours contre les décisions de l'Autorité de la Concurrence seront portés devant une juridiction spécialisée en matière de concurrence	Renforcer la légitimité et le contrôle des activités et des décisions de l'Autorité de la Concurrence. Le traitement du contentieux de la concurrence par des juges spécialisés vu la technicité des affaires de concurrence
Entités habilitées à saisir l'Autorité de la	<ul style="list-style-type: none"> • Donner la possibilité aux entreprises

<p>Concurrence</p> <p>Elargissement de la sphère des entités qui peuvent saisir la future Autorité de la Concurrence aux entreprises et aux associations de protection de consommateur sans qu'elles soient reconnues d'utilité publique.</p>	<p>concernées de saisir directement l'Autorité de la concurrence et sans obligation de passage par leurs associations professionnelles où pourraient être représentées les parties adverses ;</p> <ul style="list-style-type: none"> Assurer une souplesse dans la procédure de saisine de l'autorité de la concurrence <p>Assurer une protection efficace et effective du consommateur et l'ériger en un véritable acteur de régulation du marché</p>
<p>Coopération entre l'Autorité de la concurrence et les régulateurs sectoriels</p> <p>Prévoir des mécanismes de consultation réciproques entre l'Autorité de la concurrence et les autorités de régulation sectorielle</p>	<ul style="list-style-type: none"> Renforcer la coopération entre l'Autorité de la concurrence et les autorités de régulation sectorielle ; Eviter les chevauchements de compétences entre l'Autorité de la concurrence et les autorités de régulation sectorielle. Assurer un échange d'expertise entre les deux autorités
<p>Renforcer les pouvoirs des services d'instruction de l'Autorité de la Concurrence</p> <ul style="list-style-type: none"> Doter les services d'instruction de la future Autorité de Concurrence du pouvoir d'enquête Obliger les entreprises sous peine d'astreinte à communiquer les documents et informations nécessaires à l'instruction. 	<ul style="list-style-type: none"> Permettre à la future autorité de la concurrence d'accéder aux documents et éléments de preuve nécessaires à l'instruction des dossiers.
<p>contrôle des opérations de concentration économiques</p> <ul style="list-style-type: none"> Soumettre les projets de concentration qui dépassent les seuils prévus par la loi à l'autorisation de l'autorité de la concurrence Nullité de plein droit des opérations de concentration réalisées au mépris de l'obligation de notification à l'Autorité de la Concurrence Modifier le seuil de contrôlabilité des opérations de concentration économique en introduisant le critère du chiffre d'affaires parallèlement à celui des parts de marché ; Conférer au Premier Ministre un droit d'évocation, dûment motivé et publié, sur les décisions d'interdiction des projets de concentration prises par la future Autorité de Concurrence, tout en permettant à cette dernière de faire à la fois le bilan économique et le bilan concurrentiel des cas qui lui sont soumis ; 	<ul style="list-style-type: none"> Transférer le contrôle des opérations de concentration à l'autorité de la concurrence spécialisée dans l'analyse du bilan concurrentiel et économique. La réunion entre les mains de la future autorité de la concurrence du contrôle des concentrations et des pratiques anticoncurrentielles favorise une approche unifiée et cohérente en amont de la structure du marché et en aval des comportements de ce marché. Assurer une sécurité juridique aux entreprises qui se concentrent Faciliter le contrôle des opérations de concentration par l'autorité de la concurrence Eviter l'interdiction d'une opération de concentration qui peut être justifiée par un intérêt général légitime en dehors des préoccupations concurrentielles.
<p>Sanctions</p> <ul style="list-style-type: none"> Permettre au conseil de la Concurrence 	<ul style="list-style-type: none"> Adaptation des sanctions privatives de liberté à la gravité des infractions

<p>d'infliger des sanctions pécuniaires en cas de contravention à la loi sur la concurrence et de transmettre les faits qui lui paraissent de nature à justifier l'application de sanctions pénales au tribunal.</p> <ul style="list-style-type: none"> • Imposer des astreintes en cas de non respect des mesures conservatoires, injonction, engagements, et demandes d'information. 	<p>commises</p> <ul style="list-style-type: none"> • Rendre les sanctions aux violations des règles de la concurrence plus dissuasives.
<p>Les procédures négociées</p> <ul style="list-style-type: none"> • Introduire la procédure d'engagement et de non contestation des griefs • Introduire la procédure de clémence 	<ul style="list-style-type: none"> • Permettre un rétablissement rapide et efficace de l'ordre concurrentiel du marché sans qualifier les infractions, ni recourir aux sanctions (engagement). • Raccourcir les délais de procédure (procédure de non contestation des griefs) • Augmenter les chances de détection des ententes nocives pour le marché et les consommateurs. • Encourager les entreprises à dénoncer les ententes en contrepartie d'une humanité totale ou partielle de la sanction.
<p>les pratiques commerciales déloyales (PCD) Concernant les pratiques commerciales déloyales, deux propositions ont été formulées :</p> <ul style="list-style-type: none"> - Eriger les pratiques commerciales déloyales en une infraction supplémentaire qui s'ajouterait aux ententes et abus de pouvoirs économiques (quoique cette proposition présente plusieurs inconvénient, puisque d'abord : 1- y a une classification universellement reconnue des pratiques anticoncurrentielles (ententes/ abus de pouvoirs économiques). 2- les pratiques commerciales déloyales sont interdites per se, alors que les PAC nécessitent une étude au cas par cas. 3- risque de confusion entre régulation de la consommation et régulation de la concurrence. 4- les PCD impliquent des possibilités de dédommagement civils relevant du ressort de la justice.) <p>faire une distinction entre, d'une part les pratiques commerciales déloyales qui ont pour résultat fondamental de toucher à des intérêts particuliers et qui resteraient du ressort direct de la justice avec une veille du Conseil de la Concurrence dans le cadre de son activité d'advocacy afin de respecter les dispositions de la constitution, d'autre part les pratiques commerciales déloyales qui ont un fort impact</p>	<p>l'article 166 de la nouvelle constitution a confié au Conseil de la concurrence la mission centrale d'assurer, dans le cadre d'une concurrence libre et loyale, la transparence et l'équité des relations économiques. Pour ce faire, cet article a non seulement consacré l'ensemble des prérogatives du Conseil prévues dans le projet de loi précité, notamment en matière de lutte contre les pratiques anticoncurrentielles, de contrôle des opérations de concentration et de plaidoyer, mais il a également étendu ces compétences à deux nouveaux domaines, à savoir la lutte contre les pratiques commerciales déloyales et le contrôle des monopoles tout en accordant une importance centrale à la fonction d'advocacy (plaidoyer).</p>

