

УДК 346.545/.548(4-12)

Veronika EFREMOVA, PhD
Team Leader of GIZ ORF – Legal Reform for Macedonia

INTERACTION BETWEEN COMPETITION AND CONSUMER POLICY IN SOUTH EAST EUROPEAN COUNTRIES

Summary

The paper examines the interaction between the competition and consumer law and policy with a special focus on SEE countries, having on mind they traditionally are identified as separate policies but in reality share the same objective to improve the consumers' welfare. Therefore an overview of the conflict of goals of competition and consumer policy at the EU level will be presented, through analyzing whether the goals of competition policy correspond to the goals of consumer policy by argumentation with their complementarities and differences. At the same time it will be analysed whether competition policy is an effective instrument for consumer protection and what is the general role of the European Union in this respect. At the end, a comparative analysis of competition regimes of South-East European countries related to consumer protection is implemented, with the main objective to elaborate the scope of the national competition laws and principal competition concerns of the consumers.

Key words: *consumer welfare, competitive markets, market integration, consumer protection, anti-competitive practices, consumer benefits, consumer protection organisations.*

I Introduction

Strong interaction exists between the competition policy on the one and consumer policy on the other side. Effective competition policy diminish market entry barriers and creates environment where entrepreneurship is promoted, which causes growth of small and medium sized companies and employment expansion. The competition policy focuses on maintaining process of competition between companies and efforts to eliminate structural problems with the final goal to re-establish efficient competition on the market. The consequence of this is high level of economic efficiency, large innovations and increased consumers' welfare. Thereby consumers get opportunity for wide choice and increased accessibility of products under affordable prices. On the other hand, consumer policy primary concern for the nature of consumer transactions, aiming to improve market conditions due to guarantee efficient choice for the consumers. In this way, these two policies are focused on different market imperfections and offer various instruments, but have the same goal of maintaining functional and competitive markets promoting consumers' welfare. As a result, these two policies are commonly implemented.

II Evolution of competition and consumer policy in the European Union

The ultimate goals of the European Community are determined in Article 2 EC: 'a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, a high degree of competitiveness and convergence of economic performance'. The Community, in pursuing its economic policy is, according to Article 4(1) EC, bound by the 'principle of an open market economy with free competition'. The ultimate goals and means, as described in Articles 2 and 3 EC, have to be taken into account when we interpret the major provisions of the Treaty.¹ Thus, the EC Treaty, by its reference to 'a high degree of competitiveness', opens the road to achieving this end by adopting a competition policy stressing rivalry and the competitive process,² but it may also attain this end by supporting – at least in an indirect manner – European champions to help them compete on the global level.³

1 Joachim-Ernst Mestmäcker, Heike Schweitzer, *European Competition Law*, second edition, Munich, 2004, supra n. 7 & 3 Rz. 62.

2 Communication from the Commission – Notice – Guidelines on the application of Article 81(3) of the Treaty, *OJ* 2004 C 101/97, para. 105.

3 Commission Communication, COM (2004) 293, p. 2.

One of the general aims of the Treaties of Rome was the constant improvement of the living and working conditions of the people. However, the Treaty Establishing the European Economic Community of 25 March 1957 made only five incidental references to consumers.⁴ There was a general presumption that the consumer would stand to benefit from a deregulated, integrated and more efficient common market. In 1985, the first consumer protection directives, the Directives on Product Liability and Doorstep Selling were enacted. Finally, a specific competence for consumer protection was introduced in the Maastricht Treaty. Consumer protection was not introduced as a separate policy until the Maastricht Treaty, which laid the essential foundation stone for it in Article 129a (now Article 153) and conceived it as a fully-fledged Community policy. The Article provided that the Community must contribute to the reinforcement of consumer protection. In the Treaty of Maastricht, and more so in the Treaty of Amsterdam, the development of consumer protection has more clearly than before become the task of the Union.⁵

The subsequent change to primary law, enshrined in the Amsterdam Treaty, also entailed certain changes in the field of consumer protection. In the renumbered Article 153, it is now expressly stated that the Community would make a contribution ‘...to protect the health, safety and economic interests of consumers and to promote their right to information and education, and to organize themselves in order to safeguard their interests.’ The Nice Treaty left the regulation of consumer protection practically unchanged.⁶

Consumer policy is part of the Union’s strategic objective of improving economic competitiveness and the quality of life of all its citizens. In addition to direct action to protect their rights, the Union ensures that consumer interests are built into EU legislation in all relevant policy areas. It is important that all EU citizens benefit from the same high level of consumer protection.

