

# INTERNATIONAL COMPETITION NETWORK

## QUESTIONNAIRE ON COMPETITION ADVOCACY

### Scope

This questionnaire is intended to:

- Identify the institutional strengths and weaknesses for the advocacy role of competition authorities.
- Understand the relationship among competition authorities and policymakers, courts and legislative bodies.
- Understand the interaction between competition authorities and regulators.
- Provide some indication of how competition authorities perform their advocacy programs and how effective they are.

On the basis of this information, the Advocacy WG hopes to

- Identify the most common restrictions on the advocacy role of competition authorities.
- Analyze the importance of competition advocacy in transition and developing countries.
- Share the most successful experiences in competition advocacy.
- Develop recommendations for the improvement of the advocacy role of ICN member competition authorities

For the purpose of this questionnaire, the following definition of advocacy is adopted:

Competition advocacy refers to activities of the authority related to the promotion of a competitive environment for the economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition\* .

### Guides

- ◆ Additional comments on any question will be welcome.
- ◆ The space between questions does not indicate the expected length of the answer, so please add pages as needed to provide the most complete answers.

If the jurisdiction has more than one institution fill in a questionnaire for each competition authority

If you have doubts about filling in the Questionnaire, do not hesitate to contact:

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\* A wide definition of competition advocacy offered by the World Bank is included at the end of this Questionnaire.

## QUESTIONNAIRE ON COMPETITION ADVOCACY

Country New Zealand  
Institution Commerce Commission

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**I. THE COMPETITION AUTHORITY**

- 1) When was the competition authority established in your country?

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*The Commerce Commission was established under the Commerce Act 1986 and is a Crown entity under Schedule Four of the Public Finance Act 1989.*

- 2) Which characteristic best describes the institutional status of your competition authority? (You may choose more than one)

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- a. Independent-administrative authority**
  - b. Within a Ministry or Department
  - c. A Ministry of its own
  - d. Investigatory body**
  - e. Directorate within a Ministry
  - f. Judicial authority
  - g. Quasi-judicial authority**
  - h. Within Congress or Parliament
  - i. Other (Describe)

- 3) Members (Commissioners, Chairman, Director) of the competition authority are appointed by:
- a) President or Prime Minister
  - b) President or Prime Minister with consent of Congress or Parliament
  - c) Minister
  - d) Congress or Parliament
  - e) Representatives of entrepreneurial associations, academics and consumer associations
  - f) The judicial system
  - g) Other (Describe)

*The Commission comprises up to five Members, including a Chair and Deputy Chair. In addition, Associate Members may be appointed.*

*The Governor-General, on the recommendation of the Minister of Commerce, appoints Commission Members, who are appointed for their knowledge of, and experience in areas relevant to the Commission's interests. At least one Commission member must be a barrister or solicitor. The Minister of Commerce appoints Associate Members.*

*Each member's Warrant of Appointment sets out the start date and duration of the term for which the member is appointed. This term can be extended with the Chair's approval to deal with work still in progress.*

- 4) How many members (Commissioners, Chairman, Director) does your Authority have?

*The Commission currently comprises five members and two associate members.*

- 5) What was their background before appointment? (Academia, politics, business, professions, consumer groups, public administration, etc.)

*Commissioner backgrounds include law, public policy and management, economics and accounting.*

- 6) Do appointments of the members (Commissioners, Chairman, Director) of the competition authority last for a specified period?

*The period ranges from 2-5 years.*

7) How long is the period? Is the mandate renewable?

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*Every member of the Commission shall hold office for such term, not exceeding five years, as the Governor-General shall specify in that member's instrument of appointment, but may from time to time be reappointed.*

8) How is the budget for the competition authority assigned (as part the budget of a Secretary or Minister, directly by the congress or parliament, etc.)?

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*The bulk of the Commission's funding is by Government Appropriations. The Commission also collects application fees for some of its activities.*

9) Does the mechanism for the appointment of the members (Commissioners, Chairman, Director), and the allocation of the budget contribute to or detract from the autonomy of the competition authority?

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*Those processes are compatible with the autonomy of the Commerce Commission.*

10) Does the degree of autonomy of the competition authority contribute to or detract from its advocacy activities? Why?

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*The Commerce Commission does not engage in advocacy activities. Departmental officials, who advise on policy and legislation, perform that function.*

11) Are the advocacy efforts of your competition authority supervised, or otherwise subject to modification or review, by another authority or the courts? Please explain.

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*N/A*

- 12) Has the political environment restricted the competition authority's advocacy efforts? (Reversal of decisions, firing of competition officials of authority, etc.)

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N/A

## II. GENERAL ADVOCACY

- 13) What is the level of awareness of the benefits of competitive markets and competition policy in your country? In your opinion, does your country have a "competition culture"?

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*As in the answer to Question 10 (above), the Commerce Commission does not have an advocacy function.*

- 14) Are government entities and courts familiar with the competitive market mechanism and its benefits?

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N/A

- 15) What activities has the competition authority undertaken to raise awareness in the society of the benefits of competitive markets? Which activities do you consider more successful in terms of their positive effect on the competition process?