<p>sur le fonctionnement concurrentiel du marché dans sa globalité et qui relèveraient de la compétence du Conseil en tant que pratique anticoncurrentielle supplémentaire</p>	
<p>le contrôle des monopoles</p> <ul style="list-style-type: none"> - Renforcement des prérogatives décisionnaires du conseil de la concurrence en matière d'abus de position dominante, en y incluant le cas de l'exploitation abusive d'une situation de monopole (modification de l'article 7 de la loi 06.99). - Renforcement du rôle d'advocacy en permettant au Conseil de la concurrence de prendre l'initiative de donner son avis ou entreprendre toute étude concernant la concurrence et recommander à l'administration de mettre en œuvre les mesures nécessaires à l'ouverture des monopoles de fait ou de droit à la concurrence et à l'amélioration du fonctionnement concurrentiel des marchés... 	
<p>le renforcement du rôle de plaidoyer</p> <p>Cette fonction, déjà prévue par le projet de loi, a été non seulement consacrée par l'article 166 de la Constitution, mais renforcée dans la mesure où le Conseil de la concurrence, en tant qu'institution indépendante, devra assurer la transparence et l'équité des relations économiques à travers notamment l'analyse et la régulation des marchés, ce qui suppose que cette institution devra jouer un rôle important dans le raffermissement de l'Etat de droit dans le domaine des affaires, de l'égalité des chances, de la mise à niveau de l'économie nationale, de sa modernisation, du renforcement de sa compétitivité, de son attractivité pour l'investissement productif et donc pour la promotion de la croissance et de l'emploi.</p> <p>Il est donc suggéré de compléter l'article 14 ter en faisant référence à ces fonctions de plaidoyer du Conseil.</p>	

Merger control: challenges and opportunities

Professor Maher Dabbah, PhD

Director at the Interdisciplinary Centre for Competition Law and Policy

Queen Mary University, London

- Development in the area of merger control differs in the various Mediterranean countries. This situation is understandable but change is needed. E.g. Egypt did not introduce a merger control system yet whereas in Morocco the Prime Minister is dealing with mergers. Notification thresholds and forms do differ as well. In some Mediterranean Countries merger notification depends on market shares and in some other countries on turnover. In Morocco for example notifications have to take place where a 40% market share threshold is reached. The criterion of market shares can lead to more difficulties than the case with the criterion of turnover; also it can lead to notification of fewer merger operations as market definition can be interpreted in different ways. The determination of notification thresholds is crucial. There is an inherent risk of them being too high or too low.
- The area of merger control is different from those of anti-cartel enforcement and abuse of dominance. Mergers in the vast majority of jurisdictions around the world are assessed ex ante. There are some challenges unique to merger control. Merger control also offers certain opportunities, such as direct and effective action to condition and determine level of competition in markets; possibly to facilitate competition.
- For having an effective merger control, authorities have to have the power to prohibit mergers and impose structural conditions.
- Merger control is playing an important role concerning privatisation. A compromise between selling state property and building a new private monopoly has to be found. Turkey can be cited as a good example of merger control playing an important role in facilitating a healthy privatisation process.
- Often mergers become subject of political intervention, whether on national champion grounds or those of economic patriotism or other grounds concerning employment etc. Competition

Authorities have to be independent and make their decisions concerning mergers based on facts and using competition based assessment.

- International cooperation is important as many companies act in various countries. Austria for example built a Merger platform, where all "Marchfeld-Countries" fill in their mergers in a way exchange of information, views and experience is possible.
- There is a lot of uncertainty regarding merger control, basically, there is no magic stick. Merger Control is very heterogeneously developed in Mediterranean Countries. A lot of improvements have to take place to reach a level playing field. Competition Authorities have to be strengthened in their powers and concerning their human resources. They need to be able to screen merger notifications, have appropriate notification forms and the legal authorisation to prohibit a merger independently. Merger control is about interaction between different forces and considerations: competition v. other public policies (industrial, social etc.), jurisdictional and procedural v. substantive issues, legal regimes v. business interests, domestic v. international and regional interests (in relation to Cross-border mergers). It is not easy to manage such a multi-dimensional interface.

The Importance of Competition Law and Policy for Investors: Impact on Key Sectors

John Davies, OECD, Paris

- Throughout its history, the OECD, whose origins lie in the Marshall Plan, has assisted countries in fostering good governance and reforming and improving their economic policies to generate greater economic growth. The success of these efforts helped build a wider consensus for market economies and democracy. The OECD is a world leader in designing structural reforms that promote growth and equity.
- The OECD's "Going for Growth" model finds that product market deregulation had overall stronger effects on GDP for OECD countries than for example labour market policies or taxation. While calculations are still in progress, competition might even have wider implications than product market deregulation.
- Economic analysis tells us that competition increases incentives for incumbent monopolists to innovate and invest. Competition might not always bring innovation and investment. However, it increases incentives for monopolist who - as strong evidence suggests - do not innovate and invest without competition.
- It has to be kept in mind that competition raises productivity by creating winners, but also losers. Competition does not necessarily make existing companies more efficient, but about 70 % of productivity gains come from new companies.
- Competition authorities can help long-run economic success. Most important issues include:
 - They have to make the case for competition policy at the heart of economic strategy. They also have to be prepared to convince the government that weak firms must be allowed to fail (remember: competition creates winners and losers).
 - Free entry is most important of all: take action against entry-detering abuse and government policies blocking entry (remember: about 70 % of productivity gains come from new companies).
 - Champion effective privatisation that results in competition and independent regulation.
- In the discussion several countries raised questions on how to deal with companies that argue they would leave the country if their behavior is qualified as breaching competition law. The common understanding was that competition authorities should not be concerned too much: First, in general companies will stay in countries as long as they can earn money and achieve average returns on investment. Second, one country could report that an international company really left the country after being object of competition law enforcement. However, this withdrawal led to

the creation of smaller, more efficient national companies, leaving the consumer better off in the end.

- An always difficult question is also the effective and for the consumer beneficial privatisation of companies. Several examples were given where privatisation led to problems instead of solving problems. An elaborated approach is therefore key and must be preferred to "quick money making" approaches.
- No consensus was reached on whether first a competition policy covering all sectors must be in place, before a competition law should be drafted. Several countries argued that one should not wait for the development of a competition policy as a competition law is an important anchor.

