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This document reproduces summaries of contributions submitted for Item 3 of the 68th meeting of Working Party No 2 on Competition and Regulation on 2 December 2019.
More documents related to this discussion can be found at
<http://www.oecd.org/daf/competition/independent-sector-regulators.htm>

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Independent Sector Regulators – Summaries of contributions

This document contains summaries of the various written contributions received for the discussion on Independent Sector Regulators (68th meeting of Working Party No 2 on Competition and Regulation, 2 December 2019). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Australia

One of the features of Australia's National Competition Policy (NCP) has been the combination of competition enforcement, consumer protection and economic regulation into a single, economy-wide body in the Australian Competition and Consumer Commission (ACCC). These functions all come together as part of the ACCC's single objective of making markets work to enhance the welfare of Australians.

The ACCC notes that many international jurisdictions assign infrastructure regulation to a separate institution from that of the competition authority. While Australia's regulatory design differs from those jurisdictions with separate economic and competition regulators, the ACCC is still focused on maintaining strong collaborative relationships with sector-specific regulators.

The relationship with the Australian Communications and Media Authority (the ACMA) in the communications sector, and with Australia's financial regulators are prominent examples of the ACCC working with sectoral regulators to promote competition. The relationship between the ACCC and the ACMA is strengthened via cross memberships and other forms of coordination, and the ACCC regularly meets with financial sector regulators who share a common portfolio responsibility within government.

With Australia's federal structure, the ACCC also works hard to maintain effective and collaborative working relationships with economic and sector regulators at the State and Territory level.

*Belgium**

The Belgian Competition Agency has cooperation agreements that allow the exchange of confidential information (with the exception of information obtained from ECN authorities or leniency applicants) with the energy sector regulator and with the telecom and postal sector regulator. Regulators sometimes ask to intervene in procedures, and the agency invites the relevant regulators to hearings as privileged third parties.

The agency refers to applicable regulation and the enforcement powers of the relevant regulator when assessing the risk that a merged entity might abuse its acquired market position. It considers that it has no jurisdiction when legislation has a similar objective of regulating competition and provides for a different set of legal remedies with different time limits, but it considers to have jurisdiction in respect of collusion between bidding parties. In one merger case, it imposed an obligation to grant networks access to the viewer data concerning their network, in so far as compatible with the GDPR rules.

However, the fact that it may in some cases be appropriate to defer to regulators, does not mean that regulatory concerns cannot also be competition concerns. When a dominant player distorts competition by ignoring regulation, and this is not prevented, stopped or sanctioned by a regulator, this can constitute an abusive practice under competition law.

BEUC

The operation between competition authorities and regulators is crucial for the well-functioning of markets. While regulators are often trusted with implementation of *ex-ante* policies and legislation to guarantee that their respective markets function properly, competition authorities have a role to play when it comes to intervening *ex-post* against anti-competitive practices in such markets, which are often characterised by the presence of strong incumbents.

Further to this, markets are becoming increasingly complex and permeable: a certain business conduct can fall within the remit of different competent authorities. Examples of this include not only digital markets but also more traditional markets in which companies provide services subject to different regulatory regimes e.g. bundled offers (e.g. combination of energy and telecoms products). Competition authorities and regulators therefore must work in a coordinated and complementary manner to ensure that markets deliver choice, protection and quality of services to consumers.

This note provides insights about an existing model of co-operation at EU level in the energy sector: The Partnership for the Enforcement of European Rights (PEER). PEER was established by the EU's energy regulators to improve enforcement of European consumers' rights through enhanced inter-authority cooperation at EU level.

This collaboration brings together interested authorities responsible for protecting and/or supporting Europe's consumers across a range of sectors including consumer protection authorities; data protection authorities; consumer bodies; ombudsmen; competition authorities; and sectoral regulatory authorities (e.g. energy, telecommunications, financial). PEER was launched in 2017 as an initiative of the Council of European Energy Regulators (CEER) supported by BEUC, The European Consumer Organisation.

PEER's current activities focus on raising awareness of the need for more cooperation between authorities, both at EU and at national level. They do so by organising PEER events on cross-cutting issues (e.g. Internet of Things, bundled products, cyber security) that raise challenges to different regulators and consumer rights enforcers.

