

# Strategies for Competition Advocacy



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*Changing market conditions stimulate modernization of criteria, norms and standards of competition regulation and methods of enforcement. Competition advocacy is a type of activity exercised by antimonopoly authorities to strengthen competitive environment without enforcement measures, through developing active cooperation with other government bodies and increasing the degree of understanding of the benefits of competition by the community. This paper focuses to identify valuable information regarding the different ways that competition agencies interact with regulators and how they go about their competition advocacy work, delivering and creating more competitive environment to regulated sectors and to the economy as a whole. Even though competition advocacy methods and institutional arrangements can vary significantly across jurisdictions, so this article aims to provide an insight into some key operational areas in competition policy and detection of the problem of competition policy implementation and providing solutions by using different analytical methods and tools.*

**Keywords:** Competition Advocacy, Communication Tools, Antitrust Response Competition Law

## 1. Introduction

Competition advocacy is a type of activity exercised by antimonopoly authorities to strengthen competitive environment without enforcement measures, through developing active cooperation with other government bodies.

At the present stage in the international regulatory practice of the competitive environment, one of the most important areas is the policy of preventive deterrence of anticompetitive actions and competition advocacy. It is caused by the transformational processes in the economy and the development of new approaches to antitrust control. As a world-wide practice, antitrust measures on competition advocacy and the promotion of sustainable competition culture in the community of consumers and producers are considered as essential components of a successful competition policy (Pitofski, R., 1998). The term "advocacy" was first proposed in the paper by T. Murrissa, Chairman of the U.S. Federal Trade Commission, in the section "Protection and Competition Policy" at the first annual conference of the International Competition Network which took place in 2002 in Italy. «Advocacy of Competition is one of the activities of antitrust authorities.

Competition advocacy is aimed at strengthening the competitive environment through mechanisms that do not involve the use of coercive measures, and the use of active relationships with other government agencies and an increased understanding by the general public of the benefits of competition» (Murrissa, T., 2002).

The area of antitrust regulation began to create new fundamental standards and requirements for self-transformation and renewal of antitrust policy and its impact on all aspects of society (Posner R., 2001, Sherer F. M., 2008, Steiner G., 2006, Sutton J. 1998, Vickers J, 2007 Williamson Peter J., 2007). Which are the main sources of "soft power", i.e.

1. Liberalization of antitrust regulation is strengthened and predominant application of the rule of reason takes place over the principle of the law.
2. Efforts by the Antitrust Agencies are now more focused on the most serious infringements of the competition law.
3. There is a growing significance of measures aimed at encouraging the desired behavior of market participants (greater efficiency, the formation of an innovative approach to the economic development, creation of facilities and the reduction of risks linked to consumption etc). Behavioral methods of control encourage market consolidation and strengthening of more efficient companies.
4. There is an economic trend towards the development of larger companies, oligopolistic markets and technological chains. Negative vector of concentration is being reduced and there is a growing awareness of the inefficiency of an over-strict regulation of economic concentrations by the market forces.
5. Consensus is emerging among the competition authorities based on the liberal principles of the application of international standards, analytical techniques, methods of investigation of violations of competitive processes, legal norms and their application. Principles of harmonized legislation are also being developed.
6. Issues related to the competition advocacy are being clarified. The role of the proactive deterrence of anticompetitive actions in comparison to the measures of the antitrust response (post factum) is growing. Creation by the companies of value chains and new communication opportunities, desire for public openness the complex analysis of the behavioral actions of the market players and the allocation of the final benefits for the consumers and the society at large. Thus, the economic and political processes, the development of civil society and social Internet-based networks created new conditions for the implementation of competition policies. Apart from the strengthening the supervisory functions, rules and procedures, these policies need to inform a wide range of citizens, market players and state bodies at all levels the advantages to the society and a variety of other economic and social benefits.

For a long time the system of the long-established advocacy principles by competition authorities has not been considered as an important component of their work. The Antitrust Department of the Ministry of Justice and the U.S. Federal Trade Commission began to work on the individual components of advocacy as applied in the advocacy system in the 20-30s of the twentieth century. Only in the last decade of the last century this area has become an important focus for their activities which was associated with the increased attention to the reforms of deregulation in the United States (Murrissa, T., 2002). The understanding of the importance of advocacy in other countries has come even later and it was caused by a variety of reasons. Among others, different stages of the economic theory, the focus on improving technology, the efficiency of the production methods, increased privatization and regulatory reform are being mentioned. An important advantage of the competition advocacy is the expansion of tools and methods to create a competitive environment and redistribute the "load" to protect it with the objective limitations of enforcement mechanisms and the active development of the "rules of the game".

