

ICN

Framework of Competition Assessment Regimes

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Introduction

The mission of the Advocacy Working Group (AWG) is to develop practical tools and guidance, and to facilitate experience sharing between ICN member agencies, to improve the effectiveness of ICN members' competition advocacy activities.

The Framework of Competition Assessment Regimes is a complement to the 2014 ICN Recommended Practices on Competition Assessment.

The Framework consists of tables setting out general features of competition assessment regimes, which ICN member agencies have completed in line with practices in their respective jurisdictions, and more detailed illustrations of competition assessment regimes provided by ICN members.

The purpose of this Framework is to provide a broad overview of the range of competition assessment regimes and processes that exist, in order to:

- share and disseminate alternative illustrations of competition regimes across jurisdictions; and
- provide a useful guide of how competition assessment is operationalized; and
- describe the roles of competition agencies in the process.

The Framework does not seek to reflect ICN members' consensus on particular regimes. It is intended to be a resource for those engaged in competition advocacy to assess the competitive effects of public policies. The Framework recognises that competition assessment can take many different forms, but identifies general features that can be applied to many competition assessment regimes. These features are presented in six different sections

The Framework of Competition Assessment Regimes and the 2014 Recommended Practices on Competition Assessment have been produced as part of the Competition Assessment Project of the AWG conducted under the leadership of the French Autorité de la concurrence.

Thanks

The AWG is grateful to the ICN member agencies and NGAs that completed the tables and provided illustrations or input into the drafting, and to Hilary Jennings, an independent competition consultant for her contribution to the drafting of the Framework.

Content of the Framework

The Framework is made up of two parts: (i) general features of competition assessment regimes and (ii) jurisdiction illustrations

TABLES of the general features of competition assessment regimes -- The tables in each of the six sections below set out the principal ways that competition assessment regimes are structured. Within each jurisdiction there may be a difference between, for example, regimes for reviewing the competition impact of proposed new policies and those seeking to change existing ones. The features presented in this Framework are intended to cover both such types of regime, whether formal or informal, or whether conducted by the competition agency or a different body.

The sections are not mutually exclusive. Rather they are intended to build a picture of how competition assessment regimes are structured and implemented. Institutional implementation of competition assessment will depend on a number of factors in a given jurisdiction. These may include: the existence of a federal system, staffing strengths of different parts of government, and the political environment, among others. Indeed there can be no one-size-fits-all approach to the implementation of competition assessment.

ILLUSTRATIONS of ICN member competition assessment regimes -- The tables also contain a list of ICN member jurisdictions whose competition assessment processes and institutions illustrate the particular features. Additionally, the Framework presents descriptions of competition assessment regimes in individual ICN member jurisdictions to provide a brief overview of how the regimes operate in practice, and provide further context to the Framework.

Tables of the general features of competition assessment regimes

1. Location of competition assessment in the policy development process

What does competition assessment apply to?	Jurisdictions
New legislation/ regulations/ policies only	Colombia; EU; Korea; South Africa; The Netherlands (legislation specifically affecting the areas of ACM's competence)
Existing legislation/ regulations/ policies only	Papua New Guinea
Both new and existing	Bulgaria; Finland; France; Gambia; Greece; Israel; Italy; Korea; Japan; Mexico; Portugal; Russian Federation; Spain; Sweden; Switzerland; Tunisia; United Kingdom; United States; Zambia
Competition assessment forms part of broader framework to assess impact of policies on areas other than competition	Canada; EU; Israel; Italy; Korea; Japan; Russian Federation; Spain; Sweden; United Kingdom; Zambia

2. Body responsible for conducting the competition assessment

Which body is responsible for conducting the competition assessment?	Jurisdictions
Competition agency	Bulgaria; Canada; Colombia; EU; Finland; France; Gambia; Greece ¹ ; Israel (mostly as a consultant, if relevant regulation applies); Italy; Korea; Mexico; The Netherlands; Papua New Guinea; Portugal; Russian Federation; South Africa; Spain; Sweden; Switzerland; Tunisia; United Kingdom (ex post); United States; Zambia
Other government department/regulator	EU ² ; Greece ³ ; Israel (if relevant regulation applies); Italy (ex ante only); Japan; Russian Federation; South Africa; Spain; Sweden ⁴ ; Switzerland; Tunisia; United Kingdom (mainly ex ante, but recently some ex post); United States
Other, e.g. research institution/consulting group	Sweden (commissioned research by the SCA) ⁵

¹ In Greece, competition assessment falls, in theory, within the broader context of impact assessment, which is normally undertaken by the competent line ministry or the General Secretariat of the Greek government. In practice, line ministries have not yet undertaken any such assessment. As an aside, the Competition Agency- acting on its own initiative or on the request of the government - may conduct competition assessments, which it has done over the course of the last 4 years.

² Please note the specific nature of the European Commission, integrating the competition Directorate General in charge of competition policy and other Directorates General in charge of other sectors (including regulatory/ legislative function).

³ See footnote 1 above.

⁴ The fact that another government authority conducts a competition assessment on a specific regulation would not automatically exclude the SCA from conducting a parallel competition assessment.

⁵ The SCA sometimes commissions research assignments. Such commissioned research from research institutions can involve conducting competition assessments.

3. Remit of competition agency to undertake the competition assessment

Is there a legal mandate for the competition agency to undertake competition assessment?	Jurisdictions
Specific legal basis for agency to conduct ex ante competition assessment	Colombia; EU; Finland; France; Gambia; Greece; Israel (mostly as a consultant, if relevant regulation applies); Korea; Mexico; The Netherlands; Portugal; Russian Federation; Spain; Switzerland; Tunisia; Zambia
Specific legal basis for agency to conduct ex post competition assessment or market/sector studies	Colombia; EU ⁶ ; Finland; France; Gambia; Greece; Israel; Mexico; Portugal; Russian Federation; Spain; Switzerland; Tunisia; United Kingdom; United States; Zambia
Is the ex ante competition assessment compulsory?	Colombia; Gambia; Israel (if relevant regulation applies); Korea; Portugal; Spain; Sweden (referrals from government); Switzerland; Tunisia
Derives from general legal basis for agency's advocacy activities	Bulgaria; Canada; Finland; France; Gambia; Israel; Italy; Papua New Guinea; South Africa; Sweden; United Kingdom (ex ante); United States; Zambia

⁶ Article 17 of Council Regulation 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003).

4. Indirect or informal involvement of the competition agency in the context where it is not directly responsible for competition assessment

Is the agency involved indirectly or informally in competition assessment?	Jurisdictions
Competition agency consulted by the body responsible for competition assessment	Canada (body may choose to consult the Bureau, but is not obliged to); Greece ⁷ ; Israel (on a case by case basis, at the discretion of the responsible body); Italy; Korea; Japan; Mexico; The Netherlands; Sweden; Tunisia; United Kingdom (sometimes); United States
Agency provides opinion informally to legislature/ executive/ regulator	Canada; Colombia; EU; Finland; France; Israel (on a case by case basis, at the discretion of the responsible body); Italy; Mexico; Papua New Guinea; Russian Federation; Spain; Switzerland; United States

⁷ *This remains a possibility where the competition assessment is conducted by the competent line ministry or the General Secretariat of the Greek government (although to date this has not yet occurred in practice).*

5. Tools used to facilitate competition assessment

What tools are used to identify targets, facilitate and conduct competition assessment?	Jurisdictions
Specific criteria are used to assess the impact on competition	Bulgaria; Colombia; Gambia; Korea; Portugal; Russian Federation; Spain; United Kingdom
The competition agency provides guidance on competition assessment and/ or support to other bodies conducting competition assessment	Bulgaria; Canada; Colombia; EU; Finland; France; Greece; Israel; Italy; Korea; Japan; The Netherlands (ACM assesses the impact on competition law enforcement rather than competition); Portugal; Russian Federation; Spain; Switzerland; Tunisia; United Kingdom; United States
The competition agency monitors government and legislature work programmes	Bulgaria; Colombia; EU ⁸ ; Finland; France; Gambia; Greece; Israel (on a case by case basis, according to priorities); Italy (within agency's advocacy activities); Korea; Mexico; Papua New Guinea; Portugal; Russian Federation; South Africa; Spain; Sweden ⁷ Switzerland; United States; Zambia
The competition agency considers the work of stakeholders, academia and/ or NGAs to identify targets for competition assessment	Bulgaria; Colombia; EU ⁹ ; Greece; Israel; Korea; Mexico; Papua New Guinea; Portugal; Russian Federation; Sweden; United Kingdom

⁸ See footnote 2 above.