One recent activity of PEER was the development of guidelines for authorities and companies on bundled products. The complexity and multi-sectoral nature of such products raises the question of how to help consumers make better choices and how to ensure consistent enforcement of the different consumer rights recognised in different elements of EU law and how the rules should be applied to the different components of the bundled offer.

PEER is a good example of cross-institutional co-operation, but its success depends on the commitment of the authorities to participate. A greater degree of co-operation could be achieved through the creation of specific channels of communication between the authorities that would provide a pre-defined mechanism for authorities to co-operate avoiding risks of overlaps and inconsistencies. Such a mechanism could be defined in a common agreement between the authorities e.g. in a Memorandum of Understanding or in a legal instrument e.g. in the European regulations setting up the networks of authorities.

BIAC

Business at OECD notes that while Independent Sector Regulators often perform functions that are similar to that of Competition Authorities, such as the definition of markets and the assessment of market power, there are complex technical aspects of regulating certain industries (e.g., the telecommunications industry, energy or banking), which are arguably more appropriately dealt with by an Independent Sector Regulator with highly specialized expertise.

Sector Regulators cover large and important sections of the economy and their actions have a significant impact on competition. As such, the way they interact with Competition Authorities is of crucial importance to avoid enforcement duplication as well as inconsistent approaches and unnecessary burdens for business. Despite the importance of regulation and competition law, a leading model for effective cooperation between Sector Regulators and Competition Authorities has not yet emerged.

Against the background of the variety of approaches both across and within jurisdictions, this paper attempts to extract certain broad principles aimed at discussing the different types of Independent Sector Regulators as well as their relationships with Competition Authorities. It concludes with a call for consistency between the approaches of Regulators and Competition Authorities to promote business certainty and reduce regulatory burdens:

- Competitive markets require efficient and effective allocation of enforcement responsibility between Competition Authorities and Independent Sector Regulators.
- Decisions made by Independent Sector Regulators are sometimes at odds with recommendations and decisions of the Competition Authorities and this can create a climate of business uncertainty. Instances where corrective intervention is required could be reduced at the outset by ensuring close and effective coordination between the Regulators and Competition Authorities.
- Coordination between Independent Sector Regulators and Competition Authorities can be achieved in several ways, both formally and more informally (e.g. formally via memoranda of understanding and joint reports, and informally via staff secondments).
- Such coordination ensures that in those instances where additional industry expertise is required, Competition Authorities can cooperate with Independent Sector Regulators to improve the quality of their enforcement (and vice versa). Cooperation will also ensure that regulated entities are not subjected to undue burdens as a result of divergent approaches between Competition Authorities and Independent Sector Regulators.

Please click [here](#) to download the full paper.

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Chinese Taipei

Since the concept of independent administrative institutions was introduced by Chinese Taipei in 2002, they have been designed not only to be an agency with high levels of professionalism in independence from political interference, but also a forerunner to draw up industrial policies and lead future industrial development and innovation. The independent status of such institutions may infer structural protection of constitutional rights.

In recent years, the competition authority has continued to engage in competition advocacy and successfully work with independent regulators to form competition-oriented industrial policies. The CTFTC consults with relevant government agencies in the case of an overlapping jurisdiction over competition-related matters. If competition law and industrial laws concurrently apply, the Fair Trade act in Chinese Taipei also expressly states the principle when competition law applies priority.

In practice, the CTFTC organizes coordination meetings to have discussions on respective jurisdictions with other sector-specific regulatory agencies. If it necessary, the CTFTC may seek opinions from sector-specific regulatory agencies and can take them into account in investigations and competition analysis.

Colombia

The purpose of this contribution is to present how the Colombian Competition Authority and the Regulatory Agencies interact throughout the regulatory proceedings, and, based on recent experiences, state some challenges identified by the Colombian Competition Authority. The recognition of the importance of economic competition as a mechanism to attain social wealth and the paradigm shift regarding the new role of the State as the regulator of the private market agents that participate in the provision of public utilities has brought new challenges. Specifically, States have had to learn how to intervene markets and influence private agents' decisions in a way that allows the fulfillment of the States' objectives, without suppressing the principles of a market economy.