The scope of EU consumer protection policy has also broadened, reflecting a shift in people’s needs and expectations. New legislation is setting higher, harmonised EU safety, security and health standards designed to increase consumer confidence.

EU consumer law has the particular purpose of completing the internal market and it is based on the particular concept of legal behavior that serves the completion of the internal market. The perception of consumer law as a market behavior law implies a certain link with competition law.⁷

4 Art. 39, 40, 85 (3), 86, 92 (2), which correspond to Art. 33 (3), 34, 81, 82, 87 of the Nice Treaty.

5 N. Reich, “Verbraucherpolitik und Verbraucherschutz im Vertrag von Amsterdam”, *Verbraucher und Recht*, 1999, pp. 3–10.

6 *Ibidem*.

7 N. Reich, “Protection of Economic Interests of Consumers by the EC”, *Sydney Law Review*, 14(1)/1992, pp. 23–61.

III Objectives of competition and consumer policy in the European Union

For a long time, the main objective of European competition policy was the construction of an integrated European market. With the progressive achievement of the internal market, the objective of market integration is less of a priority. It has been progressively replaced by economic efficiency aims. This new objective was enhanced in 2000 with the agreement on the Lisbon Strategy. The goal is to make the EU “the most competitive and dynamic knowledge-based economy in the world capable of sustaining economic growth with more and better jobs and greater social cohesion by 2010”.

This role of competition policy as an instrument of single market integration is absolutely crucial to any understanding of EC competition law. It makes EC law different from any system of domestic competition law. In the future, three main objectives must be pursued: harmonisation of rules, especially with the emergence of the new economy; closer cooperation in the confidential exchange of information; the creation of international institutions and mechanisms to tackle antitrust cases which generate international spill-overs.

On the other side, the consumer policy have the objective to protect consumer’s rights and interests. Consumer’s protection has as a main objective to guarantee consumers their right to make decisions based upon good information related to their choice on one side and that the traders shall fulfill their duties regarding the products they offer on the other. The consumer policy creates surrounding where the clients and consumers are satisfied with the provision of goods and services which are essential. The main concern of the consumer policy is to guarantee fair trade practice, quality of goods and efficient services with accessible information for the consumers related to the quality, quantity, content and price of their choice.

IV Consumer welfare in the European Union

In the early 1970s, largely as a result of legal and economic analysis carried out at the University of Chicago, the idea gained ground that competitive arrangements should be evaluated solely with reference to their effects on the working of the market, and therefore to the efficiency criterion.⁸ In this context, Richard Posner first argued that competitive restraints should be evaluated on the basis of their effect on consumer welfare, i.e. on whether they led to reduction in output, increases in prices or deterioration of product

8 R. Bork, *The Antitrust Paradox*, Basic Books, 1978; G. J. Stigler, *The Organization of Industry*, University of Chicago Press, 1968.

characteristics, such as quality.⁹ Posner argued strongly for the use of price theory as a legal instrument: if a firm arrangement or practice leads to an increase in consumer welfare, this may be taken as a prima facie evidence that it is pro-competitive. From this point of view, Posner's approach suggested a solution to the dilemma facing evaluation of firms' practices on the basis of the Rule of Reason since Chicago Board of Trade.¹⁰

The debate in the late 80's among enforcers and academics has finally led to the view that competition law should primarily aim at an efficient working of the market, in order to maximize consumer benefits.¹¹ In turn, this convergence has led to the general acceptance of consumer welfare as the standard for the evaluation of restrictive practices.¹²

In the late 1990s, however, the competition policy is foreseen as a process whose outcome is achieving welfare. Namely competition policy by enhancing consumer welfare and ensuring efficient allocation of resources, prevent other welfare-reducing effects. This results with consumers benefiting from competition. The primary role of the consumer welfare standard in competition law enforcement is to form the framework of reference where liability under competition rules is determined.

V Interaction between competition and consumer policy of the European Union

Strong competition and open markets create incentives for the companies to provide better information and protection of consumers. In this way competition and consumer policy together provide a framework for markets to deliver maximum benefits for consumers and the economy – consumer welfare and productivity growth.

