

## ANNEX A

### Methodology

This study covers three sectors of the Romanian economy: food processing, transport with a focus on freight transport, and construction with a focus on public procurement. The assessment of laws and regulations in the three sectors has been carried out in four stages. The present chapter describes the methodology followed in each of these stages.

#### Stage 1 – Mapping the sectors

The objective of Stage 1 of the project was to identify and collect all sector-relevant laws and regulations. As a prior condition, it was necessary to define the scope of the three sectors in detail. Whenever possible, we adopted a definition consistent with the Statistical Classification of Economic Activities in the European Community (NACE classification) in order to ensure consistency with international practice and to facilitate comparisons with other European countries.

The task of collecting the relevant legislation for each of the three sectors was conducted by the OECD team using a variety of sources. The Sintact legal database was the main tool used to identify the applicable legislation. In addition, in order to ensure that all important pieces of legislation were covered by the study, input was solicited from all the competent line ministries involved in the selected sectors, from the members of the High Level Committee composed of senior government officials and from stakeholders in the three sectors. Following this process, the relevant legislation was organised under thematic categories, such as framework regulation applicable across the sector, regulations that deal with specific economic activities within the sector and so on. In total, during Stage 1, 803 different pieces of legislation were identified, including laws, (emergency) government ordinances, government decisions and ministerial orders. This number increased slightly to 895 pieces in Stage 2 of the project, as several additional relevant pieces of legislation were discovered during the scanning of the legislation, while other pieces were found to no longer be in force. Some of the additional pieces had not been published in the *Official Gazette of Romania* or the ministries' websites and were difficult to access.

A very important task that started during Stage 1 and was continued through further stages was the establishment of contact with the market through the main associations active in the three sectors. The interviews with market participants contributed to a better understanding how the sub-sectors under investigation work in practice and helped in the discussion of potential barriers deriving from the legislation or misinterpretation of specific provisions.

## Stage 2 – Screening of the legislation and selection of provisions for further analysis

In the second stage of the project, the main work was the screening of the legislation to identify potentially restrictive provisions as well as providing an economic overview of the relevant sectors. Every piece of legislation was scanned by two team members (“four-eyes-principle”). In addition, we started to compile economic papers and reports which were considered relevant for the three sectors covered by the study.

The legislation collected in Stage 1 was analysed using the framework provided by the OECD *Competition Assessment Toolkit*. This toolkit, developed by the Competition Division at the OECD, provides a general methodology for identifying unnecessary obstacles in laws and regulations and developing alternative, less restrictive policies that still achieve government objectives. One of the main elements of the toolkit is a “Competition checklist” that asks a series of simple questions to screen laws and regulations that have the potential to unnecessarily restrain competition.

### Box A.1. Competition checklist

Further competition assessment should be conducted if a piece of legislation answers “yes” to any of the following questions:

#### A) Limits the number or range of suppliers

This is likely to be the case if the piece of legislation:

1. grants a supplier exclusive rights to provide goods or services
2. establishes a licence, permit or authorisation process as a requirement of operation
3. limits the ability of some types of suppliers to provide a good or service
4. significantly raises the cost of entry or exit by a supplier
5. creates a geographical barrier to the ability of companies to supply goods, services or labour, or invest capital.

#### B) Limits the ability of suppliers to compete

This is likely to be the case if the piece of legislation:

1. limits sellers’ ability to set the prices of goods or services
2. limits the freedom of suppliers to advertise or market their goods or services
3. sets standards for product quality that provide an advantage to some suppliers over others or that are above the level that some well-informed customers would choose
4. significantly raises the costs of production for some suppliers relative to others (especially by treating incumbents differently from new entrants).

#### C) Reduces the incentive of suppliers to compete

This may be the case if the piece of legislation:

1. creates a self-regulatory or co-regulatory regime
2. requires or encourages information on supplier outputs, prices, sales or costs to be published
3. exempts the activity of a particular industry or group of suppliers from the operation of general competition law.

**Box A.1. Competition checklist (cont.)**

**D) Limits the choices and information available to customers**

This may be the case if the piece of legislation:

1. limits the ability of consumers to decide from whom they purchase
2. reduces the mobility of customers between suppliers of goods or services by increasing the explicit or implicit costs of changing suppliers
3. fundamentally changes the information required by buyers to shop effectively.

Following the methodology of the toolkit, the OECD team compiled a list of all the provisions which answered any of the questions in the checklist positively. Ministry experts were also involved in this task. The final list consisted of 227 provisions across the sectors, broken down by the sectors as follows:

- Construction: 95
- Transport: 85
- Food Processing: 47.