Colombia's experience has been characterized, during the last decade, by the interaction of regulatory agencies and the Antitrust Authority, especially through the Competition Advocacy Group of the latter. The protection of the principles of a market economy has entailed the definition of a process by which regulatory proposals must be analyzed by the Competition Advocacy Group of the Antitrust Authority. The goal of the process has been to protect the logic of a market economy while allowing State intervention in response to the issues created by markets failures. Even though the recommendations to the regulatory proposals are not binding to the regulatory agencies, Colombia's Council of State has claimed that the non-compliance with this process or the lack of explanation for not following the suggestions made by the Antitrust Authority will generate the nullity of the regulatory proposal. The experience shows that regulatory agencies tend to follow the guidelines made by the Competition Advocacy Group of the Antitrust Authority.

Regarding regulatory agencies independency and its relationship to the competition advocacy process, more evidence is required to determine if agencies with higher levels of independency would behave in the way current regulatory agencies do. Colombia's latest experience, the law of information and communication technologies, displays an increase in the level of independence of regulatory agencies. Finally, this experience shows the importance an adequate legal architecture that allows open but independent exchanges among the regulatory agencies and competition authorities in the direction of finding a balance between objectives chased by both parties, all which are expected to be considered within the proposed regulations. In other words, competition and regulation cannot be understand separately.

This contribution explores both: the roles of Colombian regulatory agencies and the Competition Authority and, their relationship when assessing market dynamics within a unitary and decentralized state framework.

This contribution is organized as follows: **(i)** in first place, an outlook on Colombian Regulatory Agencies ("RA's") dawn and its current legal framework is described; **(ii)** in second place, is presented an outlook on the Colombian Competition Authority ("CA") and its powers and faculties in accordance with the valid legal framework; **(iii)** an overview on the linkage between the RA's and the CA is shown and, finally, **(iv)** some queries and challenges for further discussion are presented, based on the recent experiences related to the regulatory issuance process since de CA's view.

Croatia

In its contribution, Croatian Competition Agency (CCA) wishes to present the relation between CCA as a general regulatory body and sector-specific regulatory bodies, whose work is characterized by an ex ante intervention in the markets concerned. The co-operation between the CCA and these authorities proves indispensable when dealing with competition issues in the particular sectors.

Czech Republic

The paper describes the experience gained by the Czech competition authority – the Office for the Protection of Competition (hereinafter referred to as „the Office“), during the interaction with two sector regulators active within the telecommunication sector and the energy sector. It is important to point out that the Office doesn't focus on assessing the level of independence of these sector regulators as it has neither the power for such assessment nor enough relevant information, so it would not be fair to comment issue like this.

The introduction of the paper gives some explanations why it is necessary for society to regulate some sectors and describes possible basis of regulatory supervision. Whereas main objectives of sector regulators may overlap with those of the competition authorities, it is preferable that the two types of state administrative authorities work together.

The second chapter describes the legal basis and general background of the telecommunications sector regulator, the Czech Telecommunication Office (hereinafter referred to as “the CTO”), and the energy sector regulator, the Energy Regulatory Office (hereinafter referred to as “the ERO”). These are the most relevant sector regulators in terms of cooperation with the Office.

Further part of the paper deals with the general framework for cooperation between above mentioned authorities and the Office. Mutual relations between the authorities are usually based on statutory provisions, bilateral agreements or on ad hoc basis. Both the Electronic Communication Act and the Energy Act introduce some examples, mostly when the competition might be affected, in which relevant sector regulators have to cooperate with the competition authority. With regard to contractual cooperation, the Office together with both sector regulators have set up working groups dealing with market and competition issues either in telecommunication or energy sector. Moreover the Office and ERO have concluded the Memorandum of Cooperation to enhance existing collaboration between them.

The last part of the paper shows practical examples of the cooperation between relevant authorities and describes mainly positive experience of the Office as well as situations when different views of the authorities hindered their smooth cooperation.

The conclusion identifies main advantages of the framework for cooperation between these authorities and emphasises that potential situation where there are no clear rules of cooperation may lead to an uncertainty in legitimate expectations of regulated entities and third parties.

Israel

The regulatory ecosystem in Israel is comprised of a wide range of regulators, including two primary distinct types of regulators: government ministries and independent regulators of varying types (statutory corporations and auxiliary units). Like government ministries, independent regulators are responsible for regulating a certain area of public life, but unlike ministries, they are independent at various degrees in terms of setting and implementing policy.

