

CO2D: Detect abuses of monopoly by operators and concerted practices harmful for consumers

REGULATORY FUNCTION: COMPETITION		CO2D
OBJECTIVE CO2 Operators' competition behaviour is audited through collected legal and contractual information	ACTION CARD CO2D DETECT ABUSES OF MONOPOLY BY OPERATORS AND CONCERTED PRACTICES HARMFUL FOR CONSUMERS	
COST: High FREQUENCY: Regular TARGET GROUPS: Regulators, service operators, national governments, development partners, anti-monopoly institutions		
DESCRIPTION It is important to inspect any kind of anti-competitive practice, besides state subsidies, which could be harmful to consumer interests. An impartial auditing procedure is precondition to this action, obliging regulators to develop sets of transparent procedure guidelines for conducting and reporting anti-competitive audits. In accordance, regulators focus on the identification of any possible abuses resulting from a dominant position or monopoly by one or several operators. This could identify for example, oligopolies where several operators secretly agree about charging certain price, or operators who refuses to supply, abusing their dominant market position. Timely identification of a non-exhaustive list of abuses is the main objective of this action, that is sometimes jointly performed by both competition authorities and WASH regulators.		
EXPECTED OUTCOMES <ul style="list-style-type: none"> • Abuse of dominant position is prevented and the competition is re-established. • Consumers are protected from such abuses through systematic and regular reviews of operators' behaviour and service provision. • Operators are obliged to follow market rules and avoid any kind of abuse or be penalized. 		
EXAMPLE 1: CROATIA In Croatia , the Competition Agency ruled on a case involving the company Vodoopskrba i odvodnja d.o.o. from Zagreb. In the proceedings, the agency would decide whether certain services that the company adopted in July 2013 represented an abuse of a dominant position on the relevant public water supply market. The case started because there was a new provision stating an obligation for water meters installed in old buildings to be connected with the automatic water meter reading (AWMR) network, a system which Vodoopskrba has already introduced in the old buildings. In other words, water meters were a new market for Vodoopskrba, but they were also the sole owners of the AWMR network . The Competition Agency adopted a decision ordering Vodoopskrba i odvodnja to temporarily cease and-desist to impede other companies in installing telemetric services and preventing final consumers from freely choosing the provider of the services concerned.		
EXAMPLE 2: BOLIVIA In Bolivia, the Superintendency of Basic Sanitation is empowered to ensure that Drinking Water and Sanitary Sewerage services comply with the anti-monopoly and consumer protection provisions set forth in Law No. 1600 and may take the necessary measures to correct any case of non-compliance. Within this framework, it is stipulated that providers are to align their activities with principles that guarantee open competition, avoiding actions that would impede, restrict or distort it, while prohibiting joint, direct or indirect price-fixing, establishing limitations, distributing production control, markets, supply sources or investment, and developing other similar anti-competitive practices. Abusive practices are also prohibited, such as the direct or indirect imposition of buying or selling prices or other unequitable commercial conditions; the limitation of production, supply sources, markets or technical development to the detriment of consumers; the application of unequal conditions on equivalent operations, representing a		

disadvantage to clients and users; the conditioning of contract execution to the counterparty's acceptance of additional obligations that, by virtue of their nature or according to commercial practice, are not inherent to the object of such contracts; and the demand that those requesting the provision of a regulated service become partners or shareholders.

EXAMPLE 3: CHILE

In Chile, the National Economic Prosecutor's Office is in charge of supervising and verifying the possible existence of anti-competitive practices by sanitary public utilities, and in the event that such situations should be detected, the Prosecutor's Office may request that the Court for the Defense of Free Competition classify certain services as subject to price-fixing by the Superintendency of Sanitary Services, as long as monopoly-related characteristics are detected.

LINKS

Croatia: <http://www.aztn.hr/en/water-supply-and-sewage-operator-challenged-to-abuse-a-dominant-position/>

Bolivia: Law of October 28, 1994

http://www.oas.org/es/sla/dlc/mesicic/docs/blv_res15.pdf

Chile: Statutory Decree No. 1 of 2005 by the Health Ministry establishes the consolidated, coordinated and systematized text of Decree-Law No. 2.763 of 1979 and Laws No. 18.933 and No. 18.469

https://www.senasa.gov.py/application/files/3014/6067/0954/LeyN1614_8jqpoc25.pdf

INTERNAL CAPACITIES NEEDED AND THE ROLE OF PARTNERS

A range of administrative, legal and inspection skills is necessary to complete this action, obliging regulators to build their internal capacity through training, often seeking support from anti-monopoly institutions or development partners. Competition authorities could extend their expertise when conducting these audits. Development partners could build upon this through training and establishing tailored implementation procedures. Regulators' staff must be trained on when to proceed with audits, what and how to analyse and inspect, and how to advance with the respective conclusions.