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N/A

- 16) The most common attitude towards the advocacy role of the competition authority:

Group	Ally	Dissenter
Academics		
Congressmen		
Consumer associations		
Entrepreneurial associations		
Labor unions		
Local governments		
Non-governmental organizations		

Political parties		
Media		
Professional associations (lawyers, economist or others)		
Others		

Please feel free to elaborate on your answer.

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N/A

17) What is the interaction between the enforcement and advocacy programs of the competition authority?

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N/A

18) Does the competition authority advocate the elimination or restriction of exemptions to the enforcement of the competition law?

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N/A

### III. ADVOCACY IN THE REGULATORY AND LEGAL FRAMEWORKS

19) Does the competition authority participate in any council of Ministers, Cabinet or a similar high-level official group? If the answer is affirmative, what role does it have? Please explain.

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No

20) Does the competition authority advise policymakers about the competitive impact of public policies? Are these recommendations effective in modifying public policies?

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*The Commerce Commission provides factual and operational input into policy making. Operational input includes advice on practical issues and consequences. The Commission does not comment on the merits of policy or argue for particular policies.*

- 21) Is the competition authority informed by the executive or by the legislative body about reform proposals? How is this done? At what stage of the procedure? Please explain
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*The responsible department informs the Commission at various stages of the reform process in order for the Commission to provide factual input into the process.*

- 22) Does the law enable the competition authority to influence the design of the regulatory framework in the legislative process? If the answer is affirmative, explain briefly at what stage and through which mechanisms the authority can participate?
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*Yes, refer to Question 21 (above).*

- 23) Is the general public informed about the advocacy reports or opinions issued by the competition authority? Through which means?
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*N/A*

- 24) Are the recommendations or opinions issued by the competition authority available for public review? Please explain.
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*N/A*

- 25) If the advocacy reports have been published, or if they are unpublished but not statutorily protected, would the competition authority of your country be willing to share them for inclusion in an ICN electronic database?
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*N/A*

26) Choose from the following list the most frequent ways in which your competition authority becomes involved in advocacy:

- a. Competition law empowers competition authority to analyze and offer opinion about the competitive impact of sector regulation, privatization process or franchising.
- b. Sector specific law establishes intervention of the competition authority in the regulation, privatization or franchising
- c. Competition authority was invited by the sector regulator to provide its opinion
- d. Competition authority participated in regulation, privatization or franchising at the request of Congress or Parliament
- e. Other (Please explain.)

Which are the most successful? Why?

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N/A

#### IV. SECTOR SPECIFIC ADVOCACY

27) Indicate in which sectors the competition authority has been recently engaged in competition advocacy. [Describe the most outstanding activities.]

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N/A

28) For each sector, what have been the three most successful participations by the competition authority, and why?

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N/A

- 29) Which of the following reasons, if any, best account for failures to have the advocacy position of the competition authorities endorsed in specific sectors. Provide your answers filling in the following table.

Limitations	Sector(s)
A court prevented or restricted the participation of the competition authority.	
A ministry or regulatory agency prevented or restricted competition authority participation.	
Competition authority lacked expertise.	
Congress or Parliament prevented or restricted participation of competition authority.	
Environmental concerns were an obstacle to introduce or preserve competition.	
"National champion" considerations prevented the introduction of a more competitive environment	
Universal service or general interest considerations prevented the introduction of competition	
Not enough time to analyze the sector.	
Possibility of layoffs and/or bankruptcy in this sector hindered the introduction or preservation of competition.	
Scarce financial resources.	
Other (specify)	

Please feel free to elaborate on the restrictions faced by the competition authority in its advocacy role.

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N/A

- 30) Does the competition authority perform advocacy activities in certain sectors even though immunities, exemptions or waivers deprive it of jurisdiction to enforce the competition law in those sectors? Please explain.

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N/A

V. COMPETITION ADVOCACY IN THE PRIVATIZATION PROCESS, DEREGULATION, FRANCHISING, CONCESSIONS, RATE REGULATION, LICENSES AND PERMITS

- 31) What types of advocacy have been performed recently by the competition authority in privatization processes? Please explain.

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N/A

- 32) Are privatization operations subject to merger control or other competition law review?

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*The aim of the Commerce Act is to promote competition in markets for the long-term benefit of consumers. The Act applies to all individuals and commercial organisations including state owned enterprises, local government and government departments in so far as they engage in trade.*

- 33) What have been the three most successful participations of the competition authority regarding privatization processes, franchising, concessions, rate regulation, licenses and permits?

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N/A

- 34) What obstacles restricted the advocacy efforts undertaken by the competition authority regarding privatization processes, franchising, concessions, licenses and permits?

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N/A

## VI. INTERNATIONAL DIMENSION OF ADVOCACY

35) Does any international organization support the advocacy role of the competition authority in your country? How important is this support? Please explain.

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*N/A*

36) Are there any advocacy provisions in bilateral or multilateral agreements, treaties or fora in which your country participates?

