



INTERNATIONAL COMPETITION NETWORK

Report on

**Assessment of ICN Members' Requirements and
Recommendations on Further ICN Work on
Competition Advocacy**

Prepared by

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Sub-Group 1: Review and Update Project*

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Introduction

The *purpose* of this Report¹ is to (i) elaborate on ICN members' experiences with competition advocacy ("CA"), (ii) summarize their suggestions for future ICN work in the area, (iii) assesses the extent to which existing ICN work product has been used by members, (iv) inform ICN members as they consider what, if any, additional work should be done on competition advocacy.

The Project is using the CA *definition* as provided in Advocacy and Competition Policy Report of 2002:

"Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for 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."

For purposes of this project, the Report focuses on CA activities in *institutional* areas (for examples, advocating competition with government bodies², sector regulators³, business community⁴, and special interest groups⁵, facilitating competition culture in society⁶, consumer education⁷ etc.) and *sectoral* areas that are closely related to each other and enforcement practices. The institutional area provides for targeting CA efforts at specific institutions, both public and private, and/or social categories, as well as at organized special interest groups (e.g., consumer associations, small business associations or pressure groups etc.) that may either facilitate or hinder competition, depending on the character of a particular group. The sectoral area is characterized by CA focused on specific sectors in which competition law enforcement is limited or not possible due to market failures and/or government policies.

The working group collected responding agencies' opinions on possible further ICN efforts in the field of CA through the use of a Questionnaire (please see Annex 1). The Questionnaire

¹ This Report was prepared by: Edgar Carballo (Mexican FCC), Vladimir Kachalin (Russian FAS), Nancy Olson (U.S. DOJ), Heidi Sada (Mexican FCC), Andrei Tzarikovskiy (Russian FAS).

² For example, Croatia is at the moment in the process of adopting new Competition Act, the efforts are mostly focused on government institutions, such as Ministry of Economy and Ministry of Justice, legislative bodies such as Parliament and judicial bodies, particularly on Commercial Court and Minor Offence Court.

³ For example, the Antitrust Division of the U.S. Department of Justice participates in proceedings, submits comments to, appears before, or consults on competition-related issues with many federal agencies. A major focus of the Division's competition advocacy with other federal agencies involves the submission of comments and intervention in federal regulatory agency proceedings in an effort to focus attention on competitive issues and to suggest adoption of the least anticompetitive and best designed forms of regulation where regulation is deemed necessary.

⁴ For example, in the United Kingdom, the OFT promotes competition policy to business through a combination of its market studies, and the substantial material it publishes on competition compliance. Officials from the OFT senior management team and board often address specific sectors of the business community and organizations such as retail consortiums.

⁵ For example, in Poland the promotion of the competitive environment is also conducted by means of cooperation with organized special interest groups, e.g. consumer associations, small business associations or pressure groups etc. that may either facilitate or hinder competition, depending on character of a particular group.

⁶ For example, in Korea, the KFTC undertakes lectures and presentations for promotion and education on competition law: over the total 66 occasions between April and December of 2008, Chairman directly promoted KFTC policy and activities to business, academic and media circles, and moreover, the KFTC held education and counseling sessions for those engaged in the sectors where antitrust infringements tend to occur frequently

⁷ For example, the Jamaica Fair Trading Commission is targeting students at all levels. They recently published a book on Competition for children under the age of 10, which is now being distributed throughout the country. The Commission also conducts lectures at tertiary level institutions and teaching classes at secondary level institutions.

elicited information on the members' recent competition advocacy efforts, the sectors in which the agency is most actively engaged in CA or CA efforts are required, the use of existing ICN CA work product by responding members, and their recommendations on possible further ICN projects. The conclusions and recommendations of the report are based on the responses to the questionnaire provided by 32 ICN members.⁸

⁸ Member agency responses from the following jurisdictions:: Brazil (SEAE), Canada, Colombia, Croatia, Cyprus, Denmark, European Union (European Commission DG Competition "EC DG Comp"), Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia.

Executive Summary

This paper was prepared by the Review and Update Project Subgroup of ICN Competition Advocacy Work Group for the 8th Annual Conference of the ICN in June 2009.

This Report consists of three parts and a conclusions/recommendations section. The first part presents a review of competition advocacy work by competition agencies working in different legal and political environments and, therefore, facing various institutional challenges. The analysis of the CA efforts by competition agencies includes the types of efforts, agency resources dedicated to advocacy, and the methods of measuring success of advocating competition. The diversity of environments in which the competition agencies operate did not prevent them from making recommendations on continued ICN work on CA as well as on the form and type of such work. The agencies' recommendations form the bases for the recommendations on future ICN work addressing CA issues and are set forth in the conclusions/recommendations part of the Report.

