



**Asia-Pacific  
Economic Cooperation**

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Agenda Item: 11

## **Competition Assessment of Laws and Regulations**

Purpose: Information  
Submitted by: OECD



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# COMPETITION ASSESSMENT OF LAWS AND REGULATIONS



**APEC Economic Committee (EC)**  
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29 February 2016, Lima, Peru



## Agenda

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**Part I: Competition assessment**

- A. Challenges for economic growth
- B. Benefits of competition
- C. OECD Competition Assessment Toolkit
- D. Assessment process

**Part II: The Romanian Competition Assessment Project**

- A. Benefits of Competition
- B. Project Stages
- C. Working Arrangement
- D. Capacity Building
- E. Recommendations and an example

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## A. Challenges for economic growth

Growth pace can be slowed down, or even reversed, by various factors, such as:

- **Anti-competitive practices**
  - Cartels
  - Abuse of dominance
  - Unlawful mergers
- **Restrictive government regulation**
  - Grant exclusive rights to suppliers
  - Create entry barriers
  - Limit choices and information to consumers
  - Etc.
- **Lack of competitive neutrality** (preference to SOEs)
- **Non-competitive tendering**
- **Technical barriers to trade** that shelters domestic industries

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## A. Benefits of Competition

Competition leads to:

- Dynamic markets
- Production efficiencies (lower average costs)
- Lower prices for consumers
- Better quality, more choice for consumers
- Innovation
- Higher Productivity and Growth



*There is solid evidence in support of each of the relationships shown above. See Factsheet on the links between competition, productivity and growth, OECD 2014*

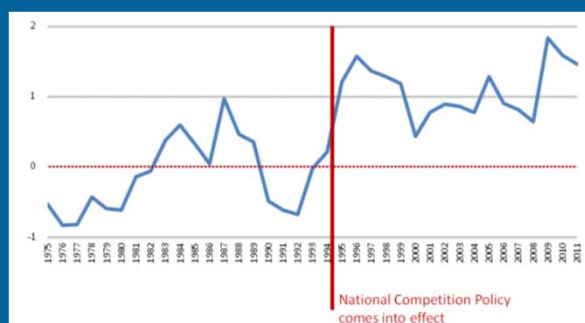
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## A. Pro-competitive reform can help

- Australia implemented broad, pro-competitive reforms at both national and state level in the mid-1990s. Since that time, has experienced strong economic performance, with high and steady growth.

*Difference, Australia GDP growth to OECD average*



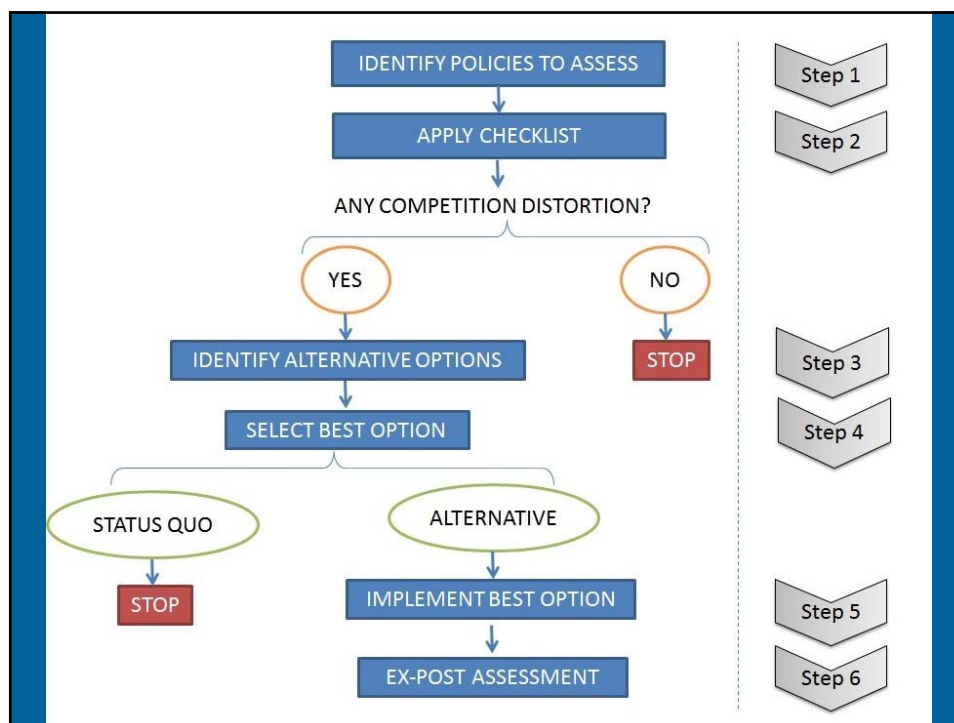
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## B. Competition assessment is Straightforward and simple

