

REQUEST FOR EXPRESSIONS OF INTEREST (CONSULTING SERVICES)

REPUBLIC OF MOLDOVA

Sector: General industry and trade sector

Project ID Number: P144103

Expression of interest: MD-CEP-126256-CS-CQS

Title of Assignment: **“Technical support to the Competition Council in amending the Competition Law”**

The Republic of Moldova has received financing from the International Development Association and the International Bank for Reconstruction and Development for implementation of the Second Competitiveness Enhancement Project (CEP II). The project's development objective (PDO) is to increase the export competitiveness of Moldovan enterprises and decrease the regulatory burden they face. This PDO will be achieved through a set of measures that aim to: (i) improve the business environment through regulatory reforms that reduce the cost of doing business; (ii) help SMEs and exporters to get access to business development services; and (iii) improve access to medium and long term finance for export oriented enterprises.

The project consists of the following three components:

Regulatory Reform Component

The objective of the Regulatory Reform component is to support the Government of Moldova (GoM) in improving the business enabling environment in Moldova, and specifically in implementing its regulatory reform strategies over the next five years.

Access to Finance Component

The objective of the Access to Finance component is to improve access to medium and long-term finance for export-oriented enterprises, reduce barriers to finance due to perceived high credit risk in SME finance and high collateral requirements and promote suitable models for value chain financing.

Small and Medium Enterprise Development Component

The objective of the SME Development component is to strengthen Moldovan SMEs' linkages to markets and ability to compete in those markets through:

- ✓ Strengthening the institutional capacity of the Moldovan Investment Agency (MIA) and SME' Development Organization (ODIMM) so that they can play a more effective role in facilitating market-based SME growth;
- ✓ Providing matching grants to SMEs to implement business improvement projects focused on export competitiveness.

In order to cope with the potential threats and support the implementation of competition policy in Moldova, the Parliament of Moldova by its Decision Nr. 21-XVI dated 16.02.07 established the National Agency for Protection of Competition nowadays Competition Council (CC), as a permanent public administration authority, having the statute of a juridical person, being independent in its activity of other structures of public administration.

The scope of the Competition Council is to promote the state policy in the field of protection of competition in order to limit and repress anti-competition activities of economic agents, of public administration authorities, as well as to monitor the execution of the Law on competition.

As part of the private sector development dialogue, the World Bank has agreed with the Government to support its review of the Competition Council to ensure that competition policy, legislation and institutions are sufficiently strengthened so as to help promote healthy private sector development and not impede it.

The Competition Law 183 dated July 11, 2012 was not substantially reviewed from the time of adoption. Thus, after seven years of application of the Competition Law, it is necessary to amend it taking into account international and national judicial practice, including *inter alia*, the Directive (EU) 2019/1 of the European Parliament and of the Council of December 11, 2018, the new changes in civil law, aspects that refer to the information of a confidential nature and the assurance of the consumers' rights to benefit from the compensation of the damages in the cases of finding the acts of unfair competition, the new administrative code which includes the new administrative contentious proceedings, that refers to the notification of the decisions, the connection and the disjunction of the cases, and the existing shortcomings in the Competition Law, including, but not limited, to new challenges in relation to e-commerce and digital markets. Within this framework and in order to help with the implementation of competition policy in Moldova, the Government of Moldova (the Client) is seeking the services of a Consultant with relevant experience in carrying out a review, to propose and promote amendments to the existing Competition Law.

Objectives of the Assignment

The **main objective** of the Consultant is to review the Competition Law, identifying gaps and proposing amendments, in light of Directive (EU) 2019/1 and the existing enforcement and advocacy practice by the Competition Council.

Tasks to be performed

The Consultant will review and make recommendations for reform of the Competition Law.

The Consultant will perform the following tasks over the period of the assignment, which will be divided in phases:

- Phase 1: Drafting and substantiation of proposals for amendments of the Competition Law;
- Phase 2: Supporting the CC in providing justification, arguments and explanation for changes proposed to amend the current Competition Law to all relevant stakeholders as needed.