Part 2 of the Report is dedicated to the institutional aspects of competition advocacy and contains an analysis of the responding agencies' efforts on advocating competition principles in relation to various government and non-government institutions, including examples of forms and methods of their advocacy. In addition, this Part focuses on the advocacy implications of the development of the exercise of private rights of action and relationships between the competition authorities and private bar. This part also contains the results of a survey on the current use of the existing CA related ICN work products that forms the bases for conclusions on desirability of updating these products in the course of further ICN work.

Part 3 describes the sector-related advocacy work, i.e., competition advocacy efforts by the responding agencies in a variety of sectors like energy, transportation, telecommunications, financial services, health services, pharmaceuticals, agricultural goods, real estate, professional services, postal services, international trade, and other sectors. This part contains a review of the scope and goals of the CA efforts in relevant sectors that help to identify recommendations for future ICN work on sector related CA. It also acknowledges several examples of success stories. Based on the survey responses received on the sectors in which CA efforts are most required and the submitted suggestions on additional ICN sector-related advocacy work, the Conclusions section addresses possible future directions of such work.

The Report ends with a Conclusions section that includes a summary of the responding agencies' recommendations on the institutional and sectoral directions of further ICN work on competition advocacy, as well as on types and forms of this work as provided for in the Review and Update Project Work Plan.

1. Organization of competition advocacy efforts by competition authorities

1.1. Types of CA efforts competition authorities are engaged in

The competition authorities responding to the survey reported a wide array of CA activities which may generally be sorted into the following categories:

- providing comments or advice on current or proposed legislation;⁹
- providing comments or advice on current or proposed public policy and/or regulatory initiatives;¹⁰
- participating in cross-government councils, task forces, or groups;¹¹
- participating in meetings, discussions, or consultations with other government entities;¹²
- conducting market studies or other research projects and issuing reports;¹³
- issuing guidelines or other explanatory publications;¹⁴
- conducting or participating in seminars, workshops, conferences, or training programs;¹⁵
- conducting outreach or filing briefs with judicial authorities;¹⁶
- conducting outreach with the business community;¹⁷
- conducting outreach with the academic or economic communities;¹⁸
- conducting public education and outreach;¹⁹ and

⁹ Member agency responses from the following jurisdictions: Brazil (SEAE) Secretariat for Economic Monitoring (“SEAE”), Croatia, Germany, Hungary, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Romania, Russia, Slovak Republic, Spain, Switzerland, Turkey, United Kingdom (Office of Fair Trading “U.K. OFT”), United States. (Department of Justice “U.S. DOJ”), United States (Federal Trade Commission “U.S. FTC”), and Zambia.

¹⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Slovak Republic, Switzerland, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia.

¹¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Germany, Korea, Russia, U.K. OFT, and U.S. DOJ.

¹² Member agency responses from the following jurisdictions: Brazil (SEAE), Denmark, Germany, Japan, Lithuania, Mexico, Poland, Russia, Senegal, Slovak Republic, U.K. OFT, U.S. FTC, U.S. DOJ, and Zambia.

¹³ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Honduras, India, Japan, Korea, Mexico, Peru, Slovak Republic, Spain, Tanzania, U.K. OFT, U.S. DOJ, and U.S. FTC.

¹⁴ Member agency responses from the following jurisdictions: Canada, Cyprus, Denmark, Germany, Honduras, India, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Slovak Republic, Spain, Tanzania, U.S. DOJ, and Zambia.

¹⁵ Member agency responses from the following jurisdictions: Cyprus, Denmark, Germany, Honduras, India, Jamaica, Japan, Mexico, Norway, Peru, Poland, Slovak Republic, Spain, Tanzania, U.S. DOJ, U.S. FTC, and Zambia.

¹⁶ Member agency responses from the following jurisdictions: Germany, Jamaica, Mexico, Romania, Russia, Slovak Republic, U.S. DOJ, and U.S. FTC.

¹⁷ Member agency responses from the following jurisdictions: Germany, Japan, Korea, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovak Republic, Turkey, U.K. OFT, U.S. FTC, and Zambia.

¹⁸ Member agency responses from the following jurisdictions: Germany, Honduras, Slovak Republic, and Turkey.

¹⁹ Member agency responses from the following jurisdictions: Colombia, Cyprus, Germany, Honduras, Hungary, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Poland, Romania, Slovak Republic, Spain, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia.

- international outreach activities.²⁰

EC DG Comp responded that is engaged in wide range of CA activities “...notably advocacy in relation to other Directorate-Generals (DGs) and services of the Commission (mostly on a sector basis). Extensive advocacy are also engaged in relation to stakeholders (legal community, civil society etc).”²¹

1.2. Degree of influence of other authorities and institutions on the competition authority advocacy efforts. Political environment for competition advocacy.