The collection of economic studies had the aim of identifying: i) analyses of relevant regulatory policy changes that had taken place in other countries ii) empirical and theoretical papers on the areas of interest emerging from the screening of legislation; and iii) competition cases and reports in the sectors covered by the study in other OECD countries. The main sources for the compilation of relevant literature included academic journals and publications, competition authorities in other countries, international bodies and associations, and the EU and OECD websites.

For each of the three sectors, we also prepared an extensive economic overview, covering industry trends and main indicators, such as output, employment and prices, including comparisons with other EU Member Countries where relevant. We also analysed summary statistics on the main indicators of the state of competition typically used by competition authorities, especially information on the market shares of the largest players in each sector. Where possible, these statistics were broken down by sub-sector. The analysis conducted in this stage aimed at giving background information to better understand the mechanisms of the sector, providing an overall assessment of competition as well as explaining the important players and authorities.

### Stage 3 – In-depth assessment of the harm to competition

The provisions carried forward to Stage 3 were investigated in order to assess whether they could result in harm to competition. In parallel, the team researched the policy objectives of the selected provisions so as to better understand the regulation. An additional purpose in identifying the objectives was to prepare, in Stage 4, alternatives to existing regulations, taking account of the objective of the specific provisions when required.

The in-depth analysis of the harm to competition was carried out qualitatively and when possible quantitatively, and involved a variety of tools, including economic analysis, research into the regulations applied in other OECD and European Member Countries and econometric and data analysis.

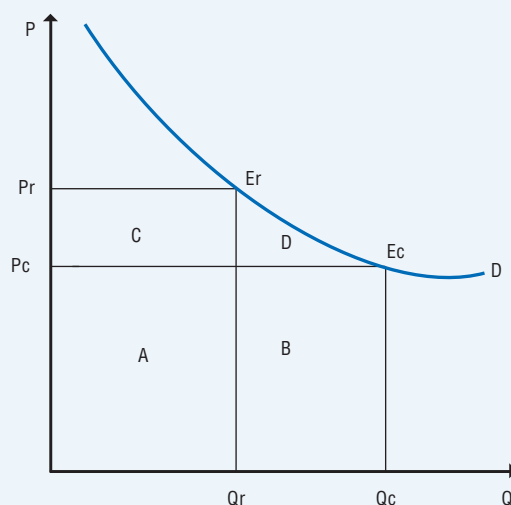
First, all provisions were analysed qualitatively, relying on economic theory, findings from the literature survey and the guidance provided by the OECD's *Competition Assessment Toolkit*. Interviews with ministry experts held in several workshops complemented the analysis by providing crucial information on the lawmakers' objectives as well as the actual implementation and effects of the provisions.

Second, whenever feasible and appropriate for the analysis of the issue under consideration, the OECD team gathered data that could be used for the quantification of the effects. For instance, when possible, variables were collected for a sample of countries to compare prices. As the expected impact of a regulatory restriction could generally not be modelled directly because of the lack of sufficient data, we relied on the standard methodology of measuring the effect of policy changes on consumer surplus. In particular, we followed the approach as suggested in the OECD (2015), *Competition Assessment Toolkit*, Volume 3, which derives a formula for changes in consumer benefit when only sector revenue and the average price effect of the restriction found are available. This is explained in Box A.2 below.

#### Box A.2. Measuring changes in consumer surplus

The effects of changing regulations can often be examined as movements from one point on the demand curve to another. For many regulations that have the effect of limiting supply or raising prices, an estimate of consumer benefit or harm with the change from one equilibrium to another can be calculated. Graphically, the change is illustrated by a constant elasticity demand curve.  $E_r$  shows the equilibrium with the restrictive regulation,  $E_c$  shows the equilibrium point with the competitive regulation. The competitive equilibrium is different from the restrictive regulation equilibrium in two important ways: lower price and higher quantity. These properties are a well-known result of many models of competition.

Figure A.1. Changes in consumer surplus



Source: OECD (2015), *Competition Assessment Toolkit*, Volume 3, OECD, Paris. [www.oecd.org/daf/competition/COMP\\_Toolkit\\_Vol.3\\_2015.pdf](http://www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_2015.pdf).

**Box A.2. Measuring changes in consumer surplus (cont.)**

Under the assumption of constant elasticity of demand the equation for consumer benefit is:

$$CB = C + D \approx (P_r - P_c)Q_r + \frac{1}{2}(P_r - P_c)(Q_c - Q_r)$$

where price changes are expected, a basic formula for such a standard measure of consumer benefit from eliminating the restriction is:

$$CB = \left( \rho + \frac{1}{2} \epsilon \rho^2 \right) R_r$$

where CB represents consumer harm,  $\rho$  represents the percentage change in price related to the restriction,  $R$  represents sector revenue and  $\epsilon$  is the demand elasticity.