Phase 1

Task 1. Drafting proposals to amend the Competition Law:

The Consultant shall assess and target *inter alia* the following issues:

- a) The competition advocacy powers to minimize the anticompetitive effects of regulation;
- b) The Competition Council's competencies in enforcing the Competition Law, namely, those pertaining to: carrying-out investigations; request and access to confidential information; carrying-out inspections;; and the full powers to impose appropriate and deterrent sanctions to the undertakings and associations of undertakings for breaching the provisions of the Competition Law in accordance with EU Directive 1/2019;
- c) The adequacy of the institutional setting as provided by the Competition Law in ensuring that the Competition Council is adequately shielded from undue private and public influence, and that it is bestowed with sufficient human, technical and financial resources.
- d) The Competition Council's investigative powers' adequacy in responding to the challenges of law enforcement in the digital environment, especially in terms of obtaining and searching information in digital format;
- e) The adequacy of the rights of defense of undertakings during the Competition Council's investigations, inspections and other procedural actions, in accordance with EU Directive 1/2019;
- f) Assessment of the competition law requirements to develop secondary rules of access to the investigation files, imposing interim measures, individualization of fines, compliance programs, and application of the leniency policy.

Based on this review the Consultant will propose changes that would:

- ✓ Improve the Competition Law in a way that makes it more effective to boost consumer welfare (*e.g. through lower prices, greater diversity, quality and innovation*), and enable firms' competitiveness;
- ✓ Strengthen the independence, resources, enforcement and fining powers (notably to review the maximum fine ceiling) of the Competition Council;
- ✓ Increase the competition law effectiveness in tackling anticompetitive conduct of private sector and State-Owned Enterprises (SOEs);
- ✓ Reinforce competition advocacy powers to minimize the anticompetitive effects of regulation;

Based on the above work, the Consultant will propose amendments to the existing legal framework as needed, including the institutional setting powers of the Competition Council as well as the competition advocacy powers.

Phase 2.

Task 2 Supporting the CC in providing justification, arguments and explanation for changes proposed to amend the current Competition Law to all relevant stakeholders as needed, including:

- a) Consultation with civil society, relevant authorities, regulatory bodies and the business community to ensure decisional transparency, ex. through a workshop(s) led by the Competition Council to discuss the draft amendments to the law and right arguments for the legal changes;
- b) Based on consultations, provide technical support and inputs to Competition Council in terms of drafting the explanatory note of the project with reasoning (*incl. Regulatory Impact Assessment as needed*) to enrich the arguments for the discussions with the Government and Parliament.
- c) Consultant will provide for a matrix of comments and responses and additional justification to Competition Council for the amendments.

The **Project Implementation Unit of the World Bank Competitiveness Enhancement Project** now invites eligible consultant firms to indicate their interest in providing the services. Interested consultants must provide information indicating that they are qualified to perform the services (brochures, description of similar assignments, experience in similar conditions, availability of appropriate skills among staff, CVs of the key staff to be involved in the assignment, etc.). Consultants may associate to enhance their qualifications. This Request for Expression of Interest will lead to the preparation of a Short List of consultants. For evaluation of the expressions of interest for this assignment, the following evaluation criteria will be applied by the Evaluation Committee:

#	Criteria	Points
1.	Company experience of at least 8 years with law enforcement, competition policy and competition advocacy	40
2.	Senior level staff with extensive knowledge in legal aspects related to competition with multi-country experience of at least 8 years	30
3.	Foreign and local staff having advanced degree in law (MA or Ph.D) with specialization in antitrust law	20
4.	Staff with knowledge of local competition requirements and experience of at least 5 years with competition advocacy.	10

The Consultant will be selected on the basis of its qualifications for the assignment (Selection based on Consultants Qualifications) in accordance with the procedures set out in the World Bank's Guidelines: Selection and Employment of Consultants by World Bank Borrowers, published in January 2011.

The assignment will require a level of effort of approximately 45 man/days and will be implemented in the period from October 2019 to February 2020, considering the obligation to ensure the decisional transparency provided by

Law no. 239 of 13.11.2008 and compliance with the legal procedures for initiating the drawing up and promotion of draft normative acts provided by the Law on normative acts no. 100 of 22.12.2018.

Interested consultants may obtain further information at the address below during office hours from 09:00 to 17:00 hours (Chisinau time).

Expressions of interest must be delivered to the address below or electronically not later than **September 23, 2019**.

Project Implementation Unit of the World Bank Competitiveness Enhancement Project
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