- **Competition assessment is:**
  - the assessment of whether regulations restrict competitive conditions; and
  - the development and evaluation of alternatives to find options that restrict competition less
- Builds on industrial organisation economics and transforms into concrete, operational method
- <http://www.oecd.org/daf/competition/assessment-toolkit.htm>

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## C. How to do an assessment: a Two-Step “Dance”

- **Step One:** A competition assessment **checklist**
  - Designed as an initial screen to “**qualitatively**” assess market interventions that may be relatively problematic
  - Structured to be conducted in short time frame
  - Framework is based on concepts from Industrial Organization theories, and competition policy and law enforcement
- **IF** potential harm to competition and innovation is identified, then a more detailed review is recommended
- **Step Two:** Detailed competition assessment
  - Designed to fully and “**quantitatively**” evaluate those interventions that have the potential to cause significant harm
  - Restructure rules & regulations to minimize harm to competition



## C. Competition Assessment Checklist

### Initial Screening Based on the Checklist

- The checklist consists of four core questions

Do the regulations limit the

- *number or range of suppliers?*
- *ability of the suppliers to compete?*
- *incentives for the suppliers to compete?*
- *choices or information available to the consumers?*



- A **YES** answer to any of the questions would signal a competition concern and warrant a detailed review of the rule or regulation under consideration

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## C. Analysis of the harm to competition

Tools of analysis (qualitative and quantitative)

- Policy **objective**
- **Comparative** research + International experience
- National and International **jurisprudence**
- **Economic** analysis
- Econometric and **data** analysis

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## Part II

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The Romanian government and Romanian Competition Council have asked the OECD to carry out a thorough and independent policy assessment to identify rules and regulations that may hinder the efficient functioning of markets in the sectors of

- Food processing
- Transport
- Construction

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## A. Benefits of Competition in Romania

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Competition leads to:

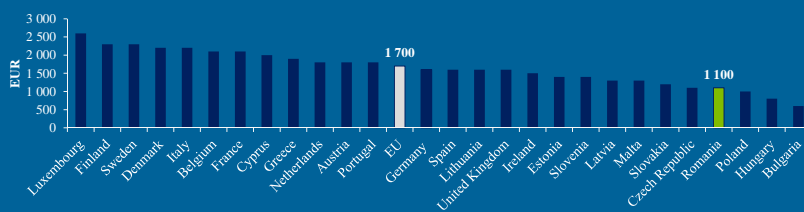
- Lower prices for consumers (example food industry)
- Better quality, more choice for consumers (new market entrants, imports, innovation)
- Higher Productivity and Growth (Example Australia: 2.5% of GDP)
- “Helping the poor” (Studies Mexico, South Africa)

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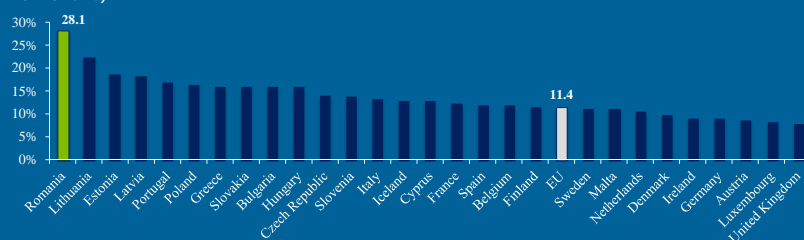


## A. Benefits of Competition in Romania/ Example Food Processing

Household consumption expenditure in EU for food products (absolute terms, per capita, in EUR) in 2013 (2012 for Romania)



Household consumption expenditure in EU for food products (percentage of total household expenditure) in 2013 (2012 for Romania)



Source: Eurostat

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## B. Romania conducted a major competition assessment in 5 stages

- **Stage 1 Mapping: March –June 2015**
  - Kick-off meeting : March 12, 2015
  - Definition of sectors
  - Collection of laws and regulations. Support from government experts in gathering relevant legislation
  - Interviews with business associations and businesses
  - 2 Workshops with members of competition authority and ministerial experts
- **Stage 2 Scanning: June-September 2015**
  - Scanning: List of potential restrictions. 4-Eye principle.
  - Economic overview of the sectors. Collection of data and information on the sub-sectors
  - Specific pieces of legislation sent to ministerial experts