⁹ The European Commission may, on a case by case basis, have regard to the external sources mentioned as a complementary tool to the European Commission's own assessment.

6. Scope of the competition assessment

What types of policy/ regulation are subject to competition assessment?	Jurisdictions
Sector-wide policies or categories of policies	Canada; Colombia; EU; Finland; France; Gambia; Greece; Israel (on a case by case basis, according to priorities); Italy; Korea; Mexico; Papua New Guinea; Portugal; Russian Federation; South Africa; Spain; Sweden; Switzerland; Tunisia; United Kingdom; United States
Individual or specific legislation/ regulations/ policies	Bulgaria; Canada; Colombia; EU; Finland; France; Gambia; Greece; Israel (on a case by case basis, according to priorities); Italy; Korea; Japan; Mexico; The Netherlands (legislation specifically affecting the areas of ACM's competence); Papua New Guinea; Portugal; Russian Federation; South Africa; Spain; Sweden; Switzerland; Tunisia; United Kingdom; United States
Exclusions, exemptions or areas of special treatment	EU; Greece; Israel (on a case by case basis, according to priorities); Italy; Russian Federation; South Africa; Sweden; Tunisia; United States

ILLUSTRATIONS of ICN member Competition Assessment regimes

The following section contains illustrations submitted by ICN members describing their jurisdiction's regime for conducting competition assessment of draft and existing legislation, regulations and policies.

Bulgaria - Commission on Protection of Competition

The competences of the Bulgarian Commission on Protection of Competition (CPC) in the field of competition advocacy are specified in Art. 28 of the Law on Protection of Competition (LPC). In order to protect free economic enterprise and prevent a restriction or distortion of competition, the Commission shall assess the compatibility of the following with the provisions of the competition law:

- draft legislative or regulatory administrative or general administrative acts;
- legislative or regulatory administrative or general administrative acts in force;
- draft acts of associations of undertakings, which regulate the activities of their members.

In relation to the first point above, on the basis of request of state authorities the Commission prepares opinions on draft legislation, related to competition and advocates for the removal of those texts which restrict competition.

The CPC can also analyse legislative acts in force and if it finds that they distort or restrict competition, it makes a proposal for their amendment or repeal.

In addition, the CPC can give opinions on draft acts of associations of undertakings and for those acts already in force, the CPC proposes amendments to remove contraventions of the competition rules.

In the Organization Rules of the Council of Ministers and its administration it is envisaged that the draft legislative acts that are related to the activity of the CPC should be sent for preliminary assessment.

In accordance with the LPC, the CPC has the right to make recommendations to the competent state authorities and municipal authorities, that they revoke or amend administrative acts issued by them, where these result in, or have the potential to result in, the prevention, restriction or distortion of competition.

The advocacy decisions of the CPC are non-binding and they cannot be appealed.

The CPC has adopted Guidelines for the assessment of legislative and general administrative acts with competition rules. The Guidelines aim to assist policy makers to incorporate a preliminary competition impact assessment in the preparation of draft acts. The document contains a checklist that encompasses possible restrictions of competition. If the state or local authority is not sure whether the draft act could have a negative impact on competition, it may request an in-depth assessment from the CPC.

Canada – Canadian Competition Bureau

The Canadian Competition Bureau (the “Bureau”) performs competition assessments as part of its advocacy mandate, pursuant to which it advocates to regulatory agencies and policymakers in favour of allowing market forces to govern sectors and industries as much as possible.

The Bureau does not have a formal competition assessment regime, instead advocating on regulations and issues as it becomes aware of their possible impact on competition. As such, it applies to both new and existing legislation and regulations.

Competition assessment is not integrated into any specific wider framework, but may be one of the factors that regulators consider when designing their policies and balancing stakeholder needs and interests. The Bureau frequently plays a support role in such assessments by providing recommendations and guidance in both formal and informal ways to regulators and governments. This may include formal regulatory interventions, submissions, or meetings and phone calls.

Section 125 and 126 of the Competition Act (the “Act”) empower the Bureau to make representations and call evidence on competition-related matters being considered by federal or provincial regulatory bodies. Historically, this has frequently taken the form of Bureau participation in formal regulatory proceedings of sector-specific regulators and submissions in response for regulators’ calls for comment.

While not expressly stated in the Act, the Bureau has the power to carry out market studies pursuant to the aforementioned sections 125 and 126 as well as section 7, which sets out its mandate to administer and enforce the Act. That said, the Bureau does not have the means, under the Act, to compel the production of information when conducting market studies. The Bureau can only rely on voluntary participation and publicly available information.

The Bureau may apply its competition expertise in both advocacy efforts aimed generally at a sector (e.g. our 2014 report on the state of competition in Canadian propane markets), and at particular policies or legislation (e.g. our 2014 regulatory interventions before the Canadian Radio-television and Telecommunications Commission concerning regulation of wholesale wireless services).

Colombia - Superintendencia de Industria y Comercio (Superintendence of Industry and Commerce)

The main objective of the competition advocacy regime in Colombia is to advise the national government on draft regulations that may have an impact on competition. This advice is based on economic studies conducted by the Superintendence of Industry and Commerce (SIC) specifically in matters relating to competition.

The SIC is the only government agency in Colombia with the legal mandate to engage in competition advocacy. Section 7 of Law 1340 of 2009 determines that regulatory authorities must inform the SIC in advance of issuing regulations, so that the SIC may render a non-binding opinion assessing the proposal's effect on competition. Competition advocacy *is limited exclusively to the examination of draft regulations that may have an impact on the competitive market dynamic.*

Decree 2897 of 2010, implements section 7 of Law 1340 of 2010, and specifies that the entities obliged to comply with the competition advocacy requirement are *“the Ministries, Administrative Departments, Superintendencies, and Administrative Public Units.”* However, Administrative initiatives that are not “regulatory,” such as legislative proposals, do not qualify, even if initiated by a Ministry or other affected government agency.

However, in order to determine whether or not a draft regulation should be submitted to the SIC, regulatory agencies must base their analysis on a standard SIC questionnaire¹⁰, which focuses on whether the proposed regulation will: lead to restrictions on starting new businesses; affect the ability of firms to compete or reduce their incentives to compete. If there is an affirmative answer to one of the questions in the checklist, the agency must notify the SIC of the proposal¹¹. The SIC holds several meetings with regulators when they are uncertain how to complete the questionnaire. These initial meetings with the regulators are also essential to better understand their standpoint. The Competition Advocacy Group of the SIC constantly monitors regulatory agendas in order to identify at an early stage those regulatory projects that may have a potential impact on competition

The competition advocacy function does not extend to new legislation but the SIC follows the legislative agenda and reviews bills under discussion in Congress, and renders its opinion when necessary. The SIC's Group of Regulation, and not the Advocacy Group, is in charge of this monitoring task but opinions are usually rendered jointly.

The competition strategy adopted by the SIC for rendering competition advocacy opinions is based on: i) direct contact with the business community to ensure timely intervention in regulatory proposals and to gain knowledge from the market – especially sophisticated markets (e.g. the energy sector); ii) interagency coordination between the SIC and the regulators to promote joint discussions and working groups; and ii) the elaboration of thorough and reliable economic studies.