As shall be elaborated herein, the Israel Competition Authority (the "**ICA**") is active in pro-competitive advocacy vis-à-vis other regulators via a variety of channels. The ICA has been granted advisory roles by law in a variety of sectors. In many other cases, sectoral regulators consult with the General Director of the ICA (the "**General Director**") based on the experience and expertise of ICA in competitive analysis, also in areas where there is no legal obligation for them to do so.

The ICA's practical experience with advocacy has taught that often the ability to advance competition largely depends on how important that goal is to the regulator and how much the regulator itself identifies with the positive outcomes of competition in its sector – rather than whether the regulator is independent or not.

Italy

This submission provides an overview of the experience on the relationships between the Italian Competition Authority (the AGCM or the Authority) and the main sector-focused regulators.

In the AGCM experience, the independence of sector regulators from the political sphere and the regulated undertakings is a relevant aspect that helps to (i) ensure a consistent application of regulatory framework and therefore a level-playing field (especially in presence of state-owned enterprises); (ii) provide legal certainty to the regulated undertakings especially in terms of planning investments; and, from an AGCM's perspective, (iii) ensure a more effective antitrust enforcement by the Authority. In addition, independence brings professionalism and expertise in the staff of regulators and a funding system ensuring a steady budget to regulators helps to retain qualified staff and plan activities.

The Authority's experience also shows that independence is important but might not be sufficient as there are situations in which independent regulators might not have adequate powers to enforce regulations or a narrow mandate which may limit the effectiveness of their actions. Furthermore, sector regulators have different objectives to pursue at the same time (for example security of supply or financial stability) and this may lead to potentially divergent views in some cases.

The Authority has advocated for the establishment of independent regulators in all industries displaying the features of natural monopolies where ensuring equal and non-discriminatory access to the infrastructure or facility is key to the promotion of entry in upstream and downstream markets. A successful advocacy story concerns the institution of the regulator in the transport sector, eventually set up in 2013.

In the Italian regulatory framework there are in place formal and informal mechanisms to ensure consistency among the actions of the various sector regulators and the Authority. In some cases, the AGCM and the regulators are required to seek each's other non-binding opinions before issuing an enforcement decision.

Over time, there has been an increased demand for cooperation and coordination among independent authorities: to this end, the AGCM has signed and renewed MoUs with the main sector regulators and has carried out joint initiatives such as market studies and advocacy opinions.

Japan

The Japan Fair Trade Commission (JFTC) has played a crucial role in enhancing competition in the electricity sector and promoting reform of the electricity systems in Japan.

Notably, a report published by the JFTC in 2012, “Proposals for the Electricity Market from Competition Policy”, is one of the most successful achievements to move forward the regulatory reform in the electricity market. The proposals mentioned in the report were taken into account seriously by the Expert Committee on the Electricity Systems Reform and led to the establishment of a new independent sector regulator, “Electricity Market Surveillance Commission (hereinafter referred to as “EGC”)", in 2015.

Furthermore, at the meeting under the EGC held on 2018, the JFTC presented its views concerning the condition and problems of the wholesale electricity market in terms of competition policy, as well as its efforts in the retail electricity market such as an issuance of warning against an electric power company.

As a consequence of our continuous efforts of advocacy to create more competitive environment in the electricity market, there have been several achievements like the realization of the unbundling of the General Electricity Utilities’ transmission and distribution units, and the full liberalization of the retail sector. For further promotion of competition in the electricity market, the coordination between the JFTC and the EGC will be the key to advance it.

*Korea**

The independent sector regulators target the industries in general that can have market failure by nature when resource allocation is solely left at the hands of the market and are likely to harm public interest. The target sectors are usually technical and specialized industries such as broadcasting, communications and finance. When sector regulators are given jurisdiction over competition laws, they may perform better due to their specialized expertise. On the other hand, they have disadvantages due to their susceptibility to capture and inconsistency in enforcement outcome. Independent regulators were born out of the need to prevent the National Assembly and the elected president from wielding their political influence over controversial issues involving acute conflicts of interest. Independent regulators are provided with structural independence for their autonomous operation and at the same time for curbing their abuse of discretion. The decisions are made by a group of commissioners who share the authority and are secured of their terms of office for a set period of time. Given the possibility of increased burden on the businesses and insufficient protection of consumer interest external supervision is to some extent necessary. Independent regulators are subject to control from the National Assembly through the inspection of their activities, and the government has oversight of their budget compilation. In addition, their regulatory measures against businesses are overseen by the judiciary and the Constitutional Court.