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## B. Romania conducted a major competition assessment in 5 stages

- **Stage 3 In-depth analysis: October - December 2015**
  - Assessment of harm to competition and documentation of reasoning for concerns
  - Description of policymakers' objective. Understanding the provisions and whether they are in force .
  - Qualitative and quantitative (subject to availability of suitable data) estimate of benefits from removing restrictions
  - International comparison
  - Description of methodology
- **Stage 4 Recommendations: January -February 2016**
  - List of relevant regulations that restrict competition
  - Workshops with line ministries on recommendations
  - Recommendations for revisions or deletion
- **Stage 5 Final draft: March 2016**

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## C. Working Arrangements

- Working team for each sector:
  - Experts of Competition Authority (RCC)
  - Ministerial Experts
  - External Consultants
- Steering by OECD. OECD Project Manager in Bucharest. General supervision by Head of OECD's Competition Division. Expert advice on economic analysis.
- Close coordination with the Romanian Prime Minister's Chancellery (First secretary of state)
- High Level Committee with representatives of RCC and institution within Romanian Public Administration

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## D. Capacity Building

- Competition Assessment Introduction
- Competition Assessment Toolkit (2 day workshop)
- Workshop on qualitative and quantitative analysis of potential restrictive provisions
- Workshops for sector experts from line ministries and from competition authority for in depth-analysis
- Workshop for bid rigging and public procurement
- Additional small workshops with ministerial experts on diverging results and recommendations

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## E. Overview Recommendations Romania

	Construction	Transport	Food Processing
<b>Pieces of legislation scanned</b>	162	566 (plus 12 acts not in force anymore)	167
<b>(Prima facie) Restrictions found</b>	81	85	45
<b>Recommendations</b>	64	50	32

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## E. Example: Public Procurement: Limitation of number of participants

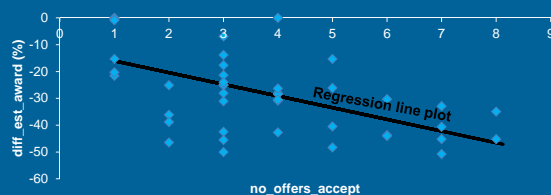
- Romania's Public Procurement System is rated as poor, due to
  - Low bidder participation: Less than 75% of tenders have more than one bidder.
  - Low Accessibility: Less than 85% of all procedures are open procedures
- Several restrictions in Romanian legislation prevent higher bidder participation and better accessibility
- Total consumer benefit in the construction sector from one bid more accepted at every tender would amount to significant savings

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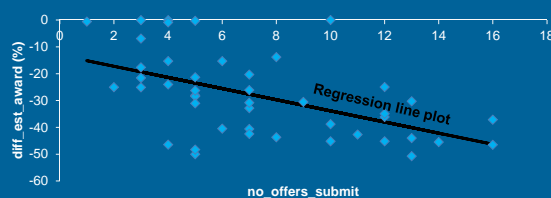
## E. Example: Public Procurement: Limitation of number of participants

Offers Accepted - Price Discount



A higher number of offers submitted results in a larger discount of the final award price compared to the estimated price (for every additional offer submitted, a further 2.1% discount is observed).

Offers Submitted - Price Discount



A higher number of offers accepted results in a larger discount of the final award price compared to the estimated price (for every additional offer accepted, a further 4.4% discount is observed).

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## Tips ...


The number of sectors in which Competition Assessment is implemented is very important.

For example, with one or two economic sectors, e.g., construction materials, food processing, or retail trading.


- Burden would be lighter
- Would provide valuable experience for conducting fuller reviews in the future
- Could be part of your SRMM deliverable

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## Toolkit sectors

 Romania will be using the Toolkit to conduct an assessment of regulatory constraints on competition in three sectors

- Food processing
- Transport
- Construction

 Greece used the Toolkit to conduct an assessment of competition-distorting rules and provisions in four sectors

- Food processing
- Retail
- Building materials
- Tourism

 Mexico is using the Toolkit to help identify regulations and policies that unnecessarily restrict competition

- Telecoms (convergence, interconnection, audio-visual content)
- Financial services (pensions, credit cards, SMEs financing)
- Energy (LP Gas, Electricity)
- Transportation (Airports, passenger)
- Standards
- Pharmaceutical products
- Agriculture (distributive effects of competition)

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**OECD Competition Assessment:**  
*Checking-up on Policies and Regulations*



Thank you

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