State Aid Control: the way forward in the Mediterranean countries

**By Professor Giorgio Monti,
European University Institute**

1. Why should a government adopt state aid rules at all?

Legal reasons

- a) Signatories to the WTO must comply with the subsidies regime set out in that agreement.
- b) Most agreements between the EU and Mediterranean countries provide that public aid which distorts competition between the EU and the country concerned by favouring certain undertakings or the production of certain goods between the EU is incompatible with the proper functioning of the agreement. It implies national law against state aid should be enacted this would then form the basis of implementation rules.

Economic reasons

- a) No really convincing reason to say subsidies are harmful to trade: (i) best response to a subsidy by Italy to the car industry is for the importer to say thank you: importer knows Italy will make cars, can redirect domestic industry to other uses; (ii) subsidy could be part of a predatory pricing strategy (e.g. I subsidise my car manufacturer so I can sell cheaper cars than a competitor and then take over his market). But an unrealistic strategy.
- b) Politics: subsidies undermine an earlier deal to open up access to markets; subsidies create a risk of a trade war.
- c) Paternalism: subsidies are an inefficient way of conducting industrial policies; most subsidies do not achieve beneficial results for the target of the subsidy.
- d) Why stop at state aid? Why not control all sorts of state expenditure? All sorts of state legislation that affects industry?

2 Lessons from EU rules?

Prohibition (Art 107(1) TFEU)

- (a) An effects-based definition of state aid allows the Commission to check a wide range of state aid, irrespective of form (e.g. interest free loan, purchase of shares at overvalue, sale of land at undervalue). The European Courts have supported a wide definition of aid in general.

- (b) But the Court has also been careful not to stretch the definition of state aid to all activities of government (e.g. labour legislation & environmental legislation) on the basis that doing so would undermine national policies.
- (c) Key elements to prove state aid in EU Law.
 - a. Aid comes from State resources
 - b. Aid gives the beneficiary an advantage it would not otherwise receive
 - c. Aid is selective (it chooses certain beneficiaries and is not a general measure of national policy)
 - d. Aid distorts competition and trade between states

Query then how Mediterranean countries should define the notion of state aid (or public aid, as in Article 34(1)(iii) of the agreement between the EU and Egypt). An effects- based definition is useful to avoid circumvention, but it also creates uncertainty. The distortion of competition test is not always examined carefully in the EU.

Exemption (Art 107(2) & (3) TFEU)

- (a) Policy reasons for tolerating certain aid are exhaustively articulated in the Treaty
Examples: aid to poor regions; aid for important projects of common interest; aid to promote culture; aid for certain economic activities
 - (b) Newly implemented economic test to determine if aid should be granted reduces the Commission's discretion:
 - 1. Is the aid aimed at a well-defined objective?
 - 2. Does the aid address the market failure/objective?
 - a. Is the aid an appropriate policy instrument to address the policy objective?
 - b. Is there an incentive effect? (Does aid change the behaviour of the recipient)?
 - c. Proportionality: could the same effect have been achieved without aid?
 - 3. Is the balance between harm and benefit positive?
 - (c) Significant amount of soft law explaining how Commission manages state aid authorisation requests
- > Query if Mediterranean states should adopt an expensive, resource intensive test; note on the other hand the advantage of soft laws so that the agency commits itself to a particular analytical method and this provides for some insulation against political pressure.

Procedures

- (a) Detailed notification rules are in place with timetables for the Commission to review state aid requests from Member States;
- (b) Aid granted unlawfully must be repaid by the beneficiary. In spite of improved recovery rates among Member States, is this an adequate remedy? Since the money is returned to the state, there is little deterrent effect.
 - > Mediterranean states likely to benefit from clear procedures set out in EU law, they are especially important because regional bodies may be in charge of granting aid. Query whether for primary legislation (e.g. new tax rules that have state aid element) it may be best to have an additional layer of legislative procedure to address state aid points.
 - > Query how best to deter government from granting state aid unlawfully, especially in light of the relatively weak status of competition authorities.
 - > Is state aid a field that is best left to competition advocacy initiatives by a competition authority, at least at the first stage?

State Aid Control: the way forward in the Mediterranean countries

By Roland Schachl

Federal Ministry of Economy, Family and Youth

Rationale of EU State Aid Control: A number of good reasons for State Aid control can be given

- Core parts of Competition Law: Antitrust and Merger, Public Procurement and State Aid
- Ensuring fair competition in functioning market economy
- Establishing a level playing field in the European Union
- Setting a general framework for State interventions
- Concentration of public funds on objectives and purposes of common / Community / Union interest
- Monitoring and transparency

Notion of the term “State Aid“ pursuant to Article 107 Paragraph 1 of the TFEU

In the course of the decision practise of Commission services and the case-law of the European Courts four definition criteria emerged: State or any other public resources, granting an advantage to enterprises / sectors of economy, (potential) distortion of competition, effect on trade between Member States.

Concept of State Aid Control in the EU

The general ban for State aid is laid down in Art. 107 (1) TFEU:

" Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market."

Exceptions under mandatory derogations are pointed out in Art. 107 (2) TFEU and under discretionary derogations in Art. 106 (2) and 107 (3).

International Legal Framework for State Aid Policy in the EU Member States

- European Economic Area Treaty (EEAT)
- Treaty of the Functioning of the European Union (TFEU)
- Agreement on Subsidies and Countervailing Measures within the World Trade Organization (WTO)
- Arrangements within the OECD,
- Bilateral and multilateral provisions (e. g. “matching clause“)

Role of the Ministry in the Field of State Aid Policy

The Ministry has on the one hand External Functions like representation in EU bodies, party on procedures, contribution to EC law development and on the other hand Internal functions like administration of rules, dissemination of know-how, legislation on aid measures ect.

There are differences in the implementation of Competition Law and State Aid Law .