1.2.1. Agency independence and autonomy in conducting C A

All agencies responding to the questionnaire indicated some degree of independence and autonomy in conducting CA activities. Of the 32 agencies responding to the questionnaire, 27 agencies²² reported that their competition advocacy efforts are not supervised, or subject to modification or review, by another authority or the courts. Of these agencies, two agencies²³ noted that advocacy activities must conform to applicable laws. Two agencies²⁴ noted that they consider feedback from stakeholders in determining appropriate advocacy activity.

Five competition agencies from the following jurisdictions, Brazil SEAE, Korea, Norway, Switzerland, and United Kingdom Office of Fair Trading (U.K. OFT), indicated that while they enjoy a considerable degree of autonomy and independence in their CA activities, their CA efforts are subject to at least some degree of supervision, review, or input. Two agencies (Brazil SEAE and competition authority of Switzerland) noted the existence of different forms of general agency oversight, but both agencies indicated that their advocacy activities are conducted independently and without specific supervision.²⁵ The remaining agencies noted the existence of particular forms of supervision, review, or input on advocacy activities in certain circumstances.

The Korea Fair Trade Commission (“KFTC”) reported that its overall work product is subject to review by an internal assessment team as well as the National Assembly or the Board of Audit and Inspection. According to the KFTC, “[t]he internal assessment team reviews the competition advocacy efforts twice a year based on several factors: adequacy of the establishing of plans and the execution process, the level of goal accomplishments, and whether or not the assessment result will be incorporated in the next plan.” In addition, with respect to the regulatory reform process, the KFTC noted that although it “participates in the Regulatory Reform Committee or Presidential Council on National Competitiveness and can claim KFTC’s view on anti-competitive effects of the concerned regulation, the KFTC’s decision on competitiveness can be modified by the Committee/Council’s decision through the discussion.”

²⁰ Member agency responses from the following jurisdictions: Korea, New Zealand, Poland, and Zambia.

²¹ Member agency response from the following jurisdiction: EC DG Comp.

²² This includes the competition authorities of Canada, Colombia, Croatia, Cyprus, Denmark, EC DG Comp, Germany, Honduras, Hungary, India, Jamaica, Japan, Lithuania, Mexico, New Zealand, Peru, Poland, Romania, Russia, Slovak Republic, Senegal, Spain, Tanzania, Turkey, U.S. DOJ, U.S. FTC, and Zambia.

²³ Member agency responses from the following jurisdictions: Germany and Lithuania.

²⁴ Member agency responses from the following jurisdictions: Mexico and Russia.

²⁵ Member agency response from the following jurisdiction: Brazil (SEAE) (“Although the Secretary and the coordinators can be discharge[d] *ad nutum*, the technical opinions about legislative or regulatory propositions are widely recognized as politically independent.”); Response of Swiss Competition Commission (“The Advocacy efforts of the [Commission] are not generally supervised by any authority, nor by any court. Nevertheless the [Federal Act on Cartels and Other Restraints of Competition] states in article 59a that the Federal Council will arrange for the effectiveness of the measures and implementation of the [Act]. This one-time evaluation has taken place in 2008 and its results have been published in mid January 2009.”).

The Norwegian Competition Authority reported that while it acts independently in its CA efforts, some CA efforts may be initiated by the Ministry of Government Administration and Reform through its annual letter of assignment to the Competition Authority outlining the government's priorities in the competition field. While the Ministry may order the Competition Authority to deal with a case, the Competition Authority may not be instructed on the decisions in individual cases.

The U.K. OFT responded that “[r]ecommendations for governmental or legislative change following market studies are reviewed and overseen by the Department of Business, Enterprise and Regulatory Reform (BERR),” which has 90 days to accept or reject U.K. OFT’s market study recommendations on behalf of the government. In addition, U.K. OFT reported that recommendations implemented by the government can be challenged by judicial review in the courts, and that parties may challenge the procedural basis of its market studies. Finally, “[d]ecisions to make or not to make a market investigation are separately appealable to the Competition Appeal Tribunal on Judicial Review principles.”