Competition policy needs to incorporate complementary consumer policies aimed at ensuring that consumers can make informed and active choices in the market place. These choices send signals to producers, and in doing so trigger the development of more competitive markets. Thus,

9 R. Posner, "The Social Cost of Monopoly and Regulation", *Journal of Political Economy*, 83/1975, p. 807; W. M. Landes R. Posner, "Market Power in Antitrust Cases", *Harvard Law Review*, March 1981, p. 937; R. Posner, *Antitrust Law*, The University of Chicago Press, 1976.

10 Board of Trade of the City of Chicago v. United States, 246 U.S. 231, 38 S. Ct. 242 (1918).

11 K. van Miert, *European Competition Policy: a Retrospective and Prospects for the Future*, Corporate Law Institute, Fordham University School of Law, 1999, p. 1.

12 R. Whish, "Regulation 2790/99: The Commission's 'New Style' Block Exemption for Vertical Agreements", *Common Market Law Review*, 2000, p. 887.

competition policy will be more effective where it includes action to develop the demand side of the market.¹³

But positive outcomes require attention to the demand side of the equation, for example through consumer protection laws and consumer-driven investigations of anti-competitive practices. Using a “bottom-up” approach to activate competition also makes the consumer a full participant in the competition policy-making processes. Such a strategy not only increases consumer welfare and enables markets to function more competitively, but also enhances democracy within the polity and the marketplace.¹⁴

1. Complementarities

When speaking of complementary objectives of competition and consumer policy, consumer protection serves competition by encouraging consumers to participate in the marketplace and to activate competition. When consumers have a reasonable degree of confidence in the market, they will make well-informed decisions and make use of the choices made available by competition law. Effective consumer programmes improve the position of consumers on the market and encourage consumers to engage in more transactions on the market. Stimulating the activity of consumers on the market will subsequently lead to more intensive competition. Thus effective consumer choices will facilitate effective competition and, ultimately, this increase the efficiency of the whole economy and the welfare of society.¹⁵ Competition is not simply fundamental to consumer policy but ‘much consumer policy is competition policy’. Thus competition and consumer policy seem to be truly complementary.¹⁶

2. Differences

The highest level of demand-side competition policy is consumer protection law. While some countries such as Australia, Poland and the UK have joint agencies and laws, others have not introduced complementary consumer policy or harmonized policy objectives. For example, Slovenia’s competition policy was motivated by EU accession. The necessary legal framework and

13 Kamala Dawar, *Establishing Consumers as Equivalent Players In Competition Policy*, p. 1, available at: <http://www.competition-regulation.org.uk/conferences/southafrica04/Dawar.pdf>.

14 *Ibidem*.

15 Katalin J. Cseres, *Competition Law and Consumer Protection*, Kluwer Law International, July 20, 2005, p. 326.

16 J. Vickers, *Economics for Consumer Policy*, British Academy Keynes Lecture, 29 October 2003, p. 17.

apparatus for the execution of the EU anti-trust regulation and regulation of state aid was introduced, but without enhanced consumer protection and education components.¹⁷

Not all countries give a high priority to consumer efficiency and welfare. National competition authorities (NCA) are more concerned whether competition policy should focus on rules and procedures to prevent anti-competitive practices, dominance or abuse of dominance, the reduction of barriers to entry and / or facilitating optimal conditions. There is an evident lack of analysis of consumer behavior and welfare in making policy, law enforcement and investigations.

VI Competition policy as an effective instrument for consumer protection

Competition policy has positive impact on development of a market economy based on supply and demand. Competition encourages attractive prices and higher quality through innovation and increased economic efficiency.

European Union has played a role in encouraging the development of new modern competition regime. Much has changed since the competition provisions of the Treaty of Rome were drafted. In the 1950s competition concerns seemed to concentrate on ensuring that there was no price discrimination or refusal to supply based on nationality. Protecting national interests seemed to be the underlying purpose for developing a competition policy. Today protecting the interests of the consumer is the ultimate aim of any modern competition regime. Whilst the wording of the Treaty provisions may not have changed, their objectives have changed to such an extent that enforcement of these provisions has to be effective.¹⁸

Competition policy play an important role in ensuring that consumers gain the benefits of new technologies and protect against those who might seek to suppress the development to protect their traditional advantages or alternatively use technology to engage in anti-competitive conduct. The laws in Western world are flexible enough to deal with new economy issues, and the basic idea behind the competition policy – to protect economic freedom and opportunity by promoting competition in the marketplace – is a sound and flexible enough policy goal for competition authorities to follow.¹⁹

17 *Ibidem.*

18 Ian Q. C. Forrester, "The Modernisation of EC Antitrust Policy: Compatibility, Efficiency, Legal Security", in: Claus Dieter Ehlermann and Isabela Atanasiu (eds.), *European University Institute Competition Law Annual 2000: The Modernisation of EC Antitrust*, Hart Publishing, 2001.

