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Competition and regional economic organisations

Contribution

Eurasian Economic Commission

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Introduction

Competition regulation at the level of integration organization is different from regulation within a given country. It has its own specific characteristics and complexities. Aiming to better understand these peculiarities, the Eurasian Economic Commission (EEC) initiated a dialogue of regional integration organizations on competition issues (Dialogue). Regional competition authorities from Eurasian, African, Caribbean, Latin American, European and Asian regions participated in the Dialogue. The Dialogue makes it possible to explore and exchange the experience of organizations similar in their functions and powers, discuss relevant matters and improve their work.

With the aim of summarizing the results of the Dialogue, analyzing regional competitive regimes, the Eurasian Economic Commission conducted a Survey on Competition Regulation in Regional Integration Organizations. Results of the Survey are presented during the 23rd session of the Intergovernmental Group of Experts on Competition Law and Policy.

Dialogue of Regional Integration Organizations on Competition

In recent years, there has been a trend toward deepening regional integration processes, which leads to the need to study competition issues at the regional level.

Regional-level competition issues have their own specifics and differ from national (in-country) regulation. In turn, regional integration organizations are also differ from each other in their legislation, functions, powers, institutional components and other aspects in the field of competition.

Despite all these differences, they all share the same goal of ensuring fair competition.

In this regard, the EEC came up with the initiative to hold meetings of regional organizations on competition (RO Meetings). These meetings allow exchange experience, discuss competition issues relevant for regional organizations and adopt best practices.

In 2020, the EEC sent to UNCTAD Secretary-General proposing to facilitate such meetings and put that issue on the agenda of the 8th UN Competition

Conference in 2020. The EEC initiative was supported and the EEC representative presented this initiative at the 8th UN Competition Conference.¹

Since 2021, the EEC has been holding annual meetings of regional organizations on competition with technical assistance of UNCTAD.²

The RO Meetings have demonstrated the demand for this form of interaction and generated interest of both the dialogue participants and other parties concerned in competition issues.

The following issues were discussed during the meetings of the Regional Organizations:

- regional competition law and enforcement;
- powers and competence of regional competition authorities;
- interaction between national and regional competition authorities;
- procedural aspects of enforcement;
- competition advocacy;
- judicial and administrative appeal of decisions and acts of regional competition authorities;
- best practices and directions of further development, etc.

Representatives of the following regional organizations attended in the RO Meetings: the Eurasian Economic Commission (EEC), Andean Community (CAN), Arab Competition Network (ACN), Association of Southeast Asian Nations (ASEAN), BRICS, East African Community (EAC), European Commission (EC), West African Economic and Monetary Union (WAEMU), Caribbean Community (CARICOM), Common Market for Eastern and Southern Africa (COMESA), Economic Community of West African States (ECOWAS), etc.

Participants of the RO Meetings recognize their importance and the need to continue and expand the discussions, attracting new participants. The dialogue is open, and all ROs are encouraged to contribute to the agenda of RO Meetings by proposing topics and sharing their experience on competition policy and regulation at the regional level. Participants also proposed that the EEC continue to hold regular RO Meetings on an annual basis.

¹ Paragraph 18 of the Report of the 8th UN Competition Conference says, "Requests UNCTAD, under its technical cooperation pillar, to: [...] Further explore and develop joint and complementary work with other international and regional organizations for more effective and stronger assistance to developing countries and transition economies."

² https://eec.eaeunion.org/comission/departement/cpol/international-cooperation/dialog-regionalnykh-organizatsiy-po-voprosam-konkurentsii/?clear_cache=Y

The topic “Competition and Regional Organizations” is regularly included in the agenda of UNCTAD events: IGE sessions and 9th UN Conference on Competition.

In order to summarize the results of the discussions held during the RO Meetings and to study in more detail the specific features of each regional organizations, the Eurasian Economic Commission conducted a Survey on Competition Regulation in Regional Integration Organizations (RO Survey).

The RO Survey reflects the analysis of regional competition regimes shaped as a result of economic integration processes.

The RO Survey covers issues related to competition law, enforcement, functions and powers of regional competition authorities, division of powers between the national and regional authorities, regulation specifics, competition advocacy, appealing decisions and actions of competition authorities.

The preliminary outcomes of the RO Survey were presented at the 9th United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (hereinafter, the UN Competition Conference and the UN Competition Set, respectively) in July 2025.

Results of the Survey on Competition Regulation in Regional Integration Organizations

19 regional organizations were analyzed, including intergovernmental and informal unions without an integration component but engaged in discussing and promoting competition issues among their members. One RO - African Continental Free Trade Area (AfCFTA) has not a regional, but even a continental character, and includes all the countries of the African continent.

The subject of consideration was the competition regime in Regional Organizations, particularly: existence of regional competition Law and authority; the powers and functions of the supranational and national authorities; the separation of powers and interaction between them; the liability for violating of competition rules; the mechanisms for appealing decisions of the regional competition authority; etc.

According the results of the RO Survey competition regulation at the regional level is developing unevenly and depends on the depth of integration, the

institutional maturity of the regional organization and the willingness of Member States to transfer part of their powers to the supranational level.