**The Strategy of Competition Advocacy** focuses on increasing the effectiveness of clients' competition frameworks. Clients can access competition policy support in several ways: technical advice on policy implementation; analytical and diagnostic products to assess competition policy constraints; and advocacy and convening work. Competition agency offers clients the following analytical and diagnostic products to support implementation and advocate for competition support implementation and for competition reforms:

**Competition Policy Assessments**, including evaluation of product market regulations; sectoral competition assessment; antitrust and state aid frameworks assessment; assessment of anticompetitive sub national regulations; estimations of the effects of lack of competition on key variables (e.g. productivity, poverty, and consumer welfare). **Competition Policy Notes**, including a focus on specific topics (e.g. competitive neutrality, anticompetitive regulations); review of competition law framework and by-laws; policy notes with priorities for new governments.

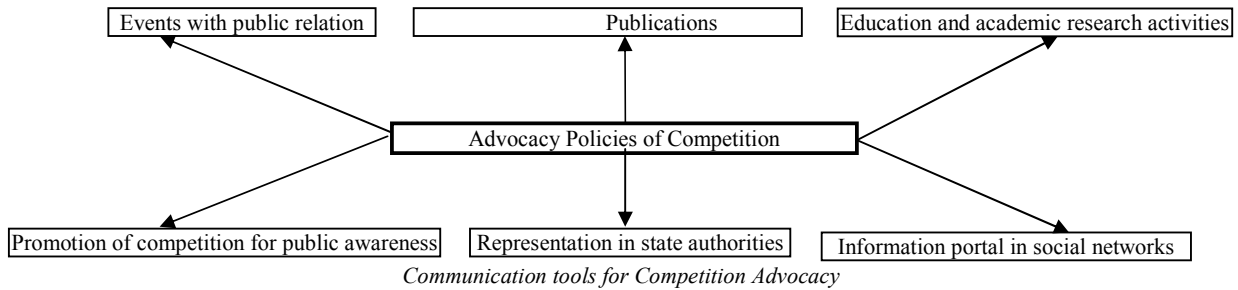
- **Institutional Effectiveness Review:** Involving functional review of the competition agency and its institutional effectiveness; evaluation of implementation policies and guidelines.
- **Impact and Advocacy Reports:** Monitoring and evaluation for competition interventions; literature reviews, cases, and technical papers to build analytical evidence on the need for competition policy reforms and convey results to policy makers and civil society.
- **By deepening our understanding of market dynamics and by measuring the effects of anticompetitive behavior:** Market players react to economic incentives and engage in strategic behavior. Ignoring the strategic interaction between market players would limit our understanding of the mechanism through which public policies can achieve our development objectives (or not). When firms are able to jointly undermine competitive dynamics, then prices and other market outcomes reflect the artificial scarcities of supply, causing the inefficient allocation of resources and thus eroding socioeconomic welfare. Understanding which markets are more prone to collusion, and analyzing how public policies can support or deter the development of cartel behavior, becomes crucial. Similarly, measuring the costs of cartel behavior for society will help overcome potential political-economy considerations and will help provide relevant ammunition to competition champions.

**The process of competition advocacy** includes all activities of the competition authorities to promote and protect competition which does not fall under the legislation. On one hand, advocacy tries to convince the authorities not to take anti-competitive measures to protect the interests of certain groups which at the same time may harm the public interest (Ellig J., 2001, Pleatsikas C., David J., 2001). This is achieved by such means as: a) informing the state bodies and the general public about the aims, objectives and results of the work of competition authority and its policies; b) involving the outside experts in the activities of the competition authority and who can provide an independent perspective on its work; c) training provision for the regulatory agencies and explaining to them the need for such regulatory rules that would be open to competition. On the other hand, there is an element of competition advocacy which is aimed not only at the government, the legislators but the market players and the society at large. This approach combines efforts by the competition authority designed to make the other government agencies, the legal system, the economic players and the public more aware of the benefits of competition, the role of competition policy and the law protecting the welfare of the population. Hard power is the ability to coercion, due to the military and economic power of the country. Soft power arises when a country attracts their own culture, political ideals and programs. It has become a greater importance for the solution of issuing requiring multilateral cooperation. Because soft power is ability desired results based on the voluntary participation of partners and not through unfair preferences.

