

**Intergovernmental Group of Experts on Competition Law
and Policy
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**Roundtable on:
Capacity-Building and the UNCTAD Voluntary
Peer Review as a capacity-building tool**

**Contribution
by
Serbia**

The views expressed are those of the author and do not necessarily reflect the views of
UNCTAD.

Introduction:

1. Competition Law and Policy still represents relative novelty in the majority of jurisdictions especially within ex communistic countries.
2. Novelties, and competition law and policy can be estimated as such; usually face different situations according to which the process of introduction and acceptance can sometimes be burdensome, sometimes there might be a lack of political consensus for new developments, especially if such developments lead to specific changes in national economies.
3. Introduction of competition law and policy, the basic element of a market economy, in any case represent a significant change in understanding how economies work.
4. Sometimes it is not so easy to present the benefits of sound competition law and policy to all: policy and decision makers, participants on the market including consumers, expert and general public.
5. Sometimes the society might be quite reluctant in accepting new ideas, especially if such ideas come from inside; due to different reasons people tend to believe somebody from outside rather the one from inside.
6. There are different kinds of providing relevant information according to which competition law and policy may be identified as inevitable element for the existence of market economy and economic and political stability as well as the progress of national economy and its competitiveness.

Peer review and its effects on competition law enforcement in Serbia:

7. In the course of international cooperation specific recommendations, technical assistance programs and other means may represent fruitful tools for smoother introduction of competition law and policy as well as its development, however peer reviews represent the most complex tool for both, detailed analysis and evaluation of the situation in the particular country, subject to the peer review, as well as for providing relevant expert opinion for all stakeholders.
8. **Voluntary peer review of Serbia can be estimated as one of the milestones in the recent development of Competition law and policy of Serbia** as it provided for a very detailed analysis of the state of play as well as for useful recommendations.
9. Needless to say, **the voluntary peer review of Serbia also represents a very important document for Competition advocacy and general awareness raising and is considered to be, together with other technical assistance programs and our own conclusions, an important trigger for the latest developments in legislative framework, institutional capacities and implementation.**

10. **The findings and recommendations as determined in the UNCTAD voluntary peer review of Serbia represent a road-map for further development of the Serbian competition law and policy.**
11. As the peer review was just recently finished it cannot be expected that all recommendations could be followed until now, however it can be estimated that both, **peer review as such and the recommendations thereto as well, represent useful and applicable guidance for further development** in legislative framework, capacity building and implementation.

Specific recommendations and the outcomes:

12. The recommendations can be divided in three different groups:

- Competition Law Enforcement
- Regulatory issue and competition policy
- Other issues (like related policies, education etc.);

hereunder we will elaborate on some UNCTAD peer review recommendations:

13. Provide the SCPC with predictable, stable and adequate financial resources:

One of the recommendations was to provide the SCPC (Serbian Commission for Protection of Competition) with predictable, stable and adequate financial resources. Currently, the financial stability is secured, however as certain unpredictable occurrences cannot be foreseen in advance the draft amendments to the existing Competition Law, that has already been put into the legislative process provides for additional security with clear definition of reserves, however we will still elaborate for additional solutions.

14. Amend Article 57 (4) and (5) in a way that the CPC does not bear the financial risk that fines are decreased or revoked by the Administrative Court:

One of the basic amendments of the new draft deals with the severe problem of interests and other financial risks that follow after annulment or decreasing of the fines; it is up to the legislative process when the amendments will be applied; realistic estimation is that it can happen in autumn this year.

15. Establish models for basic legal documents and elaborate guidelines for procedures of the SCPC:

Under technical assistance of the EU funded project "Strengthening the institutional capacity of the Commission for Protection of Competition, specific components are designed and there are extensive activities on design and (future) application of case management system and operational data base provided by both, the technical assistance project team as well as the CPC staff.

16. Train SCPC personnel and acquire tools for conducting dawn-raids:

Special programs for trainings have been developed and trainings of how to conduct dawn-raids was elaborated into detail, based on the relevant legislation and experience from different jurisdictions in order to provide for high professional level of operation.

In addition to that specific equipment for IT forensics was purchased and specialized trainings for case-handlers have already been executed; however, it is a steady learning process.