Competition Law	State Aid Law
<ul style="list-style-type: none">• independent body	<ul style="list-style-type: none">• Central State administration
<ul style="list-style-type: none">• relations between enterprises and Competition Authority or Commission respectively	<ul style="list-style-type: none">• relations between providers and State Aid coordination and Commission respectively
<ul style="list-style-type: none">• enterprises addressees of decisions	<ul style="list-style-type: none">• Member State addressee of decisions
<ul style="list-style-type: none">• application based on national legislation	<ul style="list-style-type: none">• application based on private contracts
<ul style="list-style-type: none">• direct enforcement	<ul style="list-style-type: none">• indirect enforcement

In the field of State Aid some International Cooperation should be mentioned:

- Organisation of several PHARE-Twinning-Projects in the pre-accession phase of Candidate Countries (project leader in Slovakia 2001 to 2002, junior partner in Slovenia 2001 to 2002 as well as in Bulgaria 2001 to 2002 and 2004 to 2005) Contribution to the Twinning-Project of FCA in Moldavia
- Missions and study visits under TAIEX-programmes
- Attendance in the European Regional Policy Research Consortium of the European Policy Research Centre (EPRC) of the University of Strathclyde, Glasgow
- Participation in multilateral conferences (e. g. “Competition Day“, “State Aid Day“)

Corner Pillars of recent EU State Aid Policy

- ➡ Council Conclusions on MS measures aiming at “Less and better-targeted State Aid“; 1 % benchmark
- ➡ Follow-up of the reform programme under the “State Aid Action Plan 2005 – 2009“
- ➡ Enhanced “Economization“ of State Aid surveillance similar to the practice in antitrust and merger control
- ➡ EU 2020 Strategy
- ➡ Budgeting and planning of the forthcoming “Programming Period“ 2014 – 2020.

Focal Points and Perspectives in EU State Aid Law

- ▶ Measures against the crisis on the financial markets and the real economy
 - ▶ After termination of the “State Aid Action Plan 2005 – 2009“ current revision and preparation of amendments for the period after 2013 (e. g. General Block Exemption Regulation, Regional Aid Guidelines, Community Framework for State Aid to Research, Development and Innovation, Guidelines for Risk Capital Aid to SMEs)
 - ▶ Emphasis on enforcement of aid decisions at MS level, both by private and by public parties
 - ▶ Alleviation in ex ante proceedings, but intensification of ex post monitoring requirements

Typical Obligations for a Candidate Country under Chapter 8 in the Pre-Accession Phase:

- Institution building: “independent body“ empowered with all functions of surveillance in the field of State Aid
- Drawing up a list of “Existing Aid“ (schemes and cases)
 - Preparation of a regional aid map as basis for the granting of investment aid under regional and SME derogations
 - Elaboration of privatisation and restructuring plans
 - Screening of subsidy forms applied, in particular tax reliefs and guarantees
 - Permanent monitoring and updating of progress

Closing remarks

First of all I would like to thank all the members my team¹² for their preparation and support during the Round Table! Also I would like to thank all speakers and participants for coming and for their big input and all the very useful contributions!

Hassan Qaqaya started the Round Table and every country gave a very interesting insight look into the competition enforcement situation in their country.

Juan Rivière gave experienced input about the relations and possible fields of cooperation in the whole region.

Marco Botta gave a very good overview of the institutional structures in the different countries.

President Kaldirimci gave a very profound look into the experience of the Turkish Authority and explained how relatively young competition agencies experience have many common challenges especially in the first years of enforcement but that it seems possible that those difficulties can be resolved in a short time.

John Davies explained the role of the OECD and how competition authorities can help creating long-run economic success for their countries.

Maher Dabbah highlighted how merger Control is very heterogeneously developed in Mediterranean Countries and that a lot of improvements have to take place to reach a level playing field.

Commissioner Hahn, who honoured us with his participation, mentioned the importance of cooperation and assured support by the European Commission.

Finally, **Giorgio Monti** and **Roland Schachl** showed the complementarities between state aid and competition law and showed the importance of state aid control.

Please allow me to draw some overall conclusions from the Round Table:

As discussions were so rich, the idea came to my mind that we should sum up all the discussions we had in these two days. This will also help, that the output of this conference is sustainable. We will send the summary in the form of a "Vienna report" to all of you.

I think that this meeting was a very good starting point for further discussions on competition affaires and it seems to be, that it is necessary, that some points, raised by the contributions of speakers and participants should be discussed in further detail.

¹² Natalie Harsdorf Enderndorf, Sigrid Tresnak, Veronika Haubner, Daniela Trampert-Paparella, Angelika Zauner, Marlene Weiss, Sandra Frank, Rainer Kaltenbrunner, Peter Fink, Bernhard Schandel.

It would be useful for all of us and the whole competition community that the results of this conference are distributed to the competition communities. On the one hand there should be a report to the competition committee of OECD in February 2012, on the other hand a report should be also given to the competition committee of UNCTAD and to the European Commission.

Hopefully the Vienna report of this Round Table will allow for the output of this conference to have some long-term value. Also Juan Rivi re agreed to publish the Report in the Mediterranean Bulletin.

May I formulate five key messages we have discussed:

- This Conference should be the starting point for a follow up meeting for in deepened discussions.
- Awareness of competition regulation seems a big problem everywhere. Therefore some sort of competition awareness package should be compiled and distributed.
- There is a need to promote the value and broaden the understanding of competition law and competition culture.
- It seems necessary to create quick win-win situations to ensure support.
- It is important to get in contact with the courts and judges.

Thank you!

Theodor Thanner
Director General

**Competition law enforcement in the Mediterranean countries:
Challenges and Future Perspectives**

Participants

Name - Surname	Institution	Current position	Country
Ms. Natalie Harsdorf	BWB	Case handler	Austria
Ms. Veronika Haubner	BWB	Case handler	Austria
Mr. Peter Fink	BWB	Case Handler	Austria
Mr. Theodor Thanner	BWB	Director General	Austria
Ms. Daniela Trampert	BWB	Case handler	Austria
Ms. Sigrid Tresnak	BWB	Case handler	Austria
Mr. Roland Schachl	Ministry of Economy	Head of Unit EU State Aid Law	Austria
Mr. Marco Botta	Institut für Europäische Integrationsforschung	Researcher	Austria
Mr. Johannes Hahn	European Commission	Commissioner for Regional Policy	Brussels
Mr. Stefan Zotti	European Commission	Cabinet Hahn	Brussels
Ms. Maida Campara	Council of Competition	Member of the Council	Bosnia & Herzegovina
Ms. Gordana Zivkovic	Council of Competition	Member of the Council	
Ms Milena Kazakova	Commission for the Protection of Competition	Senior expert	Bulgaria
Mr. Petko Nikolov	Commission for the Protection of Competition	Chairman	Bulgaria
Mrs Loukia Christodoulou	Commission for the Protection of Competition	Acting Chair Woman	Cyprus
Mr. Juan Riviere	European Commission	Policy and Strategy Adviser DG COMP	Brussels
Mr. Ahmed Salem	Competition Authority	ECA -Economist	Egypt
Mr Ayman Shafei	Competition Authority	ECA	Egypt
Ms Mona Yassine	Association for the Protection of Competition	Vice Chairman	Egypt
Mr. Abdullah Al Mraished		Economic Researcher	Jordan
Mr. Asem Bani Faris		Economic Researcher	Jordan
Mr. Mohammed AL- Zoube	Min Industry & Trade	Legal Researcher	Jordan
Mr. Giorgio Monti	European University Institute	Professor	Italy
Ass.Prof. Servete Gruda	Competition Authority	Commissioner	Albania
Ass.Prof. Lindita Milo	Competition Authority	Chairwoman	Albania
Mr. Gani Asllani	Kosovo Competition Commission	Member of the Commission	Kosovo
Dr. Sabri Kiqmari	Embassy of Kosovo	Ambassador	Kosovo
Mr. Hallt Shabani	Kosovo Competition Commission	Member of the Commission	Kosovo
Mr. Ali Berro	Ministry of Economy and Trade	Director of Technical Center for Pricing Policies	Lebanon
Ms Rita Feghali	Ministry of Economy & Trade	Senior Legal Trade Specialist UNDP Project-	Lebanon
Mr. Abdelali Benamour	Competition Council	President	Morocco