1.2.2. Impact of autonomy on advocacy activities

Twenty-four²⁶ of the 32 agencies responding to the questionnaire reported that their agencies’ autonomy contributes to advocacy activities. Several of these agencies observed that agency autonomy contributes to advocacy activity by allowing agencies to develop their advocacy activities based on competition principles, independent of political or bureaucratic considerations.²⁷ Other agencies responded that agency autonomy contributes to advocacy activities by providing agencies with the ability to determine appropriate topics, tools, and/or timing for advocacy activities.²⁸ Still others noted that agency independence is an important asset in formulating technical advice for other government authorities,²⁹ allows the agency to form its own opinions and have direct contact with relevant agencies,³⁰ frees the agency from having to follow instructions by other government entities,³¹ allows the agency to speak freely, frankly, and objectively with respect to competition issues or concerns,³² or increases the weight given to the agency’s positions.³³ One agency noted that its high degree of autonomy generates synergies in terms of building public support and reaching national consensus on competition policies, thereby improving the effectiveness of the policies themselves.³⁴

Two agencies (the Hungarian Competition Authority and U.K. OFT) noted that there can be trade-offs between the benefits of agency autonomy, and the limitations that exist when a competition authority’s advice is advisory. Thus, the Hungarian Competition Authority (GVH)

²⁶ This includes the competition authorities of Brazil (SEAE), Canada, Croatia, Cyprus, EC DG Comp, Germany, Honduras, India, Jamaica, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Slovak Republic, Spain, Switzerland, Tanzania, Turkey, and Zambia.

²⁷ Member agency responses from the following jurisdictions: Canada, Mexico, Peru, Poland, Russia, Slovak Republic, Spain, and Tanzania. The Russian Federation Federal Antimonopoly Service (“FAS”) noted, however, that “if legal initiatives are involved, the FAS advocacy efforts acquire more political character since it has to secure the support of numerous stakeholders and balance countervailing pressures in order to ensure passing legislation.”

²⁸ Member agency responses from the following jurisdictions: Croatia, Cyprus, Honduras, Lithuania, and New Zealand.

²⁹ Member agency response from the following jurisdiction: Brazil (SEAE).

³⁰ Member agency response from the following jurisdiction: Turkey.

³¹ Member agency response from the following jurisdiction: Switzerland .

³² Member agency response from the following jurisdiction: Jamaica.

³³ Member agency response from the following jurisdiction: Norway.

³⁴ Member agency response from the following jurisdiction: Korea (“Equipped with dual authority to determine and enforce competition advocacy related policy, the KFTC has a high degree of autonomy, which in turn generates synergies. For example, with relation to regulatory reform as part of competition advocacy efforts, KFTC Chairman, the policy maker, directly promotes the Commission’s reform efforts to economic entities, academic circles and the media to earn public support. Through this policy enforcement process, the KFTC tries to reach a national consensus on its policy, thereby raising effectiveness of the policy.”).

responded that it “has a high degree of autonomy which renders the possibility of pursuing a competition advocacy that is based on professionalism. At the same time, the views expressed by the GVH are only recommendations.”³⁵ Similarly, the U.K. OFT responded that “Since OFT is independent from government, it only has an advisory role (outside of its competition and consumer enforcement activities). This means that we need to work hard to persuade government policymakers to accept our arguments, and in some cases we work closely with other government departments and do not publish our policy advice.” Nonetheless, the OFT views its independence in giving advocacy advice as “vital in order to provide robust competition scrutiny to all sectors of the economy and of all areas of government policy. . . . [O]n balance we believe it is very important that advocacy is carried out independently from government. In particular, it is important that we can decide which issues to investigate – it is not necessary for government to invite us to comment before we can get involved. Furthermore, we are able to publish our findings, even when government does not necessarily accept the conclusions.”³⁶

One agency responded that an agency’s autonomy has no direct effect on its advocacy activities, but that it can have a positive impact in the medium to long term.³⁷ Another agency responded that it has not yet been proven whether agency autonomy plays a positive or negative role in competition advocacy.³⁸

The remaining two agencies (U.S. DOJ and U.S. FTC) commented on ways in which their degree of autonomy impacts their advocacy activities. U.S. FTC responded that it generally “refrains from engaging in formal advocacy unless invited to share its views by a member of the decision-making body (e.g., regulator or legislator) or in response to an invitation for open public comment, which can affect the areas where the FTC engages in advocacy.”³⁹

U.S. DOJ responded that being part of the executive branch of government has put it “in a unique position to have a voice in various government decisions, and to advise government agencies on antitrust matters.” U.S. DOJ noted that it participates on several interagency policy-making groups, and several government agencies seek its advice on competition issues. In addition, U.S. DOJ noted that it participates in a clearance process for Executive Branch legislative proposals, through which it “can – and often does – provide comments on the competition aspects of proposed legislation.”⁴⁰

1.2.3. Impact of the political environment on advocacy efforts

Twenty-seven⁴¹ of 32 responding competition agencies⁴² reported that the political environment has not restricted their advocacy efforts. Three agencies reported that the political environment has had some impact on their advocacy efforts.⁴³ Of the 27 agencies that did not

³⁵ Member agency response from the following jurisdiction: Hungary.

³⁶ Response of U.K. OFT.