¹⁰ Resolution 44649 of 2010 issued by the SIC, which resembles the OECD competition assessment toolkit.

¹¹ According to Section 8 of Decree 2897 of 2010, the intended regulation must be submitted together with the technical and economic studies made by the regulatory Agency; ii) the responses given to the questionnaire filled by the regulatory Agencies; and ii) the comment and observations presented by stakeholders.

If the responsible agency disagrees with the SIC's opinion, the agency is required to clearly state the reasons supporting that conclusion in its decision. The legal effect of either failing to provide a regulation proposal to the SIC for its evaluation, or disregarding the SIC's recommendation without stating the reasons for doing so, is that potential for the administrative decision to be declared void.

Colombia is currently working on the implementation of the RIA methodology as a tool to improve the quality of regulations. The domestic agency in charge of this task is the National Planning Department and the SIC is working closely with the Department to include competition assessment as one pillar of the regulatory impact assessment. The National Planning Department is developing 5 pilot projects with different regulatory agencies in order to gradually implement the RIA methodology. The SIC is taking part in these pilot projects as an observer.

European Union – Directorate General for Competition

Illustration of the 2005 European Commission Sector inquiry into the Energy Sector as a tool to increase understanding of the competition dynamics of the sector in order to feed into competition enforcement as well as regulatory initiatives in the sector ("Third Legislative Package")¹²

Issue: DG Competition wanted to increase its in-depth knowledge into the functioning of gas and electricity markets, identifying obstacles to competition or any other shortcomings. DG Competition wanted to ensure a full overview of the industry concerned by this exercise so as to improve the quality of the findings on how energy markets function and to allow stakeholders to identify potential remedies that could address any of the shortcomings identified.

DG Competition decided to initiate the Energy Sector Inquiry in June 2005 on a number of grounds suggested by evidence coming from a number of sources (including complaints, information from other EU Competition Authorities or other parts of the Commission, etc.). The decision made particular reference to the following: that cross-border flows in the electricity and gas sectors were having limited effects on prices; that prices were rising and there was little trust in the price formation mechanisms; that liquidity on exchanges was low and prices volatile; that customers had difficulty securing competitive offers from different suppliers; that network operators appeared to favour their affiliates despite the legal provisions on unbundling; and that there was high market concentration and limited new entry.

Engaging with Key Stakeholders: The main stakeholders identified were the undertakings active in the market (e.g., wholesalers, producers, transmission system operators, traders), consumers and public authorities. In total the Commission addressed more than 3,000 questionnaires to stakeholders in the sector. Energy policy makers were identified as a way to influence and shape the policy and legislative development in order to ensure that competition concerns in the energy sector are appropriately taken into account, in particular in the Third (legislative) Energy Package¹³.

Taking into account the comments received from the stakeholders, as well as further analysis of the data it gathered, the Commission published, in January 2007, the final report of the energy sector inquiry.

Effectiveness of DG Competition intervention: Evaluation

The in-depth knowledge gained into the functioning of the gas and electricity markets proved crucial in advocating for regulatory change (Third Energy Package) with the objective of liberalising the sector, as it allowed the Commission to speak perceptively about the many problems it had identified in the sector and also provided it with an insight into potential solutions to these same problems. In particular, this included the strengthening of the unbundling provisions to address vertical foreclosure issues, but also the monitoring of wholesale markets by national regulators, and increased transparency obligations on energy companies. The weight of DG Competition in these advocacy activities was significantly

¹² For further details, please see <http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>

¹³ http://europa.eu/legislation_summaries/energy/internal_energy_market/index_en.htm; see also below under Evaluation.

increased by the fact that it had carried out the energy sector inquiry and had recognition as fully understanding the issues facing the sector.

The energy sector inquiry was also evidently a knowledge platform for the Commission to pursue several antitrust cases, addressing many of the issues identified in the sector inquiry report. Whereas the sector inquiry was an ideal tool for identifying the problems in the energy sector, it should be clear that vigorous enforcement activity by the Commission remains the most efficient way to resolve competition issues.

For further information on the EU sector inquiry in the energy sector (and follow-up), please look at <http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>

Finland – Kilpailu- ja kuluttajavirasto (Finnish Competition and Consumer Authority)

As part of the main objective to safeguard effective economic competition, the task of the Finnish Competition and Consumer Authority (FCCA) is also to follow the preparation of rules and regulation concerning the economy and to make initiatives to promote competition or to dismantle restrictive regulation.

Advocacy focuses on public organisations responsible for regulation, and manifests itself above all in written and oral communications and interaction. Practical advocacy measures include initiatives, opinions, stakeholder cooperation and participation in competition-related working groups. The aim is to prevent at the outset the creation of potential problems. The objective is not the dismantling of regulation as such but “smart regulation”, which refers to regulation that is genuinely necessary, correctly dimensioned and measurable and which has benefits that genuinely exceeds the drawbacks.

Advocacy work is not entirely directly to legislative steering. For example, competition neutrality is related to the role of public authorities in the market and the objective here is to secure neutral competitive conditions between public and private sector undertakings. This task is primarily carried out through negotiations.

The FCCA’s advocacy task has been provided for in the Act on the Finnish Competition and Consumer Authority (661/2012) and the Decree on the Finnish Competition and Consumer Authority (728/2012). The Act states that the FCCA shall, among others, take initiatives to promote competition and to dismantle any restrictive regulations or orders, and tend to any other tasks prescribed or ordained to it. The Decree specifies that the FCCA shall monitor and investigate competitive conditions, follow the preparation of economic legislation and give statements about questions related to its field, and take initiatives to promote competition and to dismantle restrictive rules and regulations. The task regarding competition neutrality was provided for as an amendment to the Competition Act (948/2011) in 2013.

As regards the process for conducting competition assessment, the FCCA has published a checklist for the analysis of competition and market impacts (Appendix 1 to the report “Smart regulation - well-functioning markets” published in 2011). The checklist is in line with the 2009 Guidelines on Impact Assessment by the European Commission, the Competition Checklist by the OECD and the Recommended Practices on Competition Assessment by the ICN AWG. The scope of competition assessment covers both sector-wide and individual policies.

France – Autorité de la concurrence

As per the provisions of the Commercial Code, the French Autorité de la concurrence (“the Autorité”) is legally entitled to carry out assessment of the impact on competition of draft (i.e. ex ante) or existing (i.e. ex post) legislation, regulation and policy (“policies”), either upon request or ex officio.

The law provides that ex ante assessment by the Autorité of the competitive impact of a draft regulation is mandatory when it directly affects competition (e.g., by restricting the practice of a profession or access to a market, granting exclusive rights, or imposing uniform prices or terms of sale). A recent example concerns the opinion submitted by the Autorité to the Government in 2015 concerning a draft decree regulating the activity of taxis and private hire vehicles – which subsequently took into consideration some of the recommendations made by the Autorité to put these two professions on an equal footing.

Ex ante consultation of the Autorité on draft policies can also be requested by Parliamentary Committees, the Government, public local authorities, professional associations and labor unions, accredited consumer organisations and chambers of commerce. A recent illustration involved two opinions issued by the Autorité on the reform of the governance of the railway sector (regarding a draft law in 2013 and draft decrees in 2015). These opinions prompted a modification of the proposed legal framework, which reflected most of the Autorité’s recommendations (e.g., the management of freight infrastructures was fully transferred to an entity in charge of the railway network separate from that in charge of transport services.)

Ex post consultation of the Autorité can take place on any type of issue relating to competition at the request of the same bodies mentioned above, and is always optional. In 2009, upon referral from a prominent consumers’ organisation, the Autorité advocated for a reform of the legislation in order to enhance competition on the market for borrower’s insurance associated with housing loans. In 2012, in an opinion on the food retail sector requested by the Paris local council, the Autorité recommended that regulatory barriers to entry be lowered, and suggested that it be granted a new power to order the divestiture of assets when warranted by competition concerns.