Taking account the views of the different sources we believe, that, soft power - a form of political power, the ability to achieve the desired results on the basis of voluntary participation, sympathy and appeal, in contrast to the "hard power" which implies coercion. The basic tools to carry out the promotion of this element are: a) research conferences and forums for business

Community on important issues of the theory and practice of law enforcement; b) educational seminars for lawyers, judges, academics and the representatives of the business community on specific issues of competition policy; c) publication of annual reports on the development of competition, sociological surveys describing the level of public (the business community, the government and the population) awareness of its latest tendencies, trends and processes in the individual markets sectors; d) interaction with the public bodies, trade unions and the academic community which can be carried out in several directions; e) the activities of public sector boards and industry specific expert boards; f) public hearings of the cases discussed by competition authority; g) the tools of mass communications - issuing press releases about the pending cases, briefings, special programs, publications in mass media and information websites are presented in following Figure to promote formation of competitive culture by competition advocacy

In next page figure explained communication tools for competition advocacy.



## 2. Implementation

Implementation issues in the process of building the doctrine of competition policy intensive targeted action on competition advocacy in a particular segment form the grounds for the implementation of the relevant concepts: One can segment target advocacy groups (Theodore Tenner, T., 2011, Hiritoui B., 2011) by various attributes but first and the foremost these are the groups divided by a different institutional status: authorities, market players, society and obviously the judges. For each of these groups there are specific and separate instruments of pressure initiated and implemented by the antimonopoly bodies. Authorities (government, public and local authorities, industrial sector control officers): Prior warning before the adoption of anti-competitive regulatory norms and anti-competitive actions on the part of the governmental authorities, lobbying and joint hearings; Joint activities in the field of law-making; Provision of information on the activities of the antitrust authority Market actors (business community, professional bodies, non-profit organizations, academic community, the mass media) (Williamson Peter J., Zeng Ming, 2007): Prevention and prior warning of violations; Reduction of administrative barriers; Establishing transparent policies; Society and consumers: Creation of a competitive culture Providing information on the benefits of competition. The concept of competition culture involves awareness by the various societal groups of the advantages and benefits that are associated with the safeguarding and the development of competition embodied in the value system of informal rules. Competitive culture provides a better understanding by all stakeholders of the importance of competition as a factor contributing to the improved economic efficiency and economic development (Prahalad C.K., Ramaswamy V., 2004). Among the important factors contributing to the creation of the competitive culture one can identify: a) the impact on other organs of state power (through persuasion by formulating well argued positions and recommendations); b) improving the level of understanding by the general public of the benefits of competition; c) maintaining the principle of transparency in relation to the plans, projects and programs implemented by the competition authority. Appreciation by the authorities of long-term benefit from competition for the community as a whole, even when competitive processes can have adverse effects on the interests of different groups in the short term, is an important component of a competitive culture. Equally important is the legal system, which is applying competitive principles and is less focused on the procedural deficiencies of the cases they examine. This legal system is an essential factor in the effective enforcement of the competition law and the strengthening of a competitive culture. **The effective implementation of the policy of competition advocacy which considers the specifics of how pressure can be applied on certain market players enables one to: strengthen the competitive culture in society; promote a competitive market and create a clear field in the market for both host and foreign businesses**, deter anti-competitive behaviour by attracting professionals working in the market to look for solutions related to the problems of competition; reduce the costs of enforcement of the rules of competition regulation; ensure public and political support for the pro-competitive initiatives; report to the general public on the activities of the competition authority as the body funded by the tax payers; shape public opinion and support initiatives related to the antimonopoly body; raise the influence of the antimonopoly authority as the leading agent of competition advocacy on the economic activities and the level of trust in the community. The concepts of advocacy presented here include the general definition of purpose and a set of tools by which these objectives are to be achieved. By further filtering out the purposes of competition advocacy the most important ones are highlighted below: maintaining enforcement by informing market participants about the content of competition rules which increases their willingness to use competition law to protect their rights; increasing awareness by the potential offenders not only which of their actions are legal and which are illegal, but also what efforts the competition authority will undertake to detect and penalize violators; reducing the likelihood of generating and applying rules which are contrary to the spirit of the competition policy at various levels of government. After analyzing a wide range of literature and classifying the views of academics and practitioners alike I believe that competition advocacy a systematic management activity by the competition authorities, aimed at establishing mutual understanding between the government, society and business, including complex communication, advocacy and educational activities, and informing market participants about their rights and obligations to the society and the market. The main effort in the field of competition advocacy to achieve public recognition, educational levels and make the public aware of the issues related to competition, includes the tasks related to the procedural justice. In addition, ensuring cooperation between the antimonopoly bodies and the state authorities and society enables effectively implement communication interaction and form the support for competition agenda. The table below represents the challenges of advocacy competition and the mechanisms and tools to overcome those constraints.