The KFTC proposes opinions to independent sector regulators in order to promote competition. The mandatory prior consultation with the KFTC regarding enactment and revision of laws and regulations affecting competition is a case in point. Here, the KFTC may give advice as to the repeal and/or revision of competitively adverse factors. This prior consultation system has been enacted to proactively prevent anti-competitive rules and regulations from being created or enhanced. Independent sector regulators have the merits of making more informed decisions and seeking appropriate measures earlier on certain issues based on their expertise in a particular sector. As such, some sector regulators are attempting to enhance their concurrent jurisdiction over competition matters that used to be enforced by the competition authority. This can lead to overlapping regulations between sector regulators and competition authority. In the sectors of finance, broadcasting and communications, one of the criteria that the sector regulators take into account when approving a proposed merger is whether there is a competitive concern. However, this duplication does not create inconsistency since the sector regulators are required by law to consult with the KFTC on whether a merger will substantially restrict competition before they make a decision. In addition, some types of infringements, such as abuse of superior power and other unfair practices prohibited by the sector specific laws can overlap with unfair trade practices. However to prevent overlap legislation stipulates that when the KCC imposes any measure or surcharge against a telecommunications company for infringements, the KFTC shall not sanction the company for the same conduct.

When an independent sector regulator is given jurisdiction to enforce competition law in a specific sector, inter-agency coordination between competition authority and the regulator is needed to ensure consistency in enforcement consequences. For this reason, the KFTC has MOUs with both the financial regulator and the communications regulator. These set out cooperation mechanisms to prevent overlapping regulations and minimize inconvenience of businesses

Mexico

This contribution refers to the conditions of the telecommunications and broadcasting (T&B) sectors in Mexico before the creation of IFT, followed by the establishment in 2013 of the IFT as both the competition authority and regulator in those sectors; its main institutional features and functions based on the mandate set forth by the Constitution, the Federal Telecommunications and Broadcasting Law (LFTR) and the Federal Economic Competition Law (LFCE). It addresses IFT's institutional design as a constitutional autonomous body with powers and tools that allow it to have an impact on the efficient development and the promotion and protection of free market access and competition in the T&B sectors.

IFT is a highly technical and specialized body empowered to carry out both *ex ante* and *ex post* competition intervention in the aforementioned sectors devoting over a third of its strategic projects to promote and encourage that users and audiences enjoy enhanced public service options at affordable prices, by fostering competition and free market access in the regulated sectors. It can impose asymmetric regulations and sanctions relying in the preponderance regime, review the conditions of infrastructure sharing, network neutrality, radio electric spectrum concessions and leasing, among other functions.

As a consequence, conditions of greater competition in the provision of services such as fixed telephone, mobile, data, broadcasting television and pay television have improved in Mexico; new economic agents have entered the market, the prices of services have reduced substantially, mobile broadband subscriptions and the use of data has grown, and the quality of service has improved in terms of broadband services speeds. In addition, foreign investment has increased and the T&B sectors have grown faster than the Mexican economy in general.

IFT cannot be seen as a traditional authority of competition, since its mandate goes beyond that of a competition authority.

Norway

The Norwegian Competition Authority (NCA) is an independent regulatory agency whose main task is to enforce the Competition Act, supervise competition in the various markets, prevent and deter competition crime and affect market structure in a direction that promotes healthy competition.

In many areas, sector regulators pursue objectives and make decisions that directly impact conditions for competition in markets. The NCA's has extensive contact with sector regulators for major markets. The contact ranges from informal regular meetings, ad hoc meetings based on specific issues, to formal regular contact, institutionalized through cooperation agreements and regular meetings. The background for the relationships varies. In some cases, the contact is based on specific information needs of the NCA related to its enforcements task; in other instances, the regulator obtains information of relevance to the NCA's enforcement work. In addition, the contact follows from NCA's tasks and strategic goals, not the least related to promoting a more competition friendly regulatory environment. For the NCA, frequent contact has been an important channel to discuss alternative ways to reach regulatory goals in a way less restrictive to competition, to promote technology neutral regulations and not the least to provide fertile ground for innovations and new entrants

Moreover, the NCA also has some specific legal responsibilities that are linked to sector-specific regulation. Firstly, the NCA is responsible for enforcing some specific aspects of the Norwegian Patents Act; more specifically the provisions relating to compulsory licencing in section 50 a. of the Act. However, the NCA's responsibilities in this regard has not been called upon more than once the last 10 years. In 2009, the NCA decided to decline Pharmaq AS' request for a compulsory license to use a patent belonging to Intervet International B.V. - a patent for the production and sale of a vaccine against the disease pancreatic disease (PD), which affects farmed salmon. After an overall assessment, the NCA concluded that the conditions for compulsory licensing were not met in this case. The decision was appealed to the Ministry, which decided to uphold the decision.