BWB

Mrs. Jihan Bennis	Competition Council	Case handler	Morocco
Mr. Khalid El Bouayachi	Conseil de la concurrence	Directeur des Instructions	Morocco
Mr. John Davies	Competition Division	Head	OECD
Mr. Kamal Arili	Embassy of Morocco	Counselor	Morocco
Mr. Mazan Alhroub		Legal Assistant	Palestine
Mrs. Vesna Besarovic	Commission for the Protection of Competition	Member of the Council	Serbia
Mr. Dragan Penezic		Head International Coop Division	Serbia
Dr. oec Rafael Corazza	Switzerland Comp	Director	Switzerland
Mr. Anwar Ali	Competition Commission	General Director of	Syria
Ms Medya Hami	Competition Commission	Manager communication & IT	Syria
Mr. Wajih Al-Khoury	Competition Commission	Manager Policies legislation	Syria
Mr. Fethi Fadhli	Ministère Direction de la Concurrence & Enquêtes	Director General	Tunesia
Mr. Mohamed Faouzi Ben Hammed	Conseil de la Concurrence	President	Tunesia
Mr. Nurettin Kaldirimci	Competition Authority	President	Turkey
Mr. Murat Çetincaya	Competition Authority	Member of the Board	Turkey
Mrs. Lerzan Kayihan Unal	Competition Authority	Director Inter Relations	Turkey
Mr. Maher Dabbah	Queen Mary University	Barrister	UK
Mrs. Ulla Schwager	Competition & Consumers branch		UNCTAD
Mr. Hassan Qaqaya	Competition & Consumers policies branch	Head	UNCTAD

Competition Web pages

<p>Austria www.bwb.gv.at http://www.en.bwb.gv.at/Seiten/default.aspx</p> <p>Bulgaria http://www.cpc.bg/default.aspx</p> <p>Cyprus http://www.competition.gov.cy/competition/competiti on.nsf/index_en/index_en?opendocument</p> <p>European Commission www.ec.europa.eu/competition</p> <p>Switzerland http://www.weko.admin.ch/</p> <p>UNCTAD http://www.unctad.org/competition</p> <p>Egypt www.eca.org.eg/ECA/default.aspx</p> <p>Israel www.antitrust.gov.il/eng/</p> <p>Jordan www.mit.gov.jo/Default.aspx?tabid=527</p> <p>Liban www.economy.gov.lb</p> <p>Maroc proweb-media.com/projets/conseilconcurrence/wordpress/</p> <p>Syria competition.gov.sy/english/home.html</p> <p>Tunisie Conseil www.commerce.gov.tn/conseils.htm</p> <p>Turkey www.rekabet.gov.tr/index.php?Lang=EN</p>	<p>Albania www.caa.gov.al/default.asp?l=1</p> <p>Bosnia & Herzegovina www.bihkonk.gov.ba/en</p> <p>Croatia www.aztn.hr/eng/onama.htm</p> <p>Macedonia www.kzk.gov.mk/eng/index.asp</p> <p>Moldova www.anpc.md/index_en.php</p> <p>Republic of Serbia www.kzk.org.rs/en/</p> <p>OECD http://www.oecd.org/topic/0,3699,en_2649_37463_1_1_1_1_37463,00.html</p>
--	---

Programme

1st and 2nd December, 2011

1st December

13.00-
13.40

Registration & Coffee

13.40 – 13.50

Opening remarks

DG Theodor Thanner, Federal Austrian Competition Authority
Welcome /Introduction

13.50 - 15.30

Topic I: "The role of competition law and policy in economic development - the perspective of North African and Arab countries: Heads of competition agencies to discuss the challenges and opportunities facing them"

Speech to open the debate: **Hassan Qaqaya, UNCTAD**

15.30-
16.00

Coffee

16.00-
17.30

Topic II: "Relationship between the EU and the Mediterranean countries: Towards a closer Cooperation?"

Speech to open the debate: **Juan Riviere, European Commission, Brussels**

17.30-
19.00

Topic III: "NCAs and other State Actors: Understanding and Misunderstandings of Competition Law"

19.00-
19.15
19.30

Speech to open the debate: **Marco Botta, PhD (EUI), Akademie der Wissenschaften, Vienna**
Transfer from the Conference Location to the Evening Location

Start Evening Programme at the "Augustinerkeller", Augustinerstrasse 1, 1010 Wien

Invitation by the Mayor of Vienna and the Federal Competition Authority

2nd December

08.45-
10.15

Topic IV: "Fighting Cartels and Abuse of Dominance- Enforcement Challenges faced by the NCAs"

Speech to open the debate: **President Prof. Nurettin Kaldırımçı, Turkish Competition Authority**

BWB

10.15- 10.30	Coffee
10.30- 11:50	Topic V: The Importance of Competition Law and Policy for Investors: Impact on Key Sectors Speech to open the debate: John Davies, OECD, Paris
11.50- 12.10	Speech EU Commissioner: Dr. Johannes Hahn
12.10- 13.00	Lunch Topic VI: "Merger control: challenges and opportunities"
13.00- 14.15	Speech to open the debate: Professor Dr. Maher Dabbah, PhD, Queen Mary University, London Topic VII: "State Aid Control- the way forward in the Mediterranean countries"
14.15- 15.30	Panel: Professor Giorgio Monti, EUI, Florence and Dr. Roland Schachl, Head of State Aid Department, Federal Ministry of Economy, Family and Youth, Vienna

OECD Guidelines for Multinational Enterprises¹³

The Investment Committee shall engage with non-adhering countries on matters covered by the Guidelines in order to promote responsible business conduct worldwide in accordance with the Guidelines and to create a level playing field. It shall also strive to co-operate with non-adhering countries that have a special interest in the Guidelines and in promoting their principles and standards¹⁴.

