

CO2C: Analyse the existence of any anti-competitive advantages granted to operators

| REGULATORY FUNCTION: COMPETITION | | CO2C |
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| OBJECTIVE CO2 Operators' competition behaviour is audited through collected legal and contractual information | ACTION CARD CO2C ANALYSE THE EXISTENCE OF ANY ANTI-COMPETITIVE ADVANTAGES GRANTED TO OPERATORS | |
| COST: High FREQUENCY: Regular TARGET GROUPS: Regulators, service operators, service clusters, anti-monopoly institutions | | |
| DESCRIPTION <p>In addition to anti-competitive behaviour, checks and analysis performed through regular and random annual audits also assess state subsidies to operators that can include aid coming national, regional, or local authorities. Impartial auditing procedures are a precondition to this action, obliging regulators to develop sets of transparent procedure guidelines for conducting and reporting audits of state aid. In accordance, regulators evaluate and assess any state subvention to operators that could be harmful to competition. Those that disproportionately help operators beyond necessity are illegal and must be reimbursed. Most importantly, by performing this action, regulators help other operating competitors to avoid being placed in an inferior position, and which could eventually force them out of the market and negatively impact consumers.</p> | | |
| EXPECTED OUTCOMES <ul style="list-style-type: none"> • State subsidies are reviewed and prevented. • All operators in a given market enjoy equal conditions to compete jointly, to the benefit of consumers. • Regulator could establish incentives or aid that apply universally to all competitors. | | |
| EXAMPLE 1: EUROPEAN UNION <p>In the EU, the European Commission received a complaint in 1997 from an Italian association of private water distributors, alleging that the Italian government was granting illegal aid to joint stock companies with public majority shareholders created according to Law no.142/90. This law regulates municipalities as service providers. It stated that municipalities could create joint stock companies (SpA) in which they would maintain the majority of the shares. As a result, these undertakings became entitled to receive loans from Cassa Depositi e Prestiti (CDDPP), that turned out to have interest rates lower than the market rate. Moreover, in 1993 and in 1995, Italy established income tax exemption for this category of undertakings and also provided an exemption on all taxes relating to the transfer of assets to joint stock companies created according to Law 142/90.</p> <p>The European Commission had not been notified, and after requesting clarifications from the Italian authorities, it decided to open a formal investigation procedure. The Commission found out that the granting of this aid was not linked to explicit entrustment with any public service obligations, and the Italian authorities did not demonstrate the existence of any such obligations. On the contrary, the decisive criterion for benefiting from special fiscal treatment was the nature of the company (joint stock company) and its shareholder composition (majority public). Furthermore, the measures did not apply to an entire economic sector, but only to some public undertakings operating in that sector. Having reached this conclusion, the Commission decided that the Italian authorities should take all necessary measures to recover the illegally granted aid under the two schemes, and thus re-establish a level playing field between all operators in the sectors concerned.</p> | | |
| EXAMPLE 2: ARGENTINA <p>In Argentina, the tariff policy—tariff levels and subsidies—developed from 2006 to 2014 was characterized by tariff freezes, which threatened the economic and financial balance of the service; as from 2014, a general (almost universal) subsidy scheme was implemented according to geographical area, making no distinction in user ability to pay, with the State subsidizing providers to allow for a tariff reduction. A subsidy reduction process has been underway since 2022, stipulating a mechanism by which subsidies are restricted to users that were not able to pay the resulting tariffs. Although this experience does not imply subsidy reimbursement—simply its elimination—it is consistent with the concept of assessing State subsidies granted to operators that may harm competition insofar as they disproportionately help operators beyond actual necessity.</p> | | |

LINKS

EU: http://europa.eu/rapid/press-release_IP-02-817_en.htm

Argentina: Values of modification coefficient “k”

<https://www.boletinoficial.gob.ar/detalleAviso/primera/273473/20221012> ;

<https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-51-2022-373558/texto>

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 also extend their expertise when developing regulatory monitoring guidelines. Development partners can build upon this through training and establishing 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 concluding decisions.