³⁷ Response of JFTC (“The degree of autonomy of the competition authority does not directly affect its advocacy activities. Considering the medium to long term, however, active and fair enforcement of competition laws by an independent competition authority will increase the credibility of people in competition laws and competition policies. Such autonomy of the competition authority will create a positive effect on the advocacy activities of the competition authority.”).

³⁸ Member agency response from Senegal.

³⁹ Response of U.S. FTC.

⁴⁰ Response of U.S. DOJ.

⁴¹ This includes the competition authorities of Brazil (SEAE), Canada, Colombia, Croatia, Cyprus, Denmark, EC DG Comp, Germany, Hungary, India, Jamaica, Japan, Lithuania, Mexico, New Zealand, Norway, Peru, Romania, Russia, Senegal, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, U.S. DOJ, and Zambia.

⁴² One agency (KFTC) did not respond to this portion of the questionnaire.

⁴³ Member agency response from the following jurisdiction: Honduras, Slovak Republic and U.S. FTC. For example, the Slovak Republic competition authority responded that in the “first years of its existence the Competition Act lacked the guarantees of independence and some efforts were blocked until the introduction of the new Competition Act in 2001.” The U.S. FTC provided one example of how the political environment has affected

report political restrictions, three noted that the political environment has been supportive of their advocacy work.⁴⁴ Although most agencies reported that their advocacy efforts are not restricted by the political environment, this does not mean that their advocacy efforts go unchallenged or always succeed. As mentioned by Japan Fair Trade Commission (“JFTC”), “Unlike the enforcement of laws, advocacy activities are done by communication with various people including politicians so as to persuade them of the competition authority’s way of thinking. It is possible that the initial thinking of the competition authority is not implemented finally, but the JFTC advocacy efforts themselves are not impeded by the political environment.”⁴⁵

1.3. Legal background of CA

1.3.1. Legal authorization for CA activities

Twenty-five agencies responding to the questionnaire reported that the competition law of their jurisdiction contains provisions that authorize or govern advocacy activities.⁴⁶ One additional agency responded that its legal authority is based on constitutional principles.⁴⁷ Some of these agencies identified the existence of other legal authorities outside the competition law that also govern the agency’s CA activities.⁴⁸ In Germany, special legal provisions apply to

its advocacy activities: “in the 1980s, the FTC began to deemphasize its competition advocacy program in response to criticism from state and federal government both on specific policy issues and the debate over whether it was proper to have a federal agency engaging in advocacy.”

⁴⁴ Member agency responses from the following jurisdictions: Romania, U.K. OFT and Zambia.

⁴⁵ Response of JFTC. *See also* Response of Jamaica competition authority (“There are occasions in which the political directorate is not in agreement with our submission/position and our proposals are not undertaken or implemented; reason being, that other factors outweigh the competition considerations. Our decisions have never been reversed and no official has ever been dismissed because of our view/position.”); Mexico (“[O]ur technical autonomy vis-à-vis the Ministry of the Economy (SE) has prevented this from happening. Nevertheless, our opinions often generate political pressures from other Cabinet officials, particularly from the sectoral regulators that are directly affected by these opinions. Our experience shows that as long as our opinions and recommendations are well-grounded and have strong technical analysis, they can withstand these pressures and eventually be incorporated into laws and regulations.”); Peru (“Sometimes, the opinion of political actors could contradict the principles that guide the free market or political actors could propose initiatives which may distort conditions of competition in a market or sector. However, this does not restrict the advocacy efforts of the Competition Authority, which performs its work based on technical criteria.”); Turkey (while “any development or action that may prevent successful enforcement of competition legislation may also impede the success of advocacy,” the legal independence of TCA makes it “possible to argue that the Law itself provides a system that protects the advocacy of the TCA from political environment influence”); and U.K. OFT (“[S]ince we can only act in an advisory capacity, government does not always accept our recommendations. The easiest element of advocacy work to monitor is our market studies which make recommendations to government (since these are always public, and government makes a public response to the recommendations). Since the existing market study regime was introduced in 2002, around 67% of recommendations have been largely accepted, 20% have been rejected, and 13% are still to be decided.”).

⁴⁶ This includes the competition authorities of Canada, Croatia, Cyprus, Germany, Denmark, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russian Federation, Slovak Republic, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, and Zambia.

⁴⁷ Response of Brazil (SEAE).