19 Markku Stenborg, *Do We Need New Competition Policy in the "New Economy"?*, p. 12, available at: www.etla.fi/files/921_FES_02_2_competition_policy.pdf.

According to Adam Smith: “Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer”. Consumers not only benefit from competition, they activate it and one of the purposes of consumer protection law is to ensure that they are in a position to do so.²⁰

VII How the modernization of competition law effects consumers?

During the course of 1990s it became apparent that many aspects of Community competition law were in need of modernisation: in particular the law on vertical agreements, on horizontal cooperation agreements and on the obtaining of individual exemptions under Article 81(3) of the Treaty.²¹ The modernization efforts in the EU were in response to the regulatory inefficiencies and the burdens which the traditional enforcement of the competition laws imposed. As early as 1996, the Commission recognized that “the current political and economic situation necessitates the continuous modernization of the instruments and procedures available to the Commission, in order to improve the relevance, efficiency and transparency of competition policy”.²²

In general, the modernization effort in the EU is designed to increase efficiency in the enforcement of the European competition rules.²³

The modernization program involving the enforcement of Articles 81 and 82 of the EC Treaty is just one component in a broader effort to enhance the efficiency of the application of the European competition laws and to increase the competitiveness of European industry in a globalized economy.

VIII Economic transition, opening and creation of competitive markets in South East European (SEE) countries

In the last decade the SEE countries gone through transformation of their economic systems from a centrally planned economy into a decentralised market economy. One common factor for all these countries, is the cen-

20 R. Bannerman, in: *Trade Practices Commission, Annual Report 1983–1984*, AGPS, Canberra, 1984, p. 184.

21 Commission’s XXIX Report on Competition Policy (1999), point 8–42.

22 Commissioner Karel Van Miert, Presentation of 25th Report on Competition Policy, European Parliament (May 30, 1996) available at: http://europa.eu.int/comm/competition/speeches/text/sp1996_044_en.html.

23 Philip Lowe, *Priorities of Competition Policy, Contribution to Competitiveness and Challenges from Enlargement*, Speech at the ProbusBNW Dialogue, September 18, 2003, p. 2.

tral role of competition law and policy in creating economic environment where consumers' preferences and the efforts to compete with economic operators to satisfy those demands, lead to economic efficiency and welfare. The ambition to approach the EU and the European internal market has stimulated institutional and economic reforms in all SEE countries, but at different pace and to a varying degree.

The institutional and legal framework for promotion of competition and eliminating restrictive business practices shall encourage consumers and their acting in drafting policies, monitoring abuses on the market and in requesting damages in case of their appearance. The governments and national competition authorities are expected to recognize the positive input which the consumers' acting may give to promotion of the competition and when needed for amendments of the laws, regulations and procedures for removing barriers for their participation.

In 1990s, South Eastern European countries started with the transition process and implementing big economic reforms (transformation from social to private ownership, market of goods, capital and labor) with general goal to tend towards market economy. This process in economic literature is known as economic transition and the economies of these countries are called transition economies.²⁴ It was characterised by a very complex process of transformation in institutions, economic structures and behaviour.²⁵ The SEE countries being a part of the ex-Yugoslavian system had considerable experience of market-oriented reforms and even prior the transition process took place have already implemented many institutional changes. The other two potential advantages of these countries with respect to other former socialist countries, have merged as a by-product of institutional changes introduced in the past. Economic reforms have required changes in economic policies, as the emergence of new problems which were non-existent in the centrally planned economy, required greater reliance on market-type instruments of regulation. At the same time, market-oriented reforms and accompanying policies have also involved some economic restructuring, although only in certain fields and limited in extent.²⁶

In most SEE countries, essential parts of transition – initial phase reforms such as price, trade and foreign exchange liberalisation, institutional reforms and small and large-scale privatisation, reforms to corporate governance and competition policy, deepening of financial intermediation and infrastructure reform are close to completion and significant progress has been

24 P. Curic, "Hrvatska u vrtlogu procesa globalizacije", *Economics*, No. 3, 1998, p. 8–9.

25 Martha De Melo, Cevdet Denizer, Alan Gelb, *From Plan to Market: Patterns of Transition*, Policy Research Working Paper 1564, Washington, World Bank, 1996.