Competition¹⁵

Enterprises should:

1. Carry out their activities in a manner consistent with all applicable competition laws and regulations, taking into account the competition laws of all jurisdictions in which the activities may have anticompetitive effects.
2. Refrain from entering into or carrying out anti-competitive agreements among competitors, including agreements to:
 - a) fix prices;
 - b) make rigged bids (collusive tenders);
 - c) establish output restrictions or quotas; or
 - d) share or divide markets by allocating customers, suppliers, territories or lines of commerce.
3. Co-operate with investigating competition authorities by, among other things and subject to applicable law and appropriate safeguards, providing responses as promptly and completely as practicable to requests for information, and considering the use of available instruments, such as waivers of confidentiality where appropriate, to promote effective and efficient co-operation among investigating authorities.
4. Regularly promote employee awareness of the importance of compliance with all applicable competition laws and regulations, and, in particular, train senior management of the enterprise in relation to competition issues.

Commentary on Competition

¹³ <http://www.oecd.org/dataoecd/43/29/48004323.pdf>

¹⁴ Guidelines page 68

¹⁵ Guidelines chapter X pages 57-59

These recommendations emphasise the importance of competition laws and regulations to the efficient operation of both domestic and international markets and reaffirm the importance of compliance with those laws and regulations by domestic and multinational enterprises.

They also seek to ensure that all enterprises are aware of developments concerning the scope, remedies and sanctions of competition laws and the extent of co-operation among competition authorities. The term “competition” law is used to refer to laws, including both “antitrust” and “antimonopoly” laws, that variously prohibit:

- a) anti-competitive agreements;
- b) the abuse of market power or of dominance;
- c) the acquisition of market power or dominance by means other than efficient performance; or
- d) the substantial lessening of competition or the significant impeding of effective competition through mergers or acquisitions.

In general, competition laws and policies prohibit:

- a) hard core cartels;
- b) other anti-competitive agreements;
- c) anti-competitive conduct that exploits or extends market dominance or market power; and
- d) anticompetitive mergers and acquisitions.

Under the 1998 Recommendation of the OECD Council Concerning Effective Action Against Hard Core Cartels, C(98)35/FINAL, the anticompetitive agreements referred to in sub a) constitute hard core cartels, but the Recommendation incorporates differences in member countries’ laws, including differences in the laws’ exemptions or provisions allowing for an exception or authorisation for activity that might otherwise be prohibited. The recommendations in these *Guidelines* do not suggest that enterprises should forego availing themselves of such legally available exemptions or provisions.

The categories sub b) and c) are more general because the effects of other kinds of agreements and of unilateral conduct are more ambiguous, and there is less consensus on what should be considered anti-competitive.

The goal of competition policy is to contribute to overall welfare and economic growth by promoting market conditions in which the nature, quality, and price of goods and services are determined by competitive market forces. In addition to benefiting consumers and a jurisdiction’s economy as a whole, such a competitive environment rewards enterprises that respond efficiently to consumer

demand. Enterprises can contribute to this process by providing information and advice when governments are considering laws and policies that might reduce efficiency or otherwise reduce the competitiveness of markets.

Enterprises should be aware that competition laws continue to be enacted, and that it is increasingly common for those laws to prohibit anti-competitive activities that occur abroad if they have a harmful impact on domestic consumers. Moreover, cross-border trade and investment makes it more likely that anti-competitive conduct taking place in one jurisdiction will have harmful effects in other jurisdictions.

Enterprises should therefore take into account both the law of the country in which they are operating and the laws of all countries in which the effects of their conduct are likely to be felt.

Finally, enterprises should recognise that competition authorities are engaging in more and deeper co-operation in investigating and challenging anti-competitive activity. See generally: Recommendation of the Council Concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade, C(95)130/FINAL; Recommendation of the Council on Merger Review, C(2005)34. When the competition authorities of various jurisdictions are reviewing the same conduct, enterprises' facilitation of cooperation among the authorities promotes consistent and sound decision-making and competitive remedies while also permitting cost savings for governments and enterprises.



Sigrid Tresnak and DG Theodor Thanner



Sigrid Tresnak, DG Theodor Thanner, John Davies, Commissioner Johannes Hahn, Stefan Zotti



Maher Dabbah, Daniela Trampert, Sigrid Tresnak



Participants group with Commissioner Johannes Hahn and DG Theodor Thanner



Juan Rivière, Shafei Ayman, Salem Ahmed



Presentation of President Nurettin Kaldirimci



DG Theodor Thanner and Juan Rivière



Rita Feghali, Hassan Qaqaya, Natalie Harsdorf, Jihan Bennis



President Abdelali Benamour, Khalid El Bouayachi, Natalie Harsdorf



Gani Asllani, Petko Nikolov, Milena Kazakova, Halit Shabani, Stefan Keznickl




Hassan Qaqaya, Marco Botta, Rafael Corazza, Mona Yassine, Juan Rivière, Ayman Shafei, Ahmed Salem, Dragan Penezic, Maida Campara, Gordana Zivkovic



Ahmed Salem, Ayman Shafei, Halit Shabani, Dragan Penezic, Nurettin Kaldirimci



Speakers CV's

	<p>Dr. Theodor Thanner Director General Federal Austrian Competition Authority Bundeswettbewerbsbehörde Praterstraße 31 (Galaxy Tower) A-1020 Vienna Tel:+43 (0)1 245 08 - 0 Fax:+43 (0)1 587 42 00 wettbewerb@bwb.gv.at www.bwb.gv.at</p>
---	--

Theodor Thanner

Born in 1960 in Salzburg/Austria

1982 Juris Doctor, University of Salzburg, School of Law

1983 State Government of Salzburg

1991 Federal Chancellery, Bureau of Federal Minister of Federalism and Administrative Reform

1995 State Government of Salzburg, Head of Bureau of Governor of Salzburg

1997 Personal Adviser to Federal Minister of Defence

2000 Federal Ministry of the Interior, Head of cabinet of the Minister, Head of Directorate General for General Matters, Head of Directorate General for Legal Affairs

2006 State Government of Salzburg, Head of Section for Elections and Security

Since 1 July **2007 Federal Competition Authority, Director General**

Affiliations: Editor of the Austrian Journal for Competition Law, Member of the Public Procurement Office, Member of Board for Data Protection Affairs, Member of the Supreme Court for Patent and Trademark Law, Author of numerous publications concerning constitutional, antitrust, electoral and administrative law.