⁴⁸ Member agency responses from the following jurisdictions: Brazil (SEAE) (presidential decree defines SEAE’s roles related to competition advocacy); Japan (in addition to provisions in the Antimonopoly Act, the Act on Establishment of the Cabinet Office provides that the JFTC may “request the head of an applicable administrative agency to submit and explain necessary materials after clarify the necessity for such action, and express their opinions about policies of the applicable administrative agency”); Lithuania (noting that Competition Council regulations supplement the competition law’s competition advocacy provisions); Slovak Republic (in addition to the provisions in its Competition Act, the Act on Organization of Activities of the Government and Central State Administration Organization provides for the independence of the competition authority and predetermines the authority’s involvement in interdepartmental procedure, and additional rules regulate the authority’s involvement in the legislative process regarding governmental drafts and legislative proposals); Turkey (in addition to the provisions in the Turkish Competition Law, “two circulars by the Prime Ministry General Directorate of Personnel and Principles have been published requiring that the opinion of the TCA be obtained in competition policy related draft regulations and decisions of public institutions and organizations,” and a Regulatory Impact Assessment (“RIA”) regulation introduced by the Prime Ministry “envisages a competition assessment and cooperation with the

some of the competition agency's advocacy activities, *e.g.* its role as "*amicus curiae*" in private litigation cases and its activity report or liaising with regulatory agencies, while the agency determines the rest of its CA efforts at its own discretion within limitations provided for by other law (*e.g.* general administration law, press law, etc.).⁴⁹ According to EC DG Comp "[t]here is no specific legal basis or specific authorization for competition advocacy in European competition law."⁵⁰

Four agencies responded that the authority to engage in competition advocacy derives from the general mission of the agency, rather than any specific legal provision.⁵¹ As described by the Senegal Competition Commission, "The foundation of the competition commission in favour of competition is based on its legal mission to serve as an arbitrator for the free competition and to fight against anti competition practices. Thus, it has a role of prevention, of competition watchdog. . . . Advocacy is a means to an end. No text forbids the competition [authority] to advocate in favour of competition while fulfilling its mandate." Some agencies with explicit legal provisions governing competition advocacy also noted their inherent authority to engage in certain types of advocacy.⁵²

1.3.2. Use of formal powers when engaging in advocacy efforts

Seventeen⁵³ of 32 responding agencies⁵⁴ reported the ability to exercise some form of formal powers in connection with CA activities. Thirteen agencies responded that they do not have access to formal powers, such as the ability to compel information, when engaging in CA.⁵⁵

Of the 17 agencies reporting an ability to exercise formal powers in competition advocacy, 10 reported having the ability to compel documents, information, or data in connection with CA activities, at least in certain circumstances.⁵⁶ JFTC reported the power to collect necessary information through general surveys.⁵⁷ The competition authority of Peru reported the ability to exercise formal powers to obtain information only in connection with research related to CA functions.⁵⁸ The U.S. FTC noted the availability of formal powers to obtain information in connection with research or market studies, although it stated that the power to issue subpoenas

TCA"). The Turkish Competition Authority noted that the two circulars did not produce the expected result, but that the RIA regulation is an important tool to strengthen TCA's advocacy role.

⁴⁹ Response of German Bundeskartellamt.

⁵⁰ See EC DG Comp response.

⁵¹ Member agency responses from the following jurisdictions: Colombia, Honduras, Senegal, and U.S. DOJ.

⁵² *See, e.g.*, Member agency responses from the following jurisdictions: Slovak Republic (communication with general public and experts is based on historical tradition and is not governed by any explicit provisions) and Turkey ("With respect to advocacy to raise awareness of consumers, business community and academia, there is no direct legal rule and, it should be accentuated that there is no need for any specific rule as such practice is a natural duty which arises from the spirit of the TCL.").

⁵³ This includes the competition authorities of Brazil (SEAE), Croatia, EC DG Comp, Germany, Honduras, Jamaica, Japan, Lithuania, Norway, Peru, Poland, Romania, Russia, Spain, Tanzania, U.K. OFT, and U.S. FTC.

⁵⁴ One agency (Senegal) did not respond to this portion of the questionnaire.

⁵⁵ This includes the competition authorities of Canada, Colombia, Cyprus, Hungary, India, Korea, Mexico, New Zealand, Slovak Republic, Switzerland, Turkey, U.S. DOJ, and Zambia. While some of these agencies noted their authority to render opinions or request relevant materials or information, these agencies reported no authority to require compliance with such requests.

⁵⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Jamaica, Japan, Norway, Peru, Poland, Spain, U.K. OFT, and U.S. FTC.

⁵⁷ Response of JFTC.