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*N/A*

## VII. ADVOCACY TEAM WITHIN THE COMPETITION AUTHORITY

37) Which units, branches or departments of the competition authority are engaged in advocacy activities? (You may choose more than one)

- a) Advisor
  - b) Economics division
  - c) Enforcement division
  - d) Press Office
  - e) International Affairs
  - f) Public relations
  - g) Joint attorney/economist with expertise in the economic sector in issue
  - h) Other (Specify)
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*N/A*

38) How many people work in advocacy activities?

<b>Unities, branches or departments</b>	<b>People</b>	<b>Hours per year</b>
Advisor		
Economics division		
Enforcement division		
Press Office		
International Affairs		
Public relations		
Other (Specify)		
Total		

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*Nil*

39) Percentage of staff engaged in competition advocacy activities:

<b>Unities, branches or departments</b>	<b>Percentage</b>
Advisor	
Economics division	
Enforcement division	
Press Office	
International Affairs	
Public relations	
Other (Specify)	
Total	

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*Nil*

40) What percentage of the annual budget of the competition authority is devoted to advocacy activities?

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*Nil*

IX. IMPROVING THE ADVOCACY ROLE OF THE COMPETITION AUTHORITY

41) How do you evaluate the advocacy role of the competition authority in your country?

- a) Excellent
- b) Good
- c) Regular
- d) Unsatisfactory in some degree
- e) Very unsatisfactory

Why?

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*N/A*

42) How could the advocacy role of the competition authority be improved?

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*N/A*

43) What future plans do you have for your competition advocacy program?

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*N/A*

44) How can the International Competition Network support the authority of your country in advocating an enhanced role for competition?

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*N/A*

If you wish to add comments on competition advocacy, please attach them to this questionnaire.

<http://www1.worldbank.org/beext/faq/q16.htm>

### What is competition advocacy and how important is it?

Competition advocacy refers to the ability of the competition office to provide advice, influence and participate in government economic and regulatory policies in order to promote more competitive industry structure, firm behavior and market performance. Creating a popular base of support for competition policy is also part of competition advocacy. Competition advocacy is particularly important in developing and transition market economies where an appropriate understanding or appreciation of the merits of competitive market economic systems is often lacking.

An important aspect of the advocacy function is spelling out the implications of public policies for competition and efficiency so that government decision making takes them into account. Competition law has an interface with a broad range of economic policies affecting competition in local and national markets, including the regulation of transport, power, telecommunications, and other sectors where natural monopolies are likely to occur, international trade, foreign direct investment, intellectual property rights, financial markets, and privatization policies. These policies can enhance or impede the effectiveness of competition law.

For example, in Canada, high levels of tariff protection (prior to NAFTA) facilitated price fixing agreements in many as fourteen cases covering products such as plate glass, fertilizers, pharmaceuticals and sugar. In many developing as well as industrialized countries, economic regulation of sectors such as electricity and telecommunications which are considered as "natural monopolies" has been extended through vertical integration and exclusive licenses to the provision of products and services where effective competition can exist, such as in the supply of equipment, generation of electricity and long distance telephone services. Governments are often caught in a conflict of interest situation with respect to state-enterprise reforms and privatization. In order to attract high bids for state assets so as to lower government debt, public monopolies may be transferred into private ones. This allegedly was a factor in the sale of British Caledonia airlines to British Air (instead of SAS) which prevented injection of new competition in the U.K. holiday charter market. The acquisition of Skoda by VW in the Czech Republic was accompanied with demands for "incentives" in the form of high levels of tariff protection and foreign investment restrictions which would limit import competition and new entry. In Jamaica, the telecommunications company was privatized with exclusive rights for a period of 25 years.

Through competition advocacy, such situations can be prevented or at least be subjected to greater accountability, transparency and public discussion. Effective advocacy by the competition agency can help increase awareness of the costs and benefits of alternative policies and ensure that government policy objectives do not work at cross-purposes.

The competition policy agency should also thus be vested with a statutory role of participating, formulating and commenting on government economic and regulatory policies impacting on competition in the market place. By having a competition advocacy role, the agency can counter or at least minimize the adverse effects of rent-seeking behavior prevalent in most countries but, particularly in developing and transition market economies. Given the limited administrative capacity and relevant enforcement experience in this field in the latter type countries, this role has been viewed by some commentators as being most important if not the sole function of a competition policy agency ([Kovacic, 1995](#); [Rodriguez and Williams, 1994](#)). It is argued that a competition advocacy can also reduce the possibility of mis-applying the specific provisions of competition law which could induce further distortions into the economy. However, both the competition advocacy and enforcement functions of an appropriately structured agency are important.

Kovacic, W.E. 1995. "Designing and Implementing Competition and Consumer Protection Reforms in Transitional Economies: Perspectives from Mongolia, Nepal, Ukraine, and Zimbabwe." *De Paul Law Review* 44:1197-1224.

Rodriguez, A.E., and M.D. Williams. 1994. "The Effectiveness of Proposed Antitrust Programs for Developing Countries." *North Carolina Journal of International Law and Commercial Regulation* 19:209.