Finally, the Autorité has the discretionary power to study ex officio the competitive functioning of any market and, if necessary, to issue recommendations to amend the applicable legal framework in a pro-competitive manner. For instance, in 2014, the Autorité launched a study into the market for domestic long-distance coach transport. It found that regulatory restrictions were the main constraint on the development of the market, notably due to the obligation for operators to offer such services only if ancillary to an international transport. The Autorité’s proposals for liberalisation, at least for routes of over 200 km, received a positive response from lawmakers, and draft legislation was recently introduced in Parliament.

Furthermore, there is now a constitutional duty on policymakers to conduct a general impact assessment upon the enactment of new policies. Although this does not require them to examine possible competition concerns, it can be an incentive for them to refer the matter to the Autorité or to carry out a self-assessment along the lines of the Guide published by the Autorité to that effect (http://www.autoritedelaconcurrence.fr/doc/guide_concurrence_uk.pdf).

Gambia – The Gambia Competition and Consumer Protection Commission

The Gambia Competition and Consumer Protection Commission (GCCPC) conducts Competition Assessment as part of its functions, in order to realise its mission of ensuring healthy and competitive markets for the benefit of consumers in the Gambia.

The Commission is mandated by the Competition Act 2007 to advise government or any public body on any action taken or proposed to be taken that may adversely affect competition in the supply of goods and services.

GCCPC acts as an advisor to government by encouraging government departments and agencies to take into account the potential impact of policies on competition in the policy-formulation process.

Competition assessment is conducted in line with GCCPC's obligation to make sure that competition is not restricted, prevented or distorted.

Statutory monopolies and businesses with a turnover of not more than 250,000 dalasis, for example, are not covered by the Competition Act.

Greece – The Hellenic Competition Commission

The HCC is an independent administrative authority with administrative and financial autonomy.

The objective of the Authority's competition assessment regime is to provide another public body/authority with the identification of a proposed or existing policy that may unduly restrict competition and an evaluation of its likely impact on competition. The assessment procedure takes place either at a policymakers' request, or at the Authority's own initiative.

The Competition Act provides explicitly for the advocacy powers of the Authority. According to Article 23 of the Greek Competition Act (Law No3959/2011):

- 1. The Competition Commission shall issue an opinion on matters within its competence either on its own initiative or upon request by the Minister of Economy, Competitiveness and Shipping or another competent Minister.*
- 2. The Competition Commission shall issue an opinion on proposals to amend this Law or shall recommend amendments, as appropriate.*
- 3. The Competition Commission shall express an opinion on draft laws and other regulations that may create barriers to the functioning of free competition. The Competition Commission's opinion may be requested by the competent Government body to which it shall be transmitted. The Competition Commission shall express its opinion within forty-five (45) days the notification of the draft law or regulation.*
- 4. If the Competition Commission, pursuant to Article 11 of this Law (referring to Regulation of sectors of the economy), finds that conditions of effective competition do not exist, due, inter alia, to legislative acts , it shall issue an opinion recommending that they be repealed or amended. The Commission's opinion shall be submitted to the Minister with jurisdiction and copied to the Minister of Economy, Competitiveness and Shipping.*

HCC's advocacy powers aim at identifying and removing, through recommendations addressed to the competent ministries and government departments, regulatory obstacles to competition in sector-wide and individual policies, including policies that introduce exemptions, exceptions or areas of special treatment.

Israel - Israeli Antitrust Authority

The Israeli Restrictive Trade Practices Law, 5748-1988 (hereinafter: "Antitrust Law" or "the Law") sets the primary statutory framework for competition regulation in Israel. While the Antitrust Law does not formally include a specific provision which empowers the Israeli Antitrust Authority (hereinafter: "IAA") or the Director General to conduct competition assessment exactly in the meaning of the ICN's Recommended Practices on Competition Assessment, such competition assessments are undertaken in practice.

First, Section 44A of the Antitrust Law provides the Director General with the authority to conduct examinations regarding the level of competition in various sectors, including examination of the existence of competition failures and of barriers to competition. According to the Law, he/she may hand his reasoned conclusions and recommendations to the Minister responsible for the sector examined and the Minister of Treasury, and in a sector that is regulated by another body – also to the head of that body.

Second, there are specific laws and regulations, which oblige regulators in some sectors (such as banking, communications etc.) to take into account competition considerations, for example when they grant various licenses. In some cases, the regulators conduct the competition assessment on their own, while in other cases they ask the IAA to advise and assist in the evaluation process (given the knowledge and experience the IAA has regarding competition methodology and assessment).

Third, according to the Law for the Promotion of Competition and Reduction of Economic Concentration, 5774-2013, the allocation of economic rights (e.g. licenses and permits) and state assets, which are limited in quantity by government bodies, are subject to competitive considerations. In cases where the Director General is of the opinion that the allocation of these rights may have a significant effect on competition, he/she will advise the government and its agencies regarding the repercussions of their allocation on competition on consumer welfare. Furthermore, the present Director General was appointed as Chairman of the Concentration Reduction Committee, which was formed to advise the government on the ramifications of the allocation of economic rights and state assets on the concentration in the overall economy.

Finally, the government of Israel has recently initiated a process aimed at improving the legislative process in Israel. One of the current recommendations (which has not yet been finalized) is that any new legislation, regulations, policies and their amendments, should be assessed, among other factors, by their effect on competition.

Italy – Italian Competition Authority

The Italian Competition Authority (ICA) may express opinions both on proposed and existing laws and regulations and this power has been recently strengthened.

- In relation to ex-ante assessment, the ICA has the opportunity to provide an opinion on draft legislation proposed by Regions through the Presidency of Council of Ministers which reviews the constitutionality of the regional legislation and may challenge it before the Constitutional Court also on competition grounds.
- With respect to ex-post assessment, the ICA may tackle competitive restrictions contained in administrative acts by challenging them directly before the Administrative Tribunal if the responsible administration does not comply with the ICA opinion.

Although no specific criteria are set out, the analysis used by ICA in assessing impact on competition involves criteria that are similar to those detailed in the OECD Competition Assessment Toolkit.

In the Italian legal framework, the more formal competition impact assessment is carried out only by central government departments as a part of their Regulatory Impact Assessment (RIA) and is required when the proposed measure is expected to have a substantial impact on firms. There is no ex-post competition impact assessment obligation in the framework.

Ex-ante competition impact assessment therefore applies only to legislation and regulations proposed by the government and it is based on the OECD checklist. While the ICA is not directly and formally involved in the RIA process, the relevant government departments may, at their discretion, consult with the ICA (and other relevant stakeholders) during the RIA process to gather inputs and information for the ex-ante competition impact assessment. However, a new provision was introduced in 2011 that obliges government departments to seek a binding opinion of the ICA when performing competition impact assessment on acts introducing restrictions on access to economic activities.

At the regional or local level, the ICA can be indirectly involved in competition impact assessments or informally consulted upon request. For instance, in 2007 the ICA has published guidelines for regional government entities and it has assisted the Tuscany Region in carrying out a specific example of ex-ante impact assessment.

Korea – Korea Fair Trade Commission

Objectives: If a regulation aimed at certain policy goals is devised without consideration of its impact on economic agents, it can lead to unexpected adverse side effects on competition. Based on this recognition, competition assessment was introduced to minimize adverse impacts on competition and find alternatives to achieve original policy objectives in an efficient manner from the initial stage of devising and adopting a regulatory framework.

Role: Newly established or strengthened regulations included in enacted or revised laws are subject to Regulation Impact Assessment by the Prime Minister's Office (PMO). Since 2009, the regulations subject to the PMO's assessment are transmitted to the KFTC for a competition assessment.

