

European Competition Days

18 – 19 November 2008

Paris

Points for reflection **on adapting enforcement tools to economic growth**

Introduction

To tackle the issue of the adaptation of enforcement tools to economic growth thoroughly would require a country-by-country analysis, but time constraints do not permit me the luxury.

Accordingly, I shall refer to three common areas of reflection, the three iiis, which ranked by complexity are:

1. Increasing transparency,
2. Instituting competition-awareness culture
3. Improving the regulatory framework.

I. **Increasing transparency**

1. *Website creation for competition authorities*

Addressing my first point: increasing transparency.

A complete regulatory regime for competition should be accompanied by greater transparency, which would permit domestic and foreign operators to be aware of the rules.

To this end, all competition authorities should maintain a specific website.

Consider three countries as examples: Algeria, Morocco and Tunisia:

In each of these three countries, the enforcement of competition law is shared between the government and a competition authority.

It would seem helpful for these competition authorities to maintain specific websites, but this is not currently the case.

In contrast, there are two specific websites in France: one site for the Conseil de la concurrence (Competition Commission) and another for the department in charge of competition cases at the Ministry of Finance.

2. *The quality of information available on the web sites of national competition authorities*

For a wider dissemination of competition rules and hence a better enforcement of these rules, economic operators need to have access to as much information as possible.

My second point is that it would be desirable for the competition authority websites and/or the relevant ministry websites to include the following information:

- a general overview of the competition system with the authorities and their roles,
- the national rules,
- the latest opinions and decisions,
- annual reports.

Consider the example of Turkey: the website of the Turkish competition authority is complete and could serve as a model for the competition authorities of other partner countries. Fully translated into English, it contains the competition legislation, decisions and opinions, numerous information sections and all annual reports since 1998.

3. *Enhancing all operators' understanding of the national competition authority websites*

My third point is that it appears essential that all economic operators should have knowledge of the applicable rules. Therefore, it would be very useful if the websites of the competition authorities and/or the relevant ministries were available in English and French.

I refer to the examples of Algeria, Morocco and Tunisia: the websites of the Tunisian Trade Ministry, of the Moroccan Ministry of Economic Affairs and of the Algerian Trade Ministry are already available in Arabic and French. They could, in the near future, also be made available in English.

If we consider Israel: for the better enforcement of competition rules in Israel and between this country and its Mediterranean partners, it would be useful if the website, already translated into English, were also available in French and Arabic.

The three objectives noted above can be realised within the authorities or ministries themselves.

4. *Improving the visibility of the national competition authorities*

It is also necessary that operators are aware of the existence of the competition rules and the authorities which enforce them. Accordingly, it would be appropriate in the interests of transparency and greater visibility for national competition authorities organise:

- forums,
- seminars, and
- information campaigns.

This would allow operators and the general public to better understand these authorities and competition policies.

It is necessary to increase awareness in lawyers, judges and companies.

As an example, consider Jordan: the Jordanian competition authority recently carried out a media campaign. It distributed an explanatory booklet, an annual report and a brochure on

Jordanian competition law and the activities of the competition authority. It also organised numerous seminars aimed at promoting its effectiveness, which has resulted in the bringing of a large number of cases, especially on cartels, which were successfully handled by the authority.

5. *Information on programmes and activities with partners*

The competition rules and competition authorities in MEDA countries communicate with each other and other countries.

Programmes and activities with European and other partners increase the knowledge and abilities of the authorities, judges and lawyers. These programmes and information related to them could be incorporated in a specific section in the websites of competition authorities and/or the relevant ministries.

This section could include:

- seminars and conferences,
- a list of speakers and the content of their various contributions,
- the list of partnership programmes and the various activities taking place within this framework.

The purpose of such a section is to allow competition authorities to profit from their respective experience and to also act as an incentive.

6. *The creation of a “Mediterranean competition network” supported by a website*

My penultimate point on transparency concerns transparency between national competition authorities. Such transparency could have a stimulating effect.

As with the European competition network, it would be useful to create a “Mediterranean competition network” that would bring together the competition authorities of the Mediterranean partners.

The goal of this network would be to allow competition authorities to share their experience and information through working groups, and to collaborate closely to ensure the convergence of their laws and procedures.