26 Milica Uvalić, *Investment and Property Rights in Yugoslavia: The Long Transition to a Market Economy*, Cambridge University Press, 1992, p. 199.

made. Trade and price liberalisation as well as structural reforms have established the conditions for competition in numerous sectors in SEE countries.

More is needed especially to succeed the standards necessary for EU membership (except for Bulgaria, Romania and Slovenia which are already part of the EU family).²⁷ In strengthening their economies, creating fundamentals for sustainable economic growth and building up necessary physical, legal and institutional infrastructure, the SEE countries will need to enforce competition law and integrate competition policy into various of economic policy.

1. Competition laws and their coverage

Competition policy is a strong building block in the foundation of successful market economies. Development of competition policies in SEE countries aims at creating a level playing field for investment, which is of major importance for the economic progress of the countries in the region. A sound competition policy implies a complete legal framework covering all anti-competitive behaviours and abuses by market actors and governments, institutional structures to ensure a vigorous implementation of the competition rules, a general focus on the most serious distortions of competition, transparency in procedures, a deterrent sanctioning policy, and public awareness of competition principles.²⁸

Competition laws are mainly created to tackle anti-competitive business practices. Beside substantial differences in prior economic development, legal systems, and traditional cultural and society characteristics of South Eastern European countries, certain elements of national competition legislation and practice are similar and the other differ, especially the issue of enforcement practice.

Considering the shared common objective of SEE countries to become EU member states, competition legislation has been adopted as a part of the legislative reform that was required in the transition process from former centrally planned economies to a market economy. The protection of competition was expressly recognised as a pillar of the sound functioning of the market and development of the economy in these countries.

All countries faced the responsibility within the framework of the EU enlargement process, to adopt and to enforce the *acquis communautaire* in

27 Elisabetta Falcetti, Peter Sanfey, Slagjana Tepic, “South-East Europe: Opportunities and Potential for Investment and Growth”, in: Klaus Liebscher (ed.), *European Economic Integration and South-East Europe: Challenges and Prospects*, Edward Elgar Publishing, 2005, p. 51.

28 OECD, Directorate for Financial, Fiscal and Enterprise Affairs, *Competition Law and Policy in South East Europe*, April 2003, p. 3.

the field of competition before the date of their accession to the EU due to prepare their economies to cope with the competitive pressures of the European internal market. This should, in principle, improve the competitiveness of the economies and benefit the consumers. Specifically, common for all SEE countries is that the competition laws are based on the provisions of Articles 81 and 82 of the EU Treaty. All countries introduced the first competition laws in the second half of 1990s, and then faced with the responsibilities defined in the priority area of the European Agreements for Romania, Bulgaria and Slovenia and Stabilisation and Association Agreements (SAA) for the rest of the countries to harmonise national competition legislation with the EU *acquis*, as a prerequisite for accession to the EU. As a result, most of these laws were either amended or new competition laws have been adopted.

2. Institutional framework for enforcement of competition law

The second element of the assessment of competition policy before enlargement is adequate administrative capacity of accession countries in order to maintain competition discipline in line with European practice and to create credible enforcement record in all areas of competition policy. The administrative capacity shall be a competence of independent competition authorities with sufficient administrative capacity and expertise, provided with adequate financial resources. The challenge for NCAs will be to participate effectively in extending the scope and reach of competition policy principles while maintaining appropriate independence and impartiality (mainly political) in the core function of competition law administration. The NCAs should have broad powers to investigate and impose sanctions on natural persons and legal entities infringing the competition legislation.

All SEE countries have adopted a competition law and assigned the task of enforcing that law to a specialised body. The established NCAs have different organisational structure and competencies in enforcing the competition rules. There is significant difference in the number of staff and division within the NCAs, but one common for all of them is that they have specialisation division of tasks related to the competition law enforcement. Related to the issue of independence, all of the NCAs are established as to be free from any political and economic influence, and to be completely autonomous in respect of their organisational, functional, financial and personal tasks.