Implementation: The KFTC adopted a two-step competition assessment procedure similar to the one described in the OECD's Competition Assessment Toolkit.

Preliminary assessment, the first step, is conducted by answering the questions categorized into four sections. The questions are aimed at checking the potential negative impact that new regulations might have on competition aspects such as new entry, competition capacity, competition incentives and consumer choice.

Subsequently, the assessment moves to an in-depth assessment, the second stage, if an adverse impact on competition, even if minimal, is identified at the first stage.

During the in-depth assessment, the impact of the established or tightened regulations are analysed in a comprehensive manner – by examining the impact on new entry, prices, change in output, quality of products and service, diversity, innovation and growth.

Mandates: The Monopoly Regulation and Fair Trade Act (MRTA) includes the provision that mandates other government agencies planning to establish or add potentially anticompetitive laws to consult with the KFTC before official procedures are opened. (Article 63, mandatory process before pre-announcement of legislation).

Under the Basic Law on Administrative Regulation, KFTC is supposed to conduct competition assessment on all newly established or strengthened regulations that are subject to regulatory impact assessment.

Scope: In principle, all types of guidance and regulations proposed by Ministries, local government and regulatory entities are subject to competition assessment. KFTC can also undertake competition assessment on existing laws as well as newly established or strengthened regulations.

Since 2009, the KFTC has carried out advocacy activities for existing laws and regulations. Each year the KFTC selects several anticompetitive regulations among existing laws and requests professional research institutions to conduct research on them to improve entry regulations.

Japan – Japan Fair Trade Commission

Policy evaluations conducted by the government are stipulated in Article 3 of the Government Policy Evaluations Act (Act No. 86 of 2001) (hereinafter, the "Act"). Article 9 of the Act and Article 3, item (vi) of the Ordinance for Enforcement of the Act (Ordinance No. 323 of 2001) stipulates that ex-ante evaluations shall be conducted where a regulation is established, amended, or abolished.

Regarding this framework of ex-ante evaluations, which is based on the concept of the improvement of the quality of regulations and the fulfilment of accountability to the public, the "Implementation Guidelines for ex-ante Evaluation of Regulations" (approved at the Interministerial Liaison Meeting on Policy Evaluation on August 24, 2007) stipulates that costs and benefits shall be estimated when establishing, amending or abolishing regulations. Competitive impact is considered as one of the elements in this cost analysis.

The "Administrative Evaluation Program" (published in April 2010 by Ministry of Internal Affairs and Communications (hereinafter, the "MIC")) stipulates that the trial of identifying and analyzing competitive impact for the ex-ante evaluation of regulations shall be commenced in association with the Japan Fair Trade Commission (hereinafter, the "JFTC").

Currently, each ministry is expected to fill out a checklist on ex-ante evaluation, which comprises a series of questions on the potential impact on competition among competitors in the market as a result of the proposed introduction, amendment or abolishment of regulations. The completed checklist is submitted to the Administrative Evaluation Bureau of the MIC, on a voluntary basis, while the JFTC provides necessary support, such as giving advice when it is consulted by ministries completing the checklist (The administrative circular from the MIC on April 19, 2010).

Mexico – Comisión Federal de Competencia Económica (Federal Economic Competition Commission)

The Federal Economic Competition Commission (COFECE) is entrusted with the enforcement and application of the Federal Economic Competition Law (FECL) through preventive and corrective measures. COFECE can conduct competition assessment of both new and existing laws, rules and regulations in order to promote a pro-competitive legal regime.

The objective of ex ante competition assessment is to promote the inclusion of competition values in laws, regulations, and other administrative acts, so that they do not unduly hinder competition. Ex post competition assessment seeks to influence decision-makers to improve conditions for market competition and raise awareness concerning government-imposed obstacles impeding free market access.

The Commission can issue non-binding opinions regarding both new and existing legislation, regulations, and policies at the federal and local levels. For ex ante competition assessment, the Commission bases its efforts on a checklist that helps to identify when a particular proposal may unduly hinder competition. It subsequently conducts in-depth analysis in which policy alternatives are proposed and weighted against the draft proposal.

For ex post competition assessment, the Commission relies on highly skilled technical staff to conduct economic and statistical analysis to calculate how markets have been affected by a lack of competition.

While some policies are identified for competition assessment screening due to their federal nature (as within the framework of Regulatory Impact Assessment), others are selected due to their strategic nature and relevance for Mexico's economy, as is the case for market and sector studies.

Additionally to COFECE's advocacy activities, competition assessment fits explicitly into the agency's legal mandate. According to article 12 of the FECL, subsections XIII through XV, COFECE's Board of Commissioners has the authority to issue non-binding opinions regarding draft laws, regulations, agreements, circulars, provisions and other generally applicable administrative acts. Also, subsection XXIII states that COFECE may conduct or order sector and industry studies or investigations with the aim to emit recommendations to public authorities. Furthermore, since 2013, competition assessment is now included within RIA, which is itself mandatory for all Federal level government bodies.

Competition assessment can be applied to all sectors, products, services, and activities reviewed by COFECE which account for 97% of Mexican GDP. Only the telecommunications and broadcast markets are excluded from this. As it can issue opinions regarding specific regulations as well as on entire sectors, such as the financial services or agribusiness industries, competition assessment conducted by COFECE is in fact overarching with a potential to impact the entire Mexican economy.

The Netherlands – Autoriteit Consument & Markt (Authority for Consumers and Markets (ACM))

The ACM, which is a combined competition/consumer/regulator, conducts a test on proposals for draft legislation or ministerial regulations. The procedure is contained in article 6 of the information-exchange protocol between the Minister and ACM.

The Minister of Economic Affairs or the Minister for Infrastructure and the Environment sends proposals for decisions on draft legislation/regulation, which could be of influence on the tasks that ACM has to implement, to ACM for ACM to conduct an implementation test. (Should the proposal for a decision on draft legislation emanate from another Ministry, that Ministry will be requested by the Minister of Economic Affairs to send the proposal to ACM).

The relevant Minister ensures a timely sending of the proposal for a decision on draft legislation/regulation so that the test can influence the decision-making process.

In the event that the proposal is not sent to ACM by the relevant Ministry, ACM may conduct an ex officio test and inform the relevant Minister of its intention to do so.

ACM conducts the test within 4 weeks of the request. In special circumstances, ACM and the relevant Minister can agree upon a different time-frame.

In the implementation test, ACM addresses the following issues:

- a. the degree to which the draft legislation/regulation can be implemented and enforced effectively;
- b. the effects on ACM in terms of personnel, organization and finances; and
- c. possibilities to increase the effectiveness and efficiency of the proposed legislation/regulation.

ACM sends the results of the implementation test to the relevant Minister. In the Official Explanatory Memo that is attached to the draft legislation/regulation, the Minister explains how ACM's implementation test has been taken into consideration in the decision-making. ACM publishes the implementation test after the relevant decision has been published by the relevant Minister, unless the Minister and ACM agree otherwise.

Papua New Guinea – Independent Consumer & Competition Commission

The authority that has the role of regulating competition in Papua New Guinea (PNG) is the Independent Consumer and Competition Commission (“ICCC”). In its regulation of the PNG economy the ICCC aims to achieve its primary objectives of:

- Enhancing the welfare of the people of PNG through the promotion of competition, fair trading and the protection of consumers interests;
- Promoting economic efficiency in industry structure, investment and conduct; and
- Protecting the long-term interests of the people of PNG with regards to prices, quality and reliability of significant goods and services.

The ICCC administers the Independent Consumer and Competition Commission Act (“ICCC Act”), which sets out its functions, scope and mandate. The ICCC Act is based on principles similar to that of the Australian Trade Practices Act 1974 (now the Competition and Consumer Act 2010). The ICCC Act mandates the ICCC with three key roles:

1. Economic Regulation;
2. Competitive Market Conduct; and
3. Consumer Protection and consumer product safety

The Commission also has responsibility to monitor or set maximum prices for a small number of essential consumer goods and services.