Secondly, the NCA is also responsible for supervising compliance with the orders given according to the Price Policy Act, which authorizes price control in very general terms when "necessary in order to promote socially justifiable price developments." The motivation for the law was to control inflation and to protect consumers. Today, the Act must be considered as a "sleeping" law. Regardless, its applicability was considered by the government appointed committee that considered measures to avoid unfair trading in the groceries chain (NOU 2013: 6). However, the committee recommended that a separate law on fair trading principles was enacted instead.

Finally, the Norwegian taxi industry is prominent example where the NCA has some specific legal responsibilities directly linked sector-specific regulation. Taxi prices in rural parts of the country are subject to maximum price control. The NCA has the responsibility for regulating maximum fares through the Regulation of Fare Determination and of Maximum Prices for Taxi Transport. The regulations have some general provisions applicable for all areas, on eg. methodology for calculating fares and obligation to offer customers a choice between a price offer, a fixed price for the distance and the fare calculated by the taximeter, in addition to more specific provisions relating to maximum prices for price regulated areas. Notably, major changes in the framework for the taxi

industry has been enacted. Effective from mid-2020, implying an effective deregulation of the industry. Taxi licensing authority will still be allocated respective *county governments*, but no longer subject to a “needs test”, but objective and proportionate criteria for licensing. Regardless, the NCA will still have the responsibility for the Regulation of Maximum Prices for Taxi Transport, determining maximum prices for those areas which do not qualify for free price determination.

In this contribution to the WP2 Roundtable on Independent Sector Regulators and their relationship with Competition Authorities, the Norwegian Competition Authority (NCA hereafter) will first present its specific legal responsibilities that are directly linked to sector-specific regulation. Thereafter, the most relevant relations with sector regulators where contact is pertinent to fulfill enforcement tasks according to the law as well as our related strategic goals will be presented. To set the context, the NCA and its tasks are presented first.

Peru

Economic regulators were created in the nineties to promote competitiveness and competition, as well as to enhance productivity in key economic sectors. They were established to supervise the performance and the development of transport, telecommunications, energy, and water sanitation, markets that were open for private investment. While INDECOPI aims to prevent and to sanction anticompetitive behaviour, and to promote economic efficiency, to the benefit of consumers. Both INDECOPI and the economic regulators share a common objective, the promotion of competitiveness and competition in its markets. Therefore, to INDECOPI, regulators play an important role in the promotion and defence of competition in its regulated sectors. In this sense, the regular communication and exchange of information with the regulators have contributed to monitor, identify and sanction anticompetitive behaviours in their respective sector in these years.

It is worth mentioning that the creation of regulatory agencies depends on the Executive Branch, and so far, INDECOPI or its Commission for the defence of Free Competition has not concluded or suggested the creation of a new sectorial regulator. INDECOPI recommendations have focused on the promotion of competition, suggesting modifications to the existing legal framework of those sectors where the law may be creating obstacles to competition. This was the case of the market study in Notary services, where the agency recommended an amendment of the Notary Act to include an economic criterion to establish new notaries seats, besides to repeal the power of the incumbent notaries to control the access of new members and to allow informative advertising.

Romania

The OECD Best Practice Principles on the Governance of Regulators define a regulator as an entity authorised by statute to use legal tools to achieve policy objectives, imposing obligations or burdens through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement.

Some of the sectors that require supervision via a specialised regulator, intervention that is complementary to the competition authority's activity, are the following: the railway sector, the maritime sector and the financial and insurance sectors. The national competition authority has established cooperation mechanisms with each of these sectors' regulators in the interest of promoting fair competition and consumers' welfare.

This paper will present the activities and organisational aspects of the regulators that have been established for the regulation of the abovementioned sectors. Furthermore, the cooperation between these regulators and the competition authority will be explored.