When elasticity is not known, it is worth noting that if  $|\epsilon|=2$ , which would correspond to more elastic demand than in a monopoly market, but also far from perfectly elastic as in a competitive market, the expression above simplifies to:

$$CB = (\rho + \rho^2) R_r$$

Source: OECD (2015), *Competition Assessment Toolkit*, Volume 3, OECD, Paris, [www.oecd.org/daf/competition/COMP\\_Toolkit\\_Vol.3\\_2015.pdf](http://www.oecd.org/daf/competition/COMP_Toolkit_Vol.3_2015.pdf).

## Stage 4 – Formulation of recommendations

Building on the results of Stage 3, we developed recommendations for those provisions which were found to restrict competition. The present report is the result of Stage 4.

We tried to find alternatives which were less restrictive for suppliers while still aiming at the initial objective of the policy maker. In this process, we relied on international experience whenever available. In addition, the OECD asked the ministry experts for their views on recommendations.

Some provisions have been superseded by more recent legislation but have not been explicitly removed from the body of legislation. For these provisions, even if they may not result in actual harm to competition, we recommend that they be explicitly repealed in order to improve legal certainty and transparency. In other cases, we found that relevant legislation had not been published or that formulations were unclear, leaving room for wide discretion and possibly discrimination between market participants. Finally, we consider that some provisions constitute an administrative burden for suppliers. Even when we do not find evidence of harm to competition resulting from these provisions, we recommend that they be reviewed and simplified to the extent possible.

In total, 152 recommendations were submitted to the Romanian Chancellery:

- Construction: 72
- Transport: 46
- Food Processing: 34.

## Capacity building

Another important work stream in the project was to provide assistance in building up the competition assessment capabilities of the Romanian administration. To this end, officials from the line ministries and relevant authorities involved in this project were appointed by the Romanian Chancellery in order to gain exposure to the application of the OECD *Competition Assessment Toolkit*. Experts were appointed from the Ministry of

Transport, the National Company of Highways and Roads, the Ministry of Economy, Commerce and Relations with the Business Environment, Ministry of Environment, Waters and Forests, Inspectorate of State Construction, National Authority for Mineral Resources, National Standardization Authority, National Agency for Public Procurement (Before: ANRMAP: National Regulatory and Monitoring Authority for Public Procurement), Ministry of Regional Development and Public Administration, Ministry of Agriculture and Rural Development, National Sanitary Veterinary and Food Safety Authority, Ministry of Health, Ministry of Public Finance, Ministry of Foreign Affairs and the National Authority for Consumer Protection.

The selected ministry experts were involved in all the stages of the project and provided insights into the complexity of the legislation in their sectors of expertise.

More specifically, at the beginning of the project in March 2015, we organised a workshop which gave an introduction to competition policy as well as the OECD *Competition Assessment Toolkit*. The workshop explained the tasks in Stage 1. The ministry experts provided a significant contribution in ensuring that the legislation collected was comprehensive.

In May 2015, we held an additional 2-day workshop in the town of Sinaia and provided substantive training on the OECD *Competition Assessment Toolkit*. Subsequently, ministry experts had the opportunity to gain hands-on experience in the screening of the legislation using the toolkit as they were invited to help with the scanning work conducted in Stage 2 of the project.

The capacity-building process continued in Stage 3 with the identification of the objectives of the legislation in their sectors of expertise. For that, we held two workshops in September and October 2015, one with members of Romanian Competition Council and one with ministerial experts, on qualitative and quantitative analysis of restrictive provisions. Additionally, we organised a workshop on public procurement and bid riggings. In November and December 2015 we held several small workshops with the ministerial experts to explain our assessment of the harm to competition with reference to specific provisions and to obtain important feedback on possible alternatives to achieve the same policy objectives while minimising harm.

Finally, throughout the project we provided updates to the members of the High Level Committee on the status of our work, including on co-operation with their staff, and discussed with them our preliminary views on the relevant legislation. They were thus able to provide feedback at all stages of the process.

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**From:**  
**OECD Competition Assessment Reviews: Romania**

**Access the complete publication at:**  
<https://doi.org/10.1787/9789264257450-en>

**Please cite this chapter as:**

OECD (2016), "Methodology", in *OECD Competition Assessment Reviews: Romania*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264257450-10-en>

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