The ICCC is responsible for enforcing competition law, and in particular the ICCC is tasked to promote and facilitate competitive markets through the enforcement of market conduct rules. The ICCC applies the Substantial Lessening of Competition test to ascertain the level of damage done to the competitive process.

Like any other law there are exemptions. Section 65 of the ICCC Act exempts application of the market conduct rules on any State owned enterprise that is established by an Act of Parliament but while this has not been tested in the courts, the ICCC interprets the exemption narrowly.

The ICCC also undertakes competition assessments. As part of this competition assessment function the ICCC is currently conducting a review of major legislation, regulations and policies governing key economic sectors in the PNG economy, to identify anti-competitive clauses and bring them to the attention of the relevant authorities in these key sectors to in order to have them amended.

The ICCC aims to present the relevant authorities with evidence of the economic benefits of removing or modifying the protectionist anti-competitive clauses that exist in key economic sectors in PNG. This includes highlighting the economic costs to PNG’s economy of retaining these anti-competitive clauses.

The ICCC also aims to present these ideas and lobby relevant authorities in order to bring about changes in the markets affected by these anti-competitive clauses.

Portugal – The Portuguese Competition Authority (PCA)

The Portuguese Competition Authority (PCA) has established as a priority the development of internal capacities for the implementation of a Competition Impact Assessment program for *ex-ante* and *ex-post* evaluation of Portuguese public policies.

The PCA recently created a Special Unit for Competition Assessment of Public Policies, with the mission of implementing a competition impact assessment procedure of public legislative and regulatory activities, within the PCA, thus contributing to a more pro-competitive approach to market regulation. With the creation of this Special Unit, the PCA recognizes that its role in Competition Policy is not restricted to enforcement but also involves competition advocacy and the promotion of more efficient practices in the markets and in the regulation of those markets.

The PCA has planned a number of initiatives to contribute to creating competition impact assessment capacities within the authority and raise public and private awareness of the benefits of pro-competitive public interventions. Considering the expected positive impact on the Portuguese economy of pro-competitive regulation, the PCA wants to turn this initiative into a national project involving governmental institutions at all levels and sector regulators.

To attain the described objectives, a plan was defined with the following stages to be implemented in parallel:

- 1) **Policy formulation:**
 - a. Drafting Competition Assessment Guidelines, drawing on the OECD Toolkit, the experience of other EU competition authorities and the on-going ICN work
 - b. Capacity building at the PCA by setting an internal unit.
- 2) **Advocacy:** establishing the basis for communicating effectively with stakeholders:
 - a. Institutional: promoting awareness of competition assessment as part of a more efficient regulation and a means of enhancing public policies impact on economic efficiency, which may also involve capacity building in Government, Parliament and other specific public institutions.
 - b. Private stakeholders: involving business and consumer organizations to promote awareness and develop partnerships in identifying possible areas of intervention;
 - c. Internal: building on the knowledge of sectors deriving from competition law enforcement and creating internal communication channels to identify areas of intervention.
 - d. Public consultation of draft guidelines.
- 3) **Intervention:** at this stage, intervention will focus on developing institutional capabilities (knowledge, skills and human resources) by:
 - a. Intervention in a small number of cases selected to illustrate competition assessment in the Portuguese context, considering the likely impact on competitive conditions;
 - b. Ex post intervention by conducting competition assessment analysis of the regulatory framework in two selected sectors.

Both these stages will be instrumental in the guidelines' development and the internal unit's formation.

- 4) **Strategic Planning:** the development of the project will form a team with substantial experience to continue carrying out these functions on an on-going basis.

According to its By-laws (approved by Decree-Law no. 125/2014, of August 18), the PCA is responsible for promoting the adoption of pro-competitive practices and for disseminating a competition culture, as well as tasked with contributing to the improvement of the Portuguese legal system in all areas that may affect competition. In pursuance of those goals, the PCA has the power to issue recommendations, to issue opinions on the Parliament's or the Government's request on legal and other initiatives that relate to the promotion and safeguard of competition, as well as the power to issue suggestions or proposals to the creation or revision of the legal and regulatory framework. The PCA also has the power, under the new Portuguese Competition Act of 2012 (Law no. 19/2012, of May 8), to conduct market studies and sector inquiries, following which it may address recommendations to re-establish or ensure competition on the market.

Given the broad mandate that the Statute entrusts to the PCA, there are no explicit limits, exemptions or exceptions to its advocacy powers.

Russian Federation – Federal Antimonopoly Service

The Federal Antimonopoly Service of the Russian Federation (the FAS Russia) is actively involved in the development of sectoral policies in many commodity markets through the provision of pro-competitive advice. In the Russian Federation competition assessment is an integral part of the process of Regulatory Impact Assessment (hereinafter – RIA). In accordance with the Resolution of the Government of the Russian Federation on 30.01.2015 № 83 the RIA applies to all laws and regulations that affect or may affect terms of conducting business in Russia.

The procedure for inter-agency coordination with the relevant executive authorities, provides for mandatory coordination with the FAS Russia where the adoption of a proposed legislative act would directly impact on competition. This process is regulated by the Government Resolution dated 13.08.1997 № 1009 and by the FAS Russia Regulations.

Under the Federal Government Regulation on 28.12.2012 № 2579-r and in order to promote competition in various sectoral markets, the Action Plan "Development of competition and improvement of antimonopoly policy" (hereinafter "Road map") was approved. The objectives of the "Road map" are to define a set of measures for the development of competition, which includes reducing the share of the public sector in the economy, develop competition in infrastructure sectors - including natural monopolies, remove administrative barriers for business, and increase consumer protection mechanisms. The "Road map" highlights priority activities for the development of competition in individual sectors, including pharmaceuticals, medical services, air transport, telecommunication services, preschool education, and petroleum products. The "Road Map's" framework includes targets to assess its effectiveness. The FAS Russia is the lead executor of the "Road Map", with the Russian Ministry of Economic Development, the FTS of Russia and other federal executive authorities, as co-executors. Monitoring progress of the implementation of the "Road map" is made every 3 months, with the results are presented to the Government of the Russian Federation.

In addition, there is a Governmental Commission on competition and the development of small and medium-sized businesses, which is chaired by the First Vice-Premier of the Russian Federation, Igor Shuvalov. The Commission is a permanent body established to coordinate the activities of executive authorities in relation to their interaction with representatives of the business community in order to develop proposals relating to the implementation of the state policy in the field of competition and the development of small and medium-sized businesses. The main objectives of the Commission are to review and to prepare proposals for the implementation of the decisions of the President of the Russian Federation and the Government of the Russian Federation, on defining measures of state support for small and medium-sized businesses and to improve their efficiency and other issues relating to the competence of the Commission

Furthermore, according to the Federal Law on 26.07.2006 № 135-FZ "On Protection of Competition", the FAS Russia is obliged to submit an annual report "On the state of competition in the Russian Federation" to the Government of the Russian Federation. This highlights the FAS Russia's major activities in the field of revising legislation and law enforcement practices during the reporting period, as well as its analysis of competition in socially significant markets that it has identified.

South Africa – Competition Commission

Section 21 of South Africa’s Competition Act, 89 of 1998, as amended (“Act”) outlines the functions of the Commission, which include the responsibility to review legislation and public regulations and to report any provision in such legislation or regulation that permits anti-competitive behaviour. It is from this premise that the Commission evaluates and makes comments on legislation.

The Commission adopts an advocacy approach in its policy assessment, wherein it engages with Government departments through various avenues. These include written submissions, one-on-one meetings with policy makers, combined workshops or seminars on particular policy subjects, or the publication of position papers on policy matters.

The Act empowers the Commission to comment on competition matters arising in any legislation or policy, in all tiers of government. The Act also makes provisions for the policy approach which must be adopted in instances of concurrent jurisdiction with other regulators.

