

Economics in competition law – an EBRD perspective

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European Bank
for Reconstruction and Development

The EBRD's Legal Transition Team

- Conducts legal analyses and designs technical assistance projects.
- Aim: to improve legislation and strengthen key institutions in countries of operation.
- Objective: to improve the investment climate in the region as part of the Bank's Investment Climate and Governance Initiative (ICGI).

- **Efficient competition framework is fundamental for transition to a market economy.**
- **Improving competition frameworks requires strengthened enforcement of competition law.**
- **Better enforcement of competition law is only possible if the wider competition framework is fit for purpose.**
- **On competition matters, LTT works closely with the Office of the Chief Economist.**
- **Basic competition legislation in place but implementation uneven. Institutional shortcomings are the main obstacle to progress.**

Narrowing the implementation gap



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- Important to strengthen the effectiveness of organisations involved in the implementation and enforcement of competition policy.
- EBRD focus on **1. judicial training in competition law and policy, and 2. capacity building work with competition authorities.**
- **Training: competition law as a legal discipline first (remedies, discretion etc) but interaction with economics is essential.**
- **Implementation gap more pronounced in competition law but can be narrowed with combined focus on economics and law.**



- Legal experts work with expert economists to develop training programmes.
- Combination can seem counter-intuitive to judges used to purely legal analysis. Contrast with environmental law.
- Impossible to determine a breach of competition law without recourse to economic analysis.
- What is the relevant market? Abuse or legitimate business tactic? What effect on the market?
- Judges must understand the issues sufficiently to ask the right questions and come to reasoned conclusions.



- **Defining the relevant market (products, geographies, substitutability).**
- **Supply and demand.**
- **Costs (fixed and variable; short run and long run; marginal costs and economies of scale).**
- **Predatory pricing/profitteering.**
- **Barriers to entry.**
- **Collusion.**

- **Once alive to these economic concepts, judges can form clearer views on case specific detail.**
- **Important we move on from judges finding in favour of the authorities as a safe option.**
- **Only possible when judges understand the issues and the underlying principles sufficiently to make a call.**
- **EBRD will continue its efforts to strengthen judicial capacity in this crucial area, thereby improving the investment climate.**

Contacts



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