NCAs played important role in the process of transition to effective market economies in SEE countries. They provided guidance to economic reform and implemented rules to defend markets against all attempts to restrict, distort or eliminate competition between the market players. In this manner, they created economic environment favourable to investment and entrepreneurship, key prerequisites for growth and welfare. All SEE countries

today have independent, competent and strong competition authorities, not completely released and free from undue interference (especially from political influences), which is one essential element leading to successful transition to market economies.

3. Shared competence to enforce competition rules: NCAs vs. national consumer bodies

Competition policy and consumer policy are separated both institutionally and also legislatively in the SEE countries. Competition policy is adjusted by independent act and its performance lies within NCAs. Consumer policy is considerably fragmented, adjusted by many independent legal acts and tens of institutions deal with particular performance of consumer protection. The institutional structure for implementation of the competition and consumer protection laws differs from country to country, and it has impact on the way taking into consideration the consumers' interests.

Differently from competition policy, many institutions deal with consumer policy and many laws tackle directly or indirectly this area. Main competences in the area of consumer protection lies within authorisation of the relevant Ministries, which coordinates activities of all institutions in this area and fulfils many executive, conceptual and strategic functions. Consumer associations are special on the other side as groups of subjects acting in the area of consumer protection, mainly focused on representation of consumers' interests, provision of consultancy, legal protection and involving in international activities.

The consumer and competition policy in SEE countries share the common goal of making efforts to reach consumer welfare. However, competition policy is specialised in consumer indirectly and its aim is to protect competition with the goal to support economic development in favour of consumer. Thus the task of the NCAs is to ensure effective competition and functioning markets through prohibition of anticompetitive agreements and abuse of a dominant position and also non-approval of concentrations leading to creation of a dominant position. Competition environment leads to low prices, wider supply, innovations and etc., from which consumer benefits. Consumer's effect of competition policy implementation appears in middle-term or long-term horizon, it is not directly visible and is hardly measurable. On the other side, the consumer policy is focused on consumer more directly than competition policy, since consumer policy deals directly with relation supplier-consumer and covers the areas, which competition policy does not achieve, for example problems of products safety or misleading advertising cannot be solved only by ensurance of competitive environment.

Simplification of the responsibility for enforcement through joint action of the relevant bodies shall decrease the burden of the consumer protection organisations which needs support and encouragement for their work. Unfortunately, the NCAs and the consumer protection organisations in SEE countries do not reflect extensive and active cooperation, mainly due to the considerable dilution and narrow specialisation of individual consumers' associations or other consumers' authorities. Changing this situation, better results in implementation of both policies could be reached to the benefit of consumer.

In that respect the SEE countries should reconsider the focus of their competition regimes to as well enclose:

- increase and deepening of the knowledge of consumer protection organisations for the most considerable requests of competition law and the most important issues of competition referring to the consumers,
- enabling consumer protection organisations to demonstrate their opinions for the basic competition rules/issues and to identify those aspects of the competition laws for which they need further trainings and experience.

4. Legal protection of consumers

Consumer protection which was still in its infancy had an important challenge to face in the transition period of SEE countries and consequently consumer organisations had an important role to play. They fulfilled their role by means of educating consumers, providing them with information, controlling the enforcement of consumer protection legislation, and inspecting products and safety standards. The actual recognition of consumer protection was slowly advancing. It was in 1990s when the SEE countries enacted first consumer protection laws. The effort to put consumer protection on the legislative and political agenda was significantly urged by the EU. The accession process and the obligation of SEE countries to align their laws with the EU law greatly stimulated the creation of an independent and autonomous area of consumer protection.

IX Conclusions

There is strong complementarity between competition policy and consumer policy. The competition and consumer policy share the same common objective: the both intend to facilitate achievement of so called 'consumers'

sovereignty’ or efficient choice for consumers. The ‘consumers’ sovereignty’ is defined as condition where consumers may freely make decisions on the grounds of their individual interests and market which has power to respond to those interests. The competition policy has a tendency to offer consumers wide scope of choice while the consumer policy intends to provide consumers efficient choice of available options.