Regional organizations can be divided into several groups.

The first group includes organizations with an operational regional competition Law and authority with enforcement powers (Andean Community, COMESA, CEMAC, EAC, the EAEU, WAEMU, CARICOM and ECOWAS).

The second group, where a regional competition Law has already been established, but the relevant institutions are still under development (AfCFTA).

The third group includes organizations that do not have supranational enforcement powers, but have mechanisms for coordination and convergence of approaches (ASEAN, SELA, BRICS, the CIS, APEC, SADC and, to a certain extent, MERCOSUR).

Most of the regional organizations have adopted national competition laws. However, not all of them have national competition authorities. Only in three regional organizations all member states adopted competition laws and established relevant authorities: Andean Community, ASEAN and the EAEU. This demonstrates that, even where regional (or continental) rules exist, the effectiveness of the system largely depends on the level of development of national institutions.

As for competition rules, the main ones are prohibitions on anti-competitive agreements and abuse of a dominant position. These types of violations exist in almost all regional competition laws. Merger control, however, is less consistently regulated: it is in the AfCFTA, COMESA, CEMAC, EAC and ECOWAS; as well as, in a specific form, in WAEMU (it is assessed through the concept of abuse of dominant position). At the same time, regional merger control does not exist in Andean Community, the EAEU and CARICOM, and remains at the national level.

The prevailing approach is that a regional authority considers cases with a cross-border effect, it means affecting more than one Member State, while national authorities have jurisdiction over country-specific infringements. This model is characteristic of the EAEU, COMESA, CEMAC, EAC, CARICOM and ECOWAS. WAEMU has a more centralized model: competition rules fall within the exclusive competence of the Union, while national authorities perform supporting and monitoring functions. In ASEAN, SELA, BRICS, CIS, APEC and SADC,

supranational enforcement does not exist; their role consists primarily of coordination, training, information exchange and convergence of approaches.

Procedural mechanisms also differ. The most developed regional competition regimes provide for investigations, requests for information, market analysis, sector inquiries, hearings, interim measures, protection of confidential information and the right of parties to submit evidence. Such mechanisms exist in Andean Community, COMESA, CEMAC, East African Community, EAEU and WAEMU and are also envisaged under the AfCFTA model. A number of organizations provide for more modern early-resolution instruments: COMESA has settlement and commitments procedures; the EAEU applies warnings and cautions; and the East African Community allows for the approval of settlement arrangements between the parties.

Leniency programmes do not exist in all regimes: comprehensive leniency procedures are available only in some regional organizations, while others provide for the reduction or cancellation of fines in cases of voluntary disclosure of infringements, and in some organizations such procedures are among the planned reforms.

Judicial review is available in most developed regional regimes. Decisions of regional authorities may be appealed before the courts of Andean Community, COMESA, CEMAC, East African Community, EAEU, WAEMU, CARICOM and ECOWAS, while the AfCFTA provides for the establishment of a Competition Tribunal. Administrative review mechanisms are less common. In a number of organizations, judicial appeal is the primary or only mechanism for reviewing decisions on competition.

The level of fines across regional regimes is generally comparable, with the most common maximum threshold being up to 10 per cent of the infringer's turnover (Andean Community, COMESA, CEMAC, EAC, WAEMU, AfCFTA and EAEU). At the same time, certain regimes establish additional specific features. In CEMAC fines may amount to up to 20 per cent of turnover generated in the CEMAC common market and may be doubled in cases of repeated infringements. Under the AfCFTA, fines are expected to be calculated on the basis of continental or worldwide turnover. In the EAEU, fines are transferred to the budget of the Member State in whose territory the infringing undertaking operates.

Criminal liability at the regional level is generally not provided for. The principal exception is the East African Community, where fines and imprisonment

are provided for certain offences and national courts retain jurisdiction over criminal matters.

Competition advocacy has become an almost universal area of activity. Even organizations that do not possess regional competition legislation or enforcement powers actively use advocacy tools, including conferences, training programmes, expert discussions, publications, working groups and information-sharing platforms. In organizations with enforcement powers, competition advocacy supplements enforcement activities by enhancing awareness among businesses, public authorities, judges, legal practitioners, academia and the media.

Conclusion

In conclusion, it can be stated that an effective regional competition regime requires a combination of several key elements:

- a regional competition legal framework,
- a specialized competition authority,
- a clear allocation of competences between the regional and national levels,
- procedural guarantees,
- effective appealing mechanisms,

close cooperation with national competition authorities and continuous competition advocacy.

At the same time, many organizations lacking enforcement powers nevertheless play an important role in promoting a competition culture, fostering legislative convergence and preparing national authorities for deeper cooperation.

All approaches are important. However, effective enforcement against cross-border anti-competitive practices is possible only where there are an operational regional legal framework, an authority with effective powers and an efficient cooperation with national competition authorities.

It is important to emphasize that the EEC will continue to improve the RO Survey, clarify details, discuss it with regional organizations and make corrections.