EU Commissioner Johannes Hahn



Personal details

- Austrian
- Born December 2, 1957 in Vienna, Austria
- Married with one son

Political career

- January 2007 - January 2010: Federal Minister for Science and Research
- December 2008-January 2009: acting Federal Minister for Justice
- 2003-2007: Member of the Regional Government of Vienna
- 1996-2003: Member of Regional Parliament of Vienna

Professional career


- 1997-2003: Board Member, later CEO of Novomatic AG
- 1992-1997: Executive Director of the Austrian's People Party Vienna
- 1989-1992: Managerial functions in different areas of Austrian industry
- 1987-1989: Secretary General of the Austrian Managers Association (Wirtschaftsforum der Führungskräfte)
- 1985-1987: Employee of the Federation of Austrian Industries

Education

- 1987: Graduated with a Doctorate in philosophy (University of Vienna)
- 1975: Graduated from high school

Languages

- German: mother tongue
- English: thorough knowledge

	<p>Hassan QAQAYA Head, Competition law and Policy Branch UNCTAD hassan.qaqava@unctad.org Tel ++4122-9075494 Fax ++41229070247 www.unctad.org/competition.</p>
---	--

Hassan QAQAYA is the Head of United Nations Competition law and Consumer Policies programme. He holds a Post graduate degree in Economics, LSE, and an LLM, UNIL. He has been with UNCTAD since 1981, first in the division on Money, finance and Development, Globalization division and later in the Division on International trade in Goods and Services. He was the Chief of UNCTAD's Competition law and policy advisory services for 12 years. He has advised developing countries on the formulation and enforcement of national Consumer protection and competition laws, setting up competition and Consumer protection agencies, institutional building, application guidelines and training of trainers for case handlers and adjudicators. In this capacity he worked over the last twenty five year in Africa (Angola, Botswana, Benin, Burkina Faso, Ghana, Kenya, Lesotho, Malawi, Mali, Mozambique, Rwanda, Tunisia, Tanzania, South Africa, Swaziland, Zambia and Uganda), Asia (Bhutan, Cambodia, China People Rep of, Indonesia, Laos, Malaysia, Thailand, Sri Lanka, Vietnam and the Middle East (Egypt, Jordan, Lebanon, Oman, Saudi Arabia, and Syria and North Africa (Mauritania, Algeria and Tunisia), Latin America (Brazil, Bolivia, Colombia, Dominican Rep, Ecuador, El Salvador, Nicaragua, Paraguay and Peru. He has written extensively on competition law and Consumer Policies, particularly on the development dimension of consumer protection and competition laws. See www.unctad.org/competition. This work includes drafting consumer protection laws, competition laws, commentaries on revisions of existing laws, application guidelines and institutional arrangements for the enforcement of consumer protection and competition laws; reports and studies for the UNCTAD Annual Intergovernmental Group of Experts Competition law and Policy; prepared training material for trainers in this area ; advise on handling consumer protection and competition law cases; lectures in international conferences and seminars on issues of interest to developing countries.

For over a decade, he was the team leader of the advisory services and capacity building work programme which UNCTAD extended to developing countries during the WTO negotiations on Singapore issues.

BWB

	<p>Juan Antonio Rivière Martí Adviser, Directorate General Competition. J-70 0/171 European Commission 1049 Brussels. Belgium Tel: +322.295.1146 Juan.riviere@ec.europa.eu</p>
---	--

1995-2011

Policy and Strategy Adviser - Directorate General for Competition, European Commission

International relations Adviser on competition : Trade agreements , the Union for the Mediterranean / Mediterranean partnership framework, the Gulf Countries Council and Latin-America (Mexico, Chile, MERCOSUR, CAN, Central America). Supporting technical assistance programs.

Consumer Liaison Officer (2004-2008) Competition relations with consumer organisations.

Promoting European Competition Days with EU NCA's (2004-2010).

Coordinating relations with the European Ombudsman (1997-2009)

Organising directors generals meetings EU-NCA-National Competition Authorities (1995-2002)

Chair - EU Competition Advisory Committee with NCA (1995-2002).

1987-1995

Head of Unit - Merger Task Force DG Competition

Head of Unit - ECSC Agreements, abuse of dominant position & Mergers DG Competition

Head of Division - Investments opinions and industrial loans DG Economic affairs

Lawyer, member Barcelona Bar 1981.

Licenciado en Derecho – Universidad de Deusto (Bilbao)

Studies at the College of Europe (Brujes) & Institute of World Affairs (Connecticut)

Editor

BLC - Boletín Latinoamericano de Competencia

<http://ec.europa.eu/comm/competition/publications/blc/index.html>

MCB - Mediterranean Competition Bulletin MCB

<http://ec.europa.eu/competition/publications/mediterranean/index.html>

<http://www.meda-comp.net/>

	<p>Marco Botta, PhD</p> <p>Institut für Europäische Integrationsforschung, Strohgasse 45/DG, 1030 Vienna (Austria)</p> <p>Tel Austria: 0043/68120708491 Tel Italy: 0039/3485820355 Email: marco.botta@leui.eu</p>
---	---

Since May 2011, I have been working as researcher in the Institute for European Integration of the Austrian Academy of Sciences, Vienna (Austria).

In March 2010, I defended my PhD in the Law Department of the European University Institute, Florence (Italy). My research interest focuses on competition law in the emerging economies, with a geographic interest on Latin America, South-East Europe and the Mediterranean countries. The title of my doctoral thesis was 'Merger Control Regimes in Emerging Economies. A Case Study on Brazil and Argentina'. In order to conduct field research for my PhD thesis, between April and July 2008 I was visiting scholar at the Universidad San Andrés in Buenos Aires. My doctoral thesis was published in January 2011 as monograph by Kluwer Law International.

Before joining the Austrian Academy of Sciences, I worked as research assistant in the Communications & Media Area of the Florence School of Regulation, research institute on the liberalization of network industries in Europe (October 2010/April 2011). In addition, between 2008 and 2010 I cooperated with the legal database Caselex, summarizing the majority of the Italian judgments in the field of competition law. Furthermore, between April and July 2010 I gained a teaching experience in EU Law at Utrecht University (the Netherlands). Finally, in the past I also had internship experiences in the European Commission in Brussels, as well as in the Italian Diplomatic Mission at the OSCE in Vienna.