⁵⁸ Peru's INDECOPI responded that while it has no general authority to obtain information from private parties or companies to help it carry out its competition advocacy work, the Technical Secretariat of the Commission for the Defense of Free Competition does have the ability to "(i) require the display of all types of documents, (ii) question persons who are the subjects of investigations or their representatives, and (iii) conduct inspections with or without notice at the premises of natural or legal persons" in order to develop its research, and "[i]t is part of the research competence of the agency to obtain the information it needs to make recommendations to public officials or institutions to improve the conditions of competition." INDECOPI also noted its ability to obtain certain information through non-competition laws such as the public records law.

for research “is not used very often and has not been used in conjunction with specific advocacies.”⁵⁹ The U.K. OFT reported that it generally does not have the power to require information in connection with competition advocacy, except in its consideration of making market investigation referrals to the Competition Commission. Such market investigations can sometimes lead to recommendations to the government.⁶⁰

Other agencies reported the existence of formal powers other than the power to obtain documents or information. For example, the German competition authority reported its ability to conduct sector inquiries, its role as *amicus curiae* in private litigation, and its activity reporting and liaising with regulatory agencies.⁶¹ The Lithuanian competition authority reported that Article 4 of its Law on Competition “provides that when carrying out the assigned tasks related to the regulation of economic activity, public and municipality authorities should ensure freedom of fair competition. In case of infringement of this provision and after the relevant institution has been notified with the resolution of the Competition Council, but haven’t complied with it, the Competition Council has a right to initiate proceedings before the court.”⁶² The Honduras competition authority outlined its ability to issue written invitations and conduct meetings with different market sectors.⁶³ The Tanzanian competition authority reported that it has the power of written communication, which it may use when access is denied.⁶⁴ The Romanian competition authority outlined a variety of powers under its competition law.⁶⁵ The Russian Federation competition authority responded that it has formal powers to influence decisions by other government bodies on competition-related matters, including the requirement that it endorse all decisions by the State Committee on State Property on privatization of government owned assets.⁶⁶ In the EU “[i]n general competition advocacy is not based on formal powers. However, in the context of influencing proposals by other Commission DGs or services the Commission’s interservice consultation mechanism provides some formal means (such as the possibility of issuing a negative opinion on a proposal or agreeing to a proposal subject to specific comments being taken into account). In the antitrust field the basis legal framework (Regulation No 1 of 2003) contains a legal basis to launch so-called sector inquiries...”⁶⁷

⁵⁹ Response of U.S. FTC.

⁶⁰ Response of U.K. OFT.

⁶¹ Response of German Bundeskartellamt.

⁶² Response of Lithuania Competition Council.

⁶³ Response of Honduras Commission for the Defense and Promotion of Competition.

⁶⁴ Response of Tanzanian competition authority.

⁶⁵ The Romanian competition authority states that its powers under the competition law include the authority:

- (1) “to notify the Government about situations of monopoly or other cases subject to Art. 4 par. (2) and (3), and to propose the Government the measures deemed necessary for the remedy of the ascertained disfunctions;”
- (2) “to notify the Government about the interference of central and local public administration bodies in enforcing this law;”
- (3) “to give binding opinions on draft laws and governmental Ordinances that may have an anticompetitive impact and to propose amendments to the governmental legislation bills having such effects;”
- (4) “to recommend to the Government and the local public administration to adopt measures facilitating the market and competition development;”
- (5) “to propose to the Government and local public administration bodies, disciplinary measures against their staff for not observing the mandatory decisions of the Competition Council;
- (6) “to engage in consultations with central or local public administration bodies that could facilitate the fulfillment of its duties and may request information and assistance;” and
- (7) “to bring to the Court other public administrative bodies[] failing to conform to its decisions.”

Response of Romanian Competition Council.

⁶⁶ Response of Russian Federation Federal Antimonopoly Service (FAS).

⁶⁷ See EC DG Comp response.

Some agencies with access to formal powers reported that such formal powers are used in CA rarely or sparingly.⁶⁸ Three agencies reported that they generally exercise formal powers only when requested documents or information are not voluntarily forthcoming.⁶⁹

1.4. Agency resources dedicated to advocacy

Several agencies noted difficulties in estimating agency resources dedicated to CA. These agencies noted that CA is often interrelated with other agency activities,⁷⁰ agencies often do not specifically track competition advocacy as a separate category of expenditures,⁷¹ budget complexities may make it difficult to segregate resources devoted to competition advocacy versus other activities,⁷² and resources devoted to competition advocacy may vary over time and from year to year.⁷³ Due to these or other factors, eight agencies responded that information concerning the resources or percentage of their budget dedicated to competition advocacy was not available.⁷⁴

⁶⁸ Response of JFTC (“[T]he JFTC can usually collect necessary information through voluntary cooperation. The above provision is rarely applied.”); Response of Norwegian Competition Authority (“The agency is, however, very careful to see that this regulation is not misused because the agency does not want to unnecessarily burden industry.”); Response of Russian Federation FAS (“Formal powers are not used in every situation. For example, the agency may explain to the government bodies in what situation it would challenge the results of tender bids they organize for the purposes of placing their procurement orders in the private sectors. If such recommendations are carefully followed FAS would not use its formal powers. Also FAS seldom use the formal power while advocating its policies with private sector, e.g. business associations”).