In the end, an example of the cooperation between the Romanian regulator in the financial sector, the national authority for consumer protection and the competition authority will be presented in relation to the transposition of an EU Directive in light of digital developments.

Russian Federation

The Federal Antimonopoly Service (FAS Russia) carries out its activities in cooperation with other federal executive bodies, the Central Bank of the Russian Federation, government bodies of subjects of the Russian Federation, local authorities, public associations and other organizations, including independent regulators in various fields.

Besides, the FAS Russia carries out the state control over the compliance with antimonopoly legislation by the federal executive bodies, state governmental authorities of the subjects of the Russian Federation, local self-government bodies or other bodies or organizations exercising the functions of the said bodies, as well as by the state off-budget funds, economic units and natural persons, in particular over the use of land, subsoil, water resources and other natural resources.

The FAS Russia and its Regional Offices can conduct antimonopoly investigations against independent sectoral regulators in the event they take actions and adopt regulatory legal acts that adversely affect competition.

South Africa

The Competition Commission of South Africa (the Commission) is mandated to negotiate agreements with any regulatory authority to co-ordinate and harmonise the exercise of its jurisdiction over competition matters within the relevant industry or sector. It has established relationships through about fourteen (14) Memorandums of Understanding (MOUs) with various independent sector regulators in South Africa.

The paper exposes a strong cooperation framework between the Commission and a select few independent sector regulators in South Africa, namely, the Independent Communications Authority of South Africa (ICASA), the South African Reserve Bank (SARB)¹, the Construction Industry Development Board (CIDB) and the National Energy Regulator of South Africa (NERSA).

The cooperation of the Commission with independent sector regulators in South Africa has proven to be an effective tool to promote and foster joint positions on competition policy and strengthen enforcement through the exchange of confidential information, the sharing of resources, as well as the participation by one regulator in the investigations, proceedings or policy making processes of another.

The paper demonstrates the complementarity of competition policy and industrial policy in the regulation of South African markets and the role of the Commission in the processes of designing industrial policy. However, the paper also exposes the challenges and lessons revealed from case studies. Even after the conclusion of the MOUs there were challenges with the cooperation and coordination of some activities between the regulators.

The case study of the Commission's relationship with ICASA reveals issues that have arisen as a result of the lack of certainty as to concurrent jurisdiction. These include confusion in relation to the deliberation of competition concerns in mergers and acquisitions, determining appropriate remedies to address market dominance in the pay-tv market and a duplication of market review efforts. In the case of the Commission's relationship with SARB, there is room for improvement in their coordination and efficient implementation of the Banking Market Inquiry outcomes and contradictory findings of forex transgressors to address competition concerns.

A notable collaboration is in the case of the CIDB, which resulted in new measures being introduced in its bidding system (i.e. certificate) and the VRP initiative that settled disputes relating to cartel conduct in the construction industry. However, due to differences in approach to prosecute the signatories of the VRP for their involvement in the cartel, competition and disciplinary proceedings were withdrawn against them. Further engagements between the Commission and IDOW are necessary. In the energy sector, the paper reveals that despite the Commission's engagements with NERSA on its LPG market inquiry findings, NERSA is yet to implement the recommendations. There are also challenges of concurrent jurisdiction arising in complaint matters received by the Commission that include issues that need to be resolved by NERSA. In some cases, NERSA has chosen not to investigate.

These case studies reveal a lack of clarity on the exercise of concurrent jurisdiction between the Commission and independent sector regulators, opposing legislative mandates and in

¹ The Commission has not yet established a formal relationship with the SARB in terms of a MOU.

some cases, a lack of will to cooperate and interact with each other. More competitive outcomes through continued co-operation and improved relations between the Commission and independent sector regulators is expected.

Spain

In 2013, Spain went through a profound transformation of its sectoral regulators and competition system, integrating existing regulators for energy, telecommunications, transport, post and audiovisual services and the competition authority into a single institution: the National Commission for Markets and Competition (Comisión Nacional de los Mercados y la Competencia – CNMC). The integration has yielded a number of advantages, like a more global perspective in its decisions, synergies between the regulatory and the competition divisions, enhanced legal certainty, savings in operational costs and lower risks of regulatory capture.

For this integrated model to succeed, guaranteeing independence is vital. Some legal provisions are key in this regard on issues like institutional design or the appointment and dismissal of the President and members of the Board. The CNMC has proven its *de facto* independence during its years of existence through a solid enforcement record and protection of the general interest from interest groups. The experience acquired after six years of functioning of the CNMC shows some aspects of the institutional design that could be improved.