Prof. Dr. Nurettin KALDIRIMCI

President of the Turkish Competition Authority
3 October 1953
Yahyah/Kayseri
Married with 3 children

EDUCATION

Atatürk University, Faculty of Business Administration

POSITIONS HELD

1977 Ministry of National Education, Financing and Project Administration Expert
1977 - 1982 Atatürk University, Faculty of Business Administration
(Research Assistant- Doctoral Assistant)
1982 - 1995 Erciyes University, Member of Faculty at the Faculty of Economic and
Administrative Sciences
1982 Assistant Professor
1987 Associate Professor
1994 Full Professor

Served at Erciyes University, as the Head of Department of Foreign Languages and as the Head of
Management and Organization Major at the Department of Business Administration of the Faculty of
Economic and Administrative Sciences

1995 - 1999 Member of Parliament for Kayseri during the 20 Legislative Term,
Member of Plan and Budget Commission, Assistant Chair of TGNA (Turkish Grand National
Assembly) Information and Information Technologies Group
2003 - 2007 Member of the Competition Board
02.11.2007 President of the Competition Board
2009 Member of the Competition Board and Acting President
31.12.2009 President of the Competition Board

FOREIGN LANGUAGE

English

PUBLICATIONS

He has articles, researches and studies on Organizational Behavior, Business Management,
Participation in Management, Training of Administrators and Business Policy.

	<p>Maher M. Dabbah Director Interdisciplinary Centre for Competition Queen Mary University of London United Kingdom</p>
---	--

Maher M. Dabbah specialises in the field of antitrust and competition and is the founder and director of the Interdisciplinary Centre for Competition Law and Policy (ICC), Queen Mary, University of London. He has published widely in this field and is the author of several books dealing with national, regional and global competition law and policy. Among his books are *International and Comparative Competition Law* (Cambridge, 2010), *the Internationalisation of Antitrust Policy* (Cambridge, 2003), *EC and UK Competition Law* (Cambridge, 2004) and *Competition Law and Policy in the Middle East* (Cambridge, 2007). He is also the General Editor (with Paul Lasok QC) of *Merger Control Worldwide* (Cambridge, 2005) and (with Barry Hawk) of *Anti-cartel Enforcement Worldwide* (Cambridge, 2009).

Maher acts as special counsel and consultant to several governments, international organisations and large businesses and is involved in the training of government officials, judges, lawyers and economists from over thirty countries in the field of competition law. Maher has initiated and coordinated several projects looking into possible reform of the competition laws of several countries around the world. Maher is also the Series Editor (with Barry Hawk) for *Antitrust and Competition* at Cambridge University Press and a barrister of the Middle Temple.

JOHN DAVIES
OECD

John Davies is an economist specialising in the areas of competition policy and economic regulation

After taking degrees in economics from Cambridge and Oxford, he worked as a consulting economist from 1994 to 2003 for various firms. In this role he advised clients in the private and public sectors on mergers, abuse of monopoly, network regulation, privatisation and optimal tariff-setting

In 2003 he joined the UK Competition Commission as deputy Chief Economist, becoming Chief Economist in 2005. He managed a team of 20 to 30 economists and was responsible for the quality of the economic analysis on investigations. This was a period in which the CC took on new responsibilities under the 2002 Enterprise Act and undertook major investigations involving significant economic analysis. Notable cases included the market investigations of Groceries and Airports, the BskyB/ITV merger inquiry and a regulatory inquiry into mobile telephony.

At the start of 2009 John took up a two-year post to establish the new Competition Commission of Mauritius as its first Executive Director. This is a chief executive role, responsible for all aspects of running the institution, and carries with it formal responsibility for initiating, carrying out and then reporting on competition investigations, for final decision by a board of commissioners. The CCM became fully operational before the end of the year, and he led the new institution through its first year of work, investigating sectors including meat imports, insurance, travel agents, banks and telecoms.


In May 2011, John became Head of the Competition Division of the OECD in Paris. The division supports the work of the Competition Committee of the OECD, through analytical work for discussion at the Committee as well as advisory and assistant work to member countries and 'outreach' work to non-member countries. The division supports an annual 'global forum' for competition officials from around 100 jurisdictions.

**Giorgio Monti**

Professor of Competition Law
EUI European University Institute
Florence, Italy

Giorgio Monti is Professor of Competition Law at the EUI and holds the Chair jointly with the Law Department and the Robert Schuman Centre. Before joining EUI in 2010 he worked at the London School of Economics for ten years. His research interests are mainly in the field of competition law and market regulation.

He is the author of *EC Competition Law* (2007) published in the Law in Context Series of Cambridge University Press. This book considers the political, economic and institutional factors that affect the development of competition law. He is co-author of a major text on EU Law (Chalmers, Davies and Monti *European Union Law: text and materials* 2nd ed (2010)). He has written chapters on competition law, equal opportunities law and external relations. His present research is on the theoretical foundations of competition law; the role of utilities regulation in liberalised markets; and the role of state aid law in the economic crisis.

	<p>MR Mag. Dr. Roland Julian SCHACHL Federal Ministry of Economy, Family and Youth, Division "EU State Aid Law" Head of Unit Vienna</p>
---	--

Date of Birth: 12 March 1967

Place of Birth: Vienna

University Education:

1986 -1993: Degree studies in Business Administration,
Vienna University of Economics and Business Administration
March 1993: Master Degree in Social and Economic Sciences
1993 -1996: Doctoral studies in Business Administration
Vienna University of Economics and Business Administration
March 1996: Doctor Degree in Social and Economic Sciences
1993 -1997: University course "Export 2000",
Vienna University of Economics and Business Administration
June 1997: "Certified Academic Export Merchant" Degree

Professional Experience:

Oct. 1996 -
- April 2003: Federal Chancellery, Division "Structural and State Aid Policy",
Unit "State Aid Coordination and International Notifications"
Case Handler
May 2003 - : Federal Ministry of Economy and Labour,
Division "EU State Aid Law"
Deputy Head of Unit
May 2008 - : Federal Ministry of Economy, Family and Youth,
Division "EU State Aid Law"
Head of Unit

International Experience:

- Austrian representative in the field of State Aid Law at EU level
- Technical assistance for Candidate Countries within the framework of TAIEX
- Participation in several Twinning Projects on State Aid (Slovakia 2001 - 2002, Slovenia 2001 - 2002, Bulgaria 2001 - 2002 and 2004 - 2005) as well as on Competition (currently operated by Federal Competition Authority in Moldavia)