Objectives	Mechanisms and tools for achieving goal
1. Creating support for competition policy and antitrust procedures	Legislative support <ul style="list-style-type: none"> <li>• Official comments on legislation</li> <li>• Consultancy &amp; recommendations</li> <li>• Legal monitoring</li> <li>• Protocol of co-operation with authorities</li> <li>• International co-operation &amp; implantation of standards</li> <li>• Inclusion of standards to ensure the safeguarding of competition in the related industries</li> </ul>
2. Provision of co-operation between the competition authority and state agencies, business and broader public	<ul style="list-style-type: none"> <li>• Discussion for the amendments and changes in law with the representative of business community, provisional nonprofit organization &amp; academic community</li> <li>• Public events (conferences, seminars, article publications&amp; official reports etc).</li> <li>• Industry reports and sectors surveys</li> <li>• Collaboration with universities &amp; design the educational programs</li> <li>• Briefing to parliamentarians &amp; government</li> </ul>
3. Developing tools for effective implementation of communication interaction	<ul style="list-style-type: none"> <li>• Creation of competitive culture</li> <li>• Publication of mass media trade journals</li> <li>• Promote website ,internet, twitter and other social networks</li> <li>• Press realizes</li> <li>• Participation in public debates</li> <li>• Symposium &amp;panel discussion</li> </ul>
4. Procedural objectivity	The leniency program for market participants: Competition advocacy in the form of PR activities i.e. <ul style="list-style-type: none"> <li>• Informing the general public about the activities of the competition authorities</li> <li>• Obtaining feedback on the activities of competition authority</li> <li>• Conducting dialogue and considering the views of market participants</li> <li>• Attracting public attention to the problems of development of competition</li> </ul>

Training courses included in the framework of additional educational training programs and basic education special relief from the responsibility for anti-competitive agreements. Using a policy of non-liability for companies which have violated competition law provides a significant advantage to the competition authorities: a quick collection of evidence at the least cost, the availability of direct evidence, incontestability of evidence, and prompt cessation of the regulatory n programs at bachelor and post graduate level. "Leniency program" for the market players who have decided to cooperate with the antimonopoly agency to disclose cartel behavior may provide

### 3. Conclusion

An agency acquires credibility as an effective and impartial advocate for competition and for that purpose there is the greater role of formal and informal advocacy. For an agency's work to be more effective, the public and private sectors; policymakers and their constituents – businesses, workers and consumers – must understand how competition benefits an economy, and have confidence in the competition agency as an advocate for sound competition policy.

Sometimes it is observed that the views of the competition agency regarding pending legislation are binding; so that competition agencies can play more of a consultative role. Such a wide array of advocacy tools suggests that there is not only anyone technique is effective to promote competition policy rather there should be combined efforts of different techniques by a competition agency to promote the benefits of competition in sectors that are subject to regulation.

It should be noted that the competition advocacy by competition authority is introduced in order to create the appreciation by the society of fair competitive conditions. Based on widening cooperation with other state bodies, business associations and the academia, the understanding by the society of the benefits of competition is raised and its impact on the creation of fair rules for conducting fair economic activities for all market players.. One of the most important and controversial areas of advocacy are the activities of the antitrust authorities related to cautions and prior warnings. The first of these provides a public statement on the intended behavior the subject in the market (it can take a form of a petition), the second - a necessary step before initiating proceedings against the violation of the market (excluding cartels) and the government. These procedures should be regulated and meet certain conditions and legal norms. Competition advocacy is also less costly compared to the process of law enforcement, which is critical in current economic climate.

Consultation in the legislative process, either mandatory or discretionary, is a key area of competition advocacy. Competition agencies can play an important role in advocating procurement procedures that encourage competition. These reforms can translate directly into savings for the country's citizens. Successful advocacy in this arena tends to be visible, and can therefore contribute to the enhancement of the agency's reputation. Initially, the competition agencies that provided successful competition advocacy case studies appear to possess a certain level of political and financial independence, in

order to implement both its advocacy and enforcement functions. Of course, no competition agency has unlimited resources, so it is necessary to prioritize both competition advocacy and competition law enforcement activities.

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