17. Training of judges of the Administrative Court:

Extensive training program for judges of the Administrative Court started in April 2013 and will last until October 2013. The program deals with basic elements of Competition law and Policy as well as Competition economics; after this program will be completed we already plan to launch a complimentary program, focused on detailed elaboration of the EC/ECJ "Landmark decisions" as well as selected decisions of the EU member states competition authorities and national courts as well as other important decisions. The program has been prepared and coordinated with the existing on-going one.

18. Further aligning Serbian Competition Law with EU Laws:

A specific part of the mentioned draft amendments of the current competition act, as determined hereinabove, is dedicated to the further alignment of the Serbian Competition Law with EU Acquis; redesign of the stipulations with regard to a definition of a dominant position, statute of limitations and introduction of a "commitment" decision represent just few of proposed improvements for further legal alignment.

19. Strengthen policies to fight bid-rigging in procurement throughout all central and local Government:

There is a specific program of awareness raising as well as providing necessary tools to fight bid-rigging developed by the CPC and the EU-SCS Project team and a set of seminars, workshops and other training activities have been agreed with the Chamber of Economy and Commerce in a special program; the Chamber of Economy and Commerce was chosen as a partner as it can provide for all-national infrastructure and thus ensure broad access of interested parties.

20. Continue the effort of advocacy in competition policy among economic agents in Serbia:

As already mentioned hereinabove the Chamber of Economy and Commerce proved to be a reliable partner and that is why also the advocacy (and awareness raising) activities are planned to be organized in cooperation with it; the comprehensive program that includes also the topics like competition economics etc. and that will focus also on Corporate/Competition compliance programs was designed and agreed by the partners and will start in September 2013.

21. Institute courses of industrial organization and Competition Law and Economics in Law Schools and Economics Departments at post-graduate level:

Certain curricula and syllabus have been designed, there is a special course (post graduate studies that includes Competition Law and Policy) organized at the Law Faculty in Belgrade. For summer 2014 there is a plan to organize "Competition Summer School" in Belgrade in order to attract young professionals and to create a broader basis of competition experts.

Recommendations for the UNCTAD Peer Review process:

22. The idea to identify the areas to be more precisely focused on in the future peer review processes seems to be very interesting as the competition law and policy, although having a top importance, cannot be reviewed by itself only, but also in a broader sense, with related sectors and/or policies that may have a significant impact on competition and economy as such, especially when in close correlation with competition law and policy.
23. Some of specific areas may be the following, having in mind that public procurement (due to bid-rigging) somehow already counts to the basic topic (competition):
 - Competition and Intellectual Property rights
 - Competition and Trade Policy with special regard to trade defense instruments
 - Exclusive and granted rights
24. Competition and Intellectual Property rights:

Intellectual property rights represent a specific challenge as on one hand they correctly provide the protection for sensitive intellectual property, yet on the other hand such protection provides for a specific position on the market, close to legal monopoly; the problem may arise when such privileged position can be misunderstood and as a result may be abused, like some cases, especially in pharmaceutical sector show us.
25. Competition and Trade Policy with special regard to trade defense instruments:

Trade Policy may sometimes be wrongly understood as trade defense policy and can be misused as a tool for measures of protectionism. Special safeguards and even antidumping procedures can be used in order to introduce entry barriers what is opposite to the basic trade policy and trade defense instruments and having negative effects on competition.
26. Exclusive granted rights:

Exclusive granted rights represent a specific instrument according to which certain undertaking has a specific position on the market, close to legal monopoly. Two specific issues should always be observed (unfortunately not always the case): granted rights should be limited to the scope of fulfillment public interest only and the exclusive rights should be granted on a transparent, clearly prescribed in advance, way.

Conclusion:

27. Peer review is a very useful tool for several purposes. It identifies the state of play in the country and/or institution, provides for critical analysis and recommendations. On the other hand peer review report is a precious document for broader public and represents a good introductory to competition law and policy.

28. Voluntary peer review shows the ability and maturity of a country and/or institution to be faced with the existing situation, potential obstacles and recommendations as well as with desired and mandatory activities in order to accomplish a necessary progress.

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