Spain – Comisión Nacional de los Mercados y la Competencia (National Markets and Competition Commission)

The system for reviewing proposed legislation from the competition perspective is integrated into the policy drafting process as explained below. The legislator is obliged by law to conduct a competition assessment while the Spanish Competition Authority (CNMC)¹⁴ may also conduct its own assessment, which may result in recommendations to the legislator. The Competition Authority may also analyse existing legislation and even force the elimination of unnecessarily anticompetitive regulation.

Since January 2010, every new piece of legislation has to go through the filter of a competition impact assessment before it is passed. This is a fundamental achievement, for which the Spanish Competition Authority takes considerable responsibility, given that the legal act which made this competition impact assessment expressly mandatory, followed on from the publication of the Guide to Competition Assessment by the Spanish Competition Authority.

Indeed, Royal Decree 1083 of July 3 2009, regulating the Report on the Impact of New Legislation, for the first time established an obligation to assess competition issues when drafting a report on the impact of new legislation. The Royal Decree provides for the elaboration of an economic impact report comprising not only budgetary but also other economic issues, expressly mentioning competition issues.

Before the Royal Decree entered into force, a Methodological Guide for Impact Assessment of Regulation had been elaborated by the Spanish Competition Authority setting out the principles and methods for competition assessment of draft legislation.

The Competition Authority can analyse existing regulation as well as draft regulation. As a matter of fact, it may ex officio analyse existing administrative acts and regulations and make recommendations for amendments to the competent Public Administrations.

In exceptional cases, by virtue of Article 5.4 Act 3/2013 the CNMC may challenge before the Courts those existing administrative acts and regulations from which restrictions to competition are derived. These functions have been supplemented with some additional competences, attributed by art. 27 Act 20/2013 of 9 December 2013 on the Guarantee of Market Unity, to challenge before the Courts any act or regulation allegedly breaking the free movement of services and the right of establishment in the whole territory of Spain.

As regards the scope of application of the competition assessment regime, the CNMC's powers are not sector- or market-specific and thus the whole body of legislation and regulation is covered by the regime.

More broadly, the competition advocacy functions assigned to the Competition Authority by Act 3/2013 of 4 June 2013 creating the new Comisión Nacional de los Mercados y la Competencia (CNMC) are mainly the following:

¹⁴ The present Comisión Nacional de los Mercados y la Competencia (CNMC) is the result of the merger between the Competition Authority (CNC) and six sector regulators in charge of energy, telecommunications, audio-visual services, postal services, rail transport and airport tariffs

- Issue reports on draft legislation or regulation, which may include recommendations aiming at maintaining or fostering effective competition in the markets. (Article 5.2.a).
- In the field of State aid control, the CNMC, ex officio or at the request of the Public Administrations and without prejudice to the European Commission's competences, may analyse the award criteria and the possible effects of State aid on competition in the markets, and subsequently make recommendations (Article 5.1.e).
- To promote and conduct competition studies or general reports on sectors and to elaborate guides, like the Guide for competition assessment previously mentioned or the 2012 Guide on public procurement.

Sweden – Konkurrensverket (Swedish Competition Authority – SCA)

The Swedish Constitution sets out an obligation for the Government to collect information and opinions from relevant authorities in the preparation of government affairs – for example during the legislative procedure.¹⁵ The government therefore refers legislative proposals that are relevant to the SCA's field of activities. The SCA is required to respond to all such referrals from the government.

The Regulatory Impact Assessment Ordinance sets out a similar obligation for all government authorities to refer proposed regulations and other policies to relevant authorities for opinions and information. When doing so they are also obliged to provide a crude form of competition impact assessment.¹⁶ All government authorities shall for example pay attention to the possible impact on competition that the proposal may have and identify alternative solutions to the problem that they try to address. The SCA is free to respond to such referrals on its own discretion.

Before the Government can draw up a legislative proposal, the matter in question must be processed, analyzed and evaluated. That task is assigned to committees normally consisting of officials from the ministry concerned, experts and/or politicians. The SCA can sometimes be invited to provide an expert to such committees.

The government regularly assigns specific tasks to the SCA. It often involves a sector or a sector specific question that needs to be analysed from a competition perspective. The SCA's task is then to analyse and address market specific problems and, when possible, suggest solutions.

The SCA can also initiate own-initiative market studies. The SCA's market studies are conducted to gain an in-depth understanding of how sectors, markets, or market practices are working; in particular assessing existing regulations and policies and their effects on competition. Market studies are conducted primarily in relation to concerns about the function of markets arising from, for example, the structure of the market, consumer conduct and/or public sector interventions.

Most market studies are carried out by the SCA but sometimes they are performed by academics through commissioned research that SCA orders and contracts. Such commissioned research relates to issues where the SCA sees a direct need to analyse or where there is a particular issue that needs to be highlighted. The researchers' findings are generally published in a special report series of commissioned research. The SCA also has a special government appropriation to be used towards research within the fields of law and economics in the area of competition.

¹⁵ The Instrument of Government (1974:152) ch. 7 art. 2

¹⁶ Regulatory Impact Assessment Ordinance (2007:1244) art. 7

Switzerland – The Competition Commission

The main objective of the competition assessment regime is to point out (unnecessary) public restraints of competition and to advise on how to prevent them.

The competition assessment regime applies to both new and existing legislation, regulations and policies.

Any legislative authority is obliged to submit federal bills relating to commercial matters and other federal bills that are likely to influence competition to the Secretariat of the Competition Commission (Secretariat). The Secretariat is bound to determine whether such legislation may cause distortions or undue restraints of competition. Moreover, the Competition Commission (COMCO) shall – in consultation procedures – provide its opinion on federal bills that restrain or otherwise influence competition. Finally, the COMCO and its Secretariat may submit recommendations on the creation, implementation, revision or repeal of regulations relating to commercial matters.

In some cases, the Secretariat and other bodies responsible for conducting competition assessment cooperate on the assessment.

Note: The following description is limited to the competition agency's mandate for competition assessment pursuant to the Federal Act of 6 October 1995 on Cartels and other Restraints of Competition (Cartel Act, CartA).

- According to Article 46(1) CartA federal bills relating to commercial matters and other federal bills that are likely to influence competition shall be submitted to the Secretariat. It determines whether such legislation may cause distortions or undue restraints of competition. In addition, in a consultation procedure, the COMCO shall provide its opinion on federal bills that restrain or otherwise influence competition and may submit its opinion on cantonal bills (Article 46(2) CartA).
- Pursuant to Article 45(2) CartA, the COMCO and its Secretariat may submit recommendations on how to promote effective competition to authorities (at the federal, cantonal or communal level), especially with regard to the creation and implementation of regulations relating to commercial matters.
- Furthermore, the Secretariat advises governmental offices on matters relating to the CartA (Article 23(2) CartA). Finally, the COMCO (it may instruct the Secretariat to carry out this task in less important matters) shall provide other authorities with expert reports on competition law issues of general importance (Article 47(1) CartA).

The competition assessment covers any legislation, regulation and policies relating to commercial matters or matters that are likely to influence competition.

Competition assessment is even possible in areas where statutory provisions that do not allow for competition take precedence over the provisions of the CartA (Article 3 CartA). In these areas, the CartA is not applicable. However, the possibility to submit recommendations on how to promote effective competition to other bodies enables the competition authority to have some influence on this existing legislation, which can be construed as a trade-off for the fact that these statutory provisions exclude competition. By means of recommendations, the COMCO and its Secretariat can therefore point out public restraints of competition.

Tunisia – Conseil de la Concurrence (Competition Council)

In accordance with Tunisian Law no. 91-64 of July 29 1991 on Competition and Prices, Tunisia opted for the creation of an independent authority, the Competition Council, entrusted with a two-fold mission including an enforcement role¹⁷, as well as an advisory role¹⁸.