The creation of a website should be considered in order to reinforce this Mediterranean competition network. This site could reflect the content of the national websites.

7. *The creation of Euro-Mediterranean competition policy website*

Finally, the creation of a specific Euro-Mediterranean competition policy website will improve the transparency of these rules and hence their enforcement, but it will also increase awareness of these rules in politicians, industry and the legal profession.

Two web addresses have already been reserved and the structure of the proposed site has been established in collaboration with an administrator from DG Competition of the European Commission: Mr Juan Riviere y Marti.

The addresses are as follows: www.meda-comp.net and www.meda-comp.org.

This website should contain the following elements:

- the European competition rules,
- Internet links to the European Commission representations in each partner state,
- the national competition rules in each partner state,
- the implementation of these competition rules in each of these 10 states,
- information on current projects,
- publications.

II. Instituting a “competition-awareness culture”

1. Systems of cooperation and assistance

Turning to my second point: instituting a competition-awareness culture.

How can we increase the awareness of policy makers and broaden popular interest in competition issues?

This can be achieved by institutionalizing administrative cooperation and information exchange between the MEDA competition authorities, and also with the European Commission.

Take Morocco for example: as I have already mentioned, the Moroccan Ministry of Economic Affairs and the German Bundeskartellamt (Competition authority) have been cooperating since November 2007 through an “institutional partnership programme” in the field of competition.

This cooperation system provides considerable mutual benefit and improved communication through seminars, training and exchange of officials.

I should also note that it is essential to involve companies, lawyers and judges in such programmes. For instance, a seminar on banking law and competition brought banks company managers and their legal advisors together last March 2008 in Rabat.

2. Specialisation of competition policy makers and the judiciary

It is important that policy makers at the competition authorities and the relevant section of the judiciary specialise in competition law and receive, to that end, special training to familiarise them with the details of the law and the economy.

3. Advertising competition rules

A competition-awareness culture can be fostered by use of the media.

It would therefore be useful that every important decision be accompanied by an information pack and press release to help journalists to better report the work of the authorities. As I have already highlighted, the publication of the annual reports of competition authorities is also essential.

Finally, in order to increase the market actors' awareness and to guarantee the proper enforcement of competition rules, it would be appropriate for the competition authorities from MEDA countries to forge alliances with each other and cooperate with the competition regimes' beneficiaries, for instance:

- consumer organisations
- unions,
- NGOs active in economic sectors,
- small businesses, victims of anticompetitive practices.

4. *A better regional cooperation (south-south)*

I have already mentioned an essential point: transparency between competition authorities. But we should go further.

I believe it is desirable that the Mediterranean partners commit themselves to an regional operational integration process and deepen the regulatory convergence between them and the EU.

With respect to that, I would like to remind you of the Agadir agreement, which entered into force in 2007. Other initiatives are in place, such as the Arab Maghreb Union or the Greater Arab Free Trade Area, but they have not yet achieved their objectives.

We must overcome the political obstacles that are causing the failure of the regional integration process.

III. Improving the regulatory framework

1. *Improving the competences of the national competition authorities*

To conclude this triptych, let us turn to the topic of the improvement of the regulatory framework. I am well aware that this is the most difficult issue, a real challenge.

To guarantee their effectiveness, authorities should have real powers and clear statutory independence. Important decisions should not be left in the hands of governmental entities.

Almost all countries have competition laws and authorities, nine out of ten. Syria enacted its first competition law in April 2008, which has recently entered into force; it is available in Arabic.

2. *Better enforcement of competition law*

Competition policy relies on law but also on the enforcement of this law.

Accordingly, competition rules should be strictly and effectively implemented for the "better enforcement of competition law".

To achieve this, it is necessary to establish the professionalism of the competition authorities, to strengthen their powers and to give them appropriate administrative and budgetary resources so that they can take binding decisions.

3. *Increase the amount of fines*

Decisions taken by competition authorities should be accompanied by a system of heavy fines, which is the only way to achieve a dissuasive and hence effective competition policy.

However, in some MEDA countries, fines are not expressed as a percentage of turnover but are limited to a fixed amount, generally low. This is not sufficient to deter companies from adopting anticompetitive behaviour. To do so, it would be appropriate to take measures such as the ones in force in the EU, where fines can reach 10% of turnover, and to add criminal penalties for the most serious offences.