The ongoing digitisation of the economy brings about challenges in many fields. Aspects like the disruptive effects of platforms on markets, the rising market power of big tech giants and big data governance issues are among the key concerns of competition, consumer and data protection authorities at national and international levels. There is an ongoing debate on this matter, and whether and how it should translate into reinforcing competition powers or creating new regulatory bodies, for which the CNMC's experience could be informative.

Ukraine

Competition authorities are the driving force of the countries' economic competition protection systems. Therefore, the efficiency of these systems largely depend on the effectiveness of the competition authorities' activities and interaction with the independent sector regulators. Sector regulators, in the process of fulfilling their mission, should interact with competition authorities, mostly by conducting mutual exchange of information on the regulated markets in order to tackle any possible competition-related issues promptly.

In Ukraine, there are numerous regulators in a wide sense of this term. For example, the Ministry of Healthcare of Ukraine may be considered as regulator in the market of public procurement of medicines since it regulates numerous technical aspects for the medicines tenders, and the list of this kind of regulators in Ukraine is excessively long. But it becomes much more shorter when we talk about independent regulators.

While there is no universally accepted definition of an independent regulator, usually those public authorities are defined by the following list of characteristics:

- Special status in the system of state power (provided for by the dedicated law or even the Constitution);
- Independency in decision-making (from the President, the Government, the Parliament and the regulated markets);
- Different sources of funding (the State budget, fees for the certain services provided etc.) with the long-term planning and independency in allocation of the budget;
- Collegiate form of management and decision-making;
- Special procedure for the appointment/withdrawal of the top management (stipulated by the dedicated law or even the Constitution) etc.

In Ukraine, the list of independent regulators (according to the definition above) is comparatively short. It includes the following public authorities:

- The National Energy and Utilities Regulatory Commission – regulator of the energy and utilities sector;
- The National Bank of Ukraine – regulator of the banking and currency exchange sector;
- The National Commission for the State Regulation of Communications and Informatization – regulator of the telecommunications sector;
- The National Securities and Stock Market Commission – regulator of the securities and stock markets.

Analysis of the world's best experience and practice shows that the function of market analysis shall be attributed to sector regulators, while clear delimitation of this function between them and competition authorities should also be in place. Thus, EU acquis comprise the principles, according to which national regulatory authorities shall analyze the relevant markets (if necessary, this analysis shall be carried out in close cooperation with national competition authorities) and determine whether those markets are effectively competitive, identify undertakings with significant market power and assign/withdraw

corresponding obligations on them. Moreover, effective and timely identification of competition-related issues in regulated markets is almost impossible for competition authorities in the absence of relevant information received from regulators.

Therefore, competition authorities and regulators should actively exchange information and work shoulder-to-shoulder in order to establish the level playing field and promote competition in regulated markets, ensure the balance of powers between natural monopolies and their consumers. Only this synergy may bring efficiency and competition to regulated markets.

*United States**

In the United States, the jurisdiction and responsibilities of the competition agencies (the Antitrust Division of the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”), together the “Antitrust Agencies”)) at times intersect with those of sector-specific regulators. In general, the federal antitrust laws provide the framework for the protection of competition across all sectors of the economy. In some markets, however, Congress has determined that a sector-specific regulator should supplement, or, in a few limited cases, supersede antitrust enforcement.

The US contribution provides an overview of sector-specific regulators in the United States and describes the general framework for interaction between regulatory oversight and antitrust enforcement. It provides examples of shared jurisdiction in the telecommunications, electricity, and aviation industries and describes the Antitrust Agencies’ competition advocacy efforts in regulated sectors.

It concludes that one advantage of concurrent jurisdiction is that it allows each agency to avail itself of the other’s expertise. Cooperation can therefore help in defining markets, obtaining industry statistics, and articulating theories of competitive harm. In addition, the Antitrust Agencies generally have greater investigative powers than the regulatory agencies. On the other hand, concurrent or shared jurisdiction can impose costs on the antitrust and regulatory agencies and the parties. For example, where the regulator and the agencies are pursuing the same goals, there may be costly duplication of investigative efforts by the agencies and compliance efforts by the parties. Shared jurisdiction can also lead to inconsistent outcomes.