The Competition Council provides market analysis and conducts competition assessment through its enforcement and advisory powers.

The objectives pursued are to identify:

- The effects of individual or collective practices on competition;
- The effects of draft legislation, regulation or policy on competition;
- The effects of mergers or exemptions on competition.

In addition, the Competition Council has broadened its scope of activities by using powers assigned to its Rapporteur general to carry out market studies to assess the state of competition in priority sectors of the economy¹⁹.

The fact that sector regulators (such as those in the telecoms, insurance and banking sectors) have jurisdiction over competition matters does not deprive the Competition Council from its horizontal competency of evaluating competition across all sectors.

¹⁷ Article 11 of Law no. 91-64 of July 29 1991.

¹⁸ Article 9 of Law no. 91-64 of July 29 1991.

¹⁹ Article 11 of the Council's internal rules of April 20, 2006.

United Kingdom – Competition and Markets Authority

UK competition assessments: ex post and ex ante analysis

Ex post – Market Studies and Market Investigations

Market studies are examinations into the causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour.

Market studies may lead to a range of outcomes, including: a clean bill of health, actions which improve the quality and accessibility of information to consumers, encouraging businesses in the market to self-regulate, making recommendations to the Government to change regulations or public policy, taking competition or consumer enforcement action, and making a market investigation reference, or accepting a Undertaking in Lieu.

Market studies are conducted under the CMA's general review function in section 5 of the Enterprise Act 2002 (EA02). The Enterprise and Regulatory Reform Act 2013 (ERRA13) introduced a formal requirement for a market study to be commenced by the issuing of a market study notice when the CMA exercises its function under section 5 for certain specified purposes.

Market investigations are more detailed examinations into whether there is an adverse effect on competition in the market(s) for the goods or services referred. If so, the CMA must decide what remedial action, if any, is appropriate. Section 131 of the EA02 sets out the power of the CMA to make references.

For more details on both, please click on the following link: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/270354/CMA3_Markets_Guidance.pdf

Recently government departments are also increasingly playing an ex post role in assessing the impact of policies on competition. This can sometimes form part of the wider ex-post evaluation of a policy. The Cabinet Office's Markets for Government Services Team has an interest in reviewing markets of government creation - their remit includes, but is not limited to, the impact regulation has on public markets.

Ex-ante – Competition assessments in (regulatory) impact assessments

Section 7(1) of the EA02 gives the CMA the power to make proposals or give information and advice to Ministers and their departments in respect of any proposed changes in law, regulation or policy.

Competition assessments can be carried out by policy makers when they complete an Impact Assessment. The CMA provides help and guidance to departments who ask for help with their competition assessments. The CMA can refer policy makers to the framework questions set out in the guidance published by the Office of Fair Trading, one of CMA's predecessors. These questions are still helpful to policy makers, even though the Impact Assessment process has changed. Please click on the following link for the guidance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191489/Green_Book_supplementary_guidance_completing_competition_assessments_in_impact_assessments.pdf

The competition assessment is no longer a compulsory part of the Impact Assessment process, but it should still be carried out where appropriate i.e. where there are significant competition impacts (potential or realised). The CMA works with the Treasury and the Department for Business, Innovation and Skills (BIS) to get involved earlier, in the process, with policies that may have an impact on competition.

United States – Department of Justice Antitrust Division and Federal Trade Commission

Broadly speaking, the U.S. antitrust agencies engage in “competition advocacy” to lawmakers and regulators. At its core, this advocacy focuses on the impact on competition of draft or existing legislation, regulations and policies, even if not formally termed “competition assessment.” The objective of this type of advocacy is to provide policymakers with a framework to analyze competition issues raised by pending governmental actions or ongoing judicial disputes and to advocate for procompetitive policies. In providing this analytical framework, the antitrust agencies attempt to focus policymakers on (1) potential restrictions to competition that may result from government action, (2) whether the action is adequately tailored to address the anticipated harm, and (3) whether the benefit of the action exceeds the potential harm to competition that may result. Separate from the competition advocacy in which the U.S. antitrust agencies engage, legislatures and regulators that draft laws, regulations and policies, and specific agencies with oversight authority to review proposed laws or regulations (e.g., the Office of Information and Regulatory Affairs within the Executive Office of the President) can and do include the consideration of competition principles in their work.

The Antitrust Division and FTC engage in competition advocacy before other policymakers, including state legislatures and regulatory boards; state and federal courts; other federal agencies; and professional organizations, such as bar associations. Typically, the agencies opine either in response to specific requests from policymakers or where public comments are sought. The advocacy can take many different forms, including formal actions, such as providing testimony or written comments to Congress or state legislators or filing amicus briefs with courts. The antitrust agencies also offer counsel to Federal and state agencies, providing informal consultations and presentations. Advocacy also can take the form of public hearings and workshops, which can bring together experts from business, government, law, and academia to discuss competition issues of interest, including the agency’s views on those issues. The Division and FTC also promote competition principles through a variety of activities, such as speeches before associations of state regulators, interviews with the press, and articles in general interest publications.

The U.S. antitrust agencies’ competition advocacy efforts span many sectors that are crucial to consumers and where competition policy plays a particularly important role such as intellectual property, health care, agriculture, telecommunications, the regulation of professions, and energy. Recurring themes in advocacies involving existing or proposed legislation or regulation include facilitating entry or avoiding new and unnecessary entry barriers; opposition to antitrust immunity for certain types of anticompetitive conduct; and having courts narrowly construe existing antitrust exemptions and immunities.

Zambia – Competition and Consumer Protection Commission

In Zambia, the Competition and Consumer Protection Commission (“the Commission”) is mandated by the Competition and Consumer Protection Act (“the Act”) to review the operations of markets in Zambia and the conditions of competition in these markets. Besides investigating cases of restrictive business practices, abuse of dominance and regulating mergers and acquisitions, the Commission provides guidance to government on the impact of draft or existing legislation and policies on competition in relevant markets. The objective of the competition assessment regime is to avoid conflict of laws on competition thereby hindering the enforcement of laws, most especially the competition law.

The Commission did make several submissions to Government on why a statutory instrument limiting only to three mobile players in the sector should be lifted as it was at variance with one of the major aims of the Act which is to “*safeguard and promote competition.*” In addition, the Commission has in the recent past written an advisory note to Government on why it should not compel all Government institutions to have only Zambia Telecommunications Company be the sole provider of internet services to these institutions since it is also inimical to the aim of Act of safeguarding and promoting competition. In the past, the Commission gave its position on the liberalisation of the international gateway in order to allow for effective competition in the mobile service industry – a recommendation that was adopted.

The Commission also offers advice to sector specific regulators on the need to observe competition in their markets. In some of the legislation of some sector regulators, competition is explicitly addressed. Thus sector regulators are advised to collaborate with the Commission in conducting competition assessment of their respective sectors. For example, the Zambia Information and Communications Technology Authority’s (ZICTA) Information and Communications Technology (ICT) Act has an aspect of competition which states that on matters relating to competition, ZICTA shall consult with the Commission. Thus, in 2014, the Commission worked with ZICTA in assessing a merger where MTN sold its telecommunications towers to IHS Zambia Limited.

In Zambia, there is a specific legal basis for an agency to conduct both ex ante competition and ex post competition assessment or market/sector studies. Section 5 of the Act gives the Commission the mandate to act as a primary advocate for competition and effective consumer protection in Zambia; and also to advise Government on laws affecting competition and consumer protection. As such, all advocacy activities carried out by the Commission have the legal backing of the Act. Specifically, Section 38 of the Act allows for market inquiries to be conducted, which can be a very useful way of obtaining information on competition and provide the basis to advise the Government on how implemented laws are affecting competition.

The Commission therefore, monitors legislative work programmes to identify potential areas that may conflict with promotion of healthy competition for the benefit of consumers and advise Government on such matters / concerns.