4. *Establishing a leniency regime*

It would be advisable to establish leniency programmes to improve the efficacy of these nascent competition systems.

This could encourage companies to lodge complaints.

However, it should be recalled that the effectiveness of a leniency programme depends on the fines and penalties that this system allows applicants to avoid: for a leniency programme to work as it should, a competition authority should have at its disposal heavy fines and penalties, strict enforcement tools and a reputation for using them.

Consider Israel and Turkey: alone among the MEDA countries in having leniency programmes.

5. *Establishing settlement procedures*

A settlement procedure, such as the one available in France since 2001 and the one established in the EU with the adoption of Regulation 622/2008 on 30th June 2008, could also contribute to a more efficient application of competition law in the EU's Mediterranean partners.

In the EU, this procedure allows the Commission to settle cases through a simplified procedure: companies charged by the competition authorities of having participated in an anticompetitive agreement may receive a 10% reduction of the fine imposed if they acknowledge their liability.

To date, no MEDA country has adopted such a procedure.

6. *Improving liberalisation policies*

This is another important and sensitive issue.

Liberalisation measures energize markets and increase foreign direct investment.

Liberalisation of the telecoms sector is considered as an important indicator of the development of a competitive environment.

However, in the MEDA countries, liberalisation of public utilities and services is not well enough developed. In order to open up national markets to competition, in particular in the fields of:

- telecoms

- gas and electricity,
- water,
- banks, and
- transport,

we should increase bilateral cooperation on these liberalisation issues. I can very well imagine a network interconnecting electricity suppliers.

Downstream, close monitoring of liberalised markets is strongly recommended.

Every MEDA country is at a different stage in the liberalisation process, in particular in the telecoms sector.

To illustrate this, consider Egypt and Morocco.

Egypt: despite the official liberalisation of the market in December 2005, Telecom Egypt remains the only fixed telephony supplier, though the Egyptian Telecommunications regulatory authority launched an invitation for bids for a second fixed telephony licence last June. Concerning the banking and tourism sectors, which have also been liberalised, we note that foreign competitors have appeared.

Morocco: has a department of public enterprises and privatisation at the Ministry of Finance. A privatisation programme was launched in 1993. This programme has enabled the liberalisation of sectors where the State was the sole operator, especially in the telecommunications and tobacco sectors.

7. *Application of competition rules to public undertakings*

My penultimate point:

EU competition rules are enforceable on both private and public undertakings. Article 86 EC expressly states that: “In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 12 and Articles 81 to 89”.

MEDA countries, where public undertakings are often in a dominant position and escape the application of competition law, should have such a rule.

Concerning association agreements concluded with the EU, only those concluded with Egypt, Israel, Jordan, Lebanon and Turkey have provisions related to the application of competition rules to public undertakings:

“With regard to public enterprises and enterprises to which special or exclusive rights have been granted, the Association Council shall ensure that as from the fifth year following the date of entry into force of this Agreement there is neither enacted nor maintained any measure distorting trade between the Community and (the state) contrary to the Parties’ interests. This provision should not obstruct the performance in law or in fact of the particular tasks assigned to these enterprises”.

8. *Broadening State aid control to the partner countries*

To conclude on this theme, I would like to talk about State aid.

To date, only the association agreements concluded with Morocco, Tunisia, Egypt, Israel, Jordan, the Palestinian authority and Turkey have provisions on State aid control

Algeria, Lebanon and Syria should also have similar provisions on State aid in their national laws.

More generally, all MEDA countries should control State aid.

To achieve this, it is necessary that they overcome significant political obstacles.

Conclusion

To conclude this presentation, I would like to underline the significant progress that has been made over the last few years by the EU's Mediterranean partners.

As mentioned, the III triptych:

1. increasing transparency,
2. instituting a competition-awareness culture
3. improving the regulatory framework,

is necessary for adapting enforcement tools to economic growth.

The future of the relations between the EU and the MEDA countries will depend on the dynamism and will of these governments to realize the free trade area in 2010.

Ladies and Gentleman, thank you for your interest.

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