There has been a growing awareness in the EU that consumer rights need to be better integrated into the competition issues. Competition therefore aims at a target of enhanced consumer welfare, and this is the clearest and most direct link by which the competition process benefits EU citizens. Therefore, consumer welfare is a point on which the European Commission has been putting a strong emphasis over the last years when enforcing competition law. This is because just as consumers benefit from functioning competition, they will equally be the ultimate victims of any anti-competitive behavior. The importance of consumer welfare in competition policy is summarised by Commissioner Kroes’s statement that “Defending consumers’ interests is at the heart of the Commission’s competition policy. In concrete terms: competition gives citizens better goods and services, and ensures businesses have more opportunities to sell them.”

From the perspective of future EU enlargement, tremendous progress has been achieved in legislative approximation of the competition legislation and in the creation of market systems in SEE countries. The SAA provides for a competition regime to be applied in trade relations between the EU and each of the SEE country based on the criteria of Articles 81 and 82 of the EC Treaty, Article 86 and Article 87. With a tendency to make accession a successful story and to ensure the proper functioning of the EU internal market after enlargement, it is especially important to create operationally independent professionalized national competition authorities, politically autonomous, entrusted with the powers necessary for the full application of the competition regime, guarantying further progress and effective enforcement due to create a genuine competition culture through application of competition advocacy instruments. Competition advocacy reflects various benefits of competition. The experience so far in SEE countries has shown that several factors lead to successful competition advocacy:

- the NCA must establish good relations with government ministries, regulatory bodies, and all the other involved in drafting, enacting, and implementing competition and other related policies affecting demand and supply conditions on the market;
- competition advocacy often entails formal appearances and public statements to promote or defend positions in favor of competition;

- the NCA must have expertise in the areas in which it seeks to intervene. The authority should suggest adequate policy measures to address competition concerns;
- competition advocacy should be conducted in an open, transparent manner in order to safeguard the integrity and credibility of the NCA;
- NCA should focus on public awareness, need to establish good media relations and explain the role and importance of competition policy as an integral part of the governments' economic framework.

Consumers are more than simply passive beneficiaries of competition or victims of lack of competition or market abuse. Informed, educated and active consumers are the real drivers behind a competitive marketplace, since ultimately, it is choice and purchasing decisions at the end of a market that drive its requirements and needs upstream. Empowering consumers means giving them the ability to be compensated for the harm they have suffered as a result of a breach of competition law, notably by obtaining a proper redress after they were rigged by a cartel. Continued engagement with and focus on consumers, the NCAs' action in SEE countries will ensure that consumers reap the full benefits of competitive markets. Therefore the competition policy regimes in SEE countries indicates that competition policy is an increasingly central feature toward their EU integration. This reflects growing use of competition policy as an instrument of fulfilling Copenhagen Economic criteria.

The SEE countries should participate in relevant EU bodies to promote the integration of competition policies and consumer protection. Their intention should be focused to better promote consumer issues, first by allocating more budgetary funds for this purpose, and, second by supporting more competition in provision of goods and services. Non-governmental bodies on consumer protection should put efforts to strengthen international cooperation to bring in the best practices of other countries that have demonstrated its usefulness, both in the area of consumer protection and competition policy.

др Верника ЕФРЕМОВА
руководилац, GIZ ORF – правна реформа Македоније

ИНТЕРАКЦИЈА ИЗМЕЂУ ПРАВА КОНКУРЕНЦИЈЕ И ПРАВА ПОТРОШАЧА У ЗЕМЉАМА ЈУГОИСТОЧНЕ ЕВРОПЕ

Резиме

Овај чланак истражује однос између права конкуренције и права потрошача са посебним освртом на државе Југоисточне Европе, имајући у виду да је реч о одвојеним областима, али које у стварности деле заједничке циљеве унапређења благодинања потрошача. Према томе, биће приказан конфликт циљева права конкуренције и потрошача на нивоу Европске уније, преко анализе у којој мери циљеви конкуренције корелирају циљевима заштити потрошача, указујући на њихову комплементарност и разлике. У исто време ће бити анализирано да ли је конкуренција ефикасан инструмент заштити потрошача и каква је генерална улога Европске уније у том погледу. На крају је примењена компаративна анализа режима конкуренције у државама Југоисточне Европе у односу на заштиту потрошача, чији је основни циљ да истражи опис националних права конкуренције и основних циљева конкуренције од интереса за потрошаче.

Кључне речи: потрошачко благодинање, конкурентска тржишта, интеграција тржишта, заштита потрошача, антikonкурентска пракса, користи за потрошаче, организације за заштиту потрошача.