⁶⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Jamaica, and Japan.

⁷⁰ Member agency responses from the following jurisdictions: Germany, Peru, Poland, and Romania.

⁷¹ Member agency responses from the following jurisdictions: Croatia, Poland, Russia, Turkey, and U.S. DOJ.

⁷² Member agency responses from the following jurisdictions: Brazil (SEAE) and Norway. The Norwegian Competition Authority noted, however, that it has implemented tools that allow it to measure how much time is spent on competition advocacy activities.

⁷³ Member agency responses from the following jurisdictions: Canada, Honduras, Poland, and U.S. FTC.

⁷⁴ Member agency responses from the following jurisdictions: Croatia, Germany, Norway, Peru, Poland, Romania, Turkey, and U.S. DOJ.

The remaining 21 agencies provided the following estimates of the resources allocated to competition advocacy:

Competition Authority	Estimated Resources		Competition Authority	Estimated Resources
Brazil SEAE	Around 20% of annual budget is addressed to CA and merger analysis. Other resources are also invested in projects (such as information systems) that support SEAE's advocacy role.		New Zealand	CA classified under "Public Information and Education," which in 2007/08 accounted for 2.7% of the total amount allocated for enforcement of Commerce Act, Fair Trading Act, and Credit Contracts and Consumer Finance Act
Cyprus	Approximately 10%		Russia	Approximately 10% of time of FAS officials
EC DG Comp	In 2006, approximately 10% of DG COMP's overall human resources have been devoted to advocacy work (including advocacy vis-à-vis other Commission DGs, Member States and wider communications activities aiming at fostering a competition culture)			
Honduras	2007: 1.03% of budget 2008: 2.26% of budget		Senegal	No budget provided for advocacy activities
Hungary	About 3% of budget annually		Slovak Republic	Approximately 10-20% of budget
India	Currently, approximately 30% of total allocated budget ⁷⁵		Spain	Around 8.5% of total human resources (16 persons)

⁷⁵ The competition authority of India noted that "[a]s the Commission has not become fully operational the major activity being undertaken by the Commission is 'Advocacy,' apart from 'administrative activities' and 'capacity building.'"

Jamaica	Approximately 10%		Switzerland	2008: 10% of staff resources for advocacy efforts and advisory opinions or recommendations to the courts in appellate procedures
Japan	FY 2008: Approximately 1.5% of supply expenses ⁷⁶		Tanzania	1/3
Korea	About .3% of budget is specially allocated to CA purposes, although the latter can be partially financed from other budgetary allocations.		U.K. OFT	Approximately 6% of OFT budget spent on CA, including market study work, policy and research projects, and consumer focused issues
Lithuania	Approximately 5-15%, depending on the means invoked		U.S. FTC	Currently, approximately 1-2% of agency budget; as much as 3-4% of agency budget in the past
Mexico	2008: about 3% of budget		Zambia	Approximately 10-15% of annual budget

Thus, the responding agencies estimated allocating anywhere from no resources to as much as 1/3 of their annual budget to CA activities. Most agencies that were able to provide an estimate reported allocating anywhere from 1-15% of their annual budgets to CA.

1.5. Measuring success of CA efforts by the competition authority

Agencies responding to the survey noted a variety of ways to measure the success of CA activities, including the reaction of the public institutions involved,⁷⁷ the number and/or quality of CA initiatives,⁷⁸ the number of accepted recommendations and/or relative number of accepted recommendations to submitted recommendations,⁷⁹ detectable changes in markets or market behavior resulting from advocacy activities,⁸⁰ surveys or public opinion polls,⁸¹ statements or assessments by independent experts,⁸² interaction with, and feedback from, stakeholders such as

⁷⁶ The data provided is approximate and does not reflect the whole resources allocated by JFTC for CA purposes. – See JFTC response to Question 1.9 for more detail.

⁷⁷ Member agency responses from the following jurisdictions: Denmark, Peru, Slovak Republic, and U.S. DOJ.

⁷⁸ Member agency responses from the following jurisdictions: Korea and Mexico.

⁷⁹ Member agency responses from the following jurisdictions: Korea, New Zealand, and Russian Federation.

⁸⁰ Member agency responses from the following jurisdictions: Korea, New Zealand, Russian Federation, and U.S. DOJ.

⁸¹ Member agency responses from the following jurisdictions: Norway, Poland, Romania, Slovak Republic, U.S. FTC.

⁸² Member agency responses from the following jurisdictions: Slovak Republic and U.K. OFT.

government officials, businesses and consumers,⁸³ media coverage and Internet exposure,⁸⁴ and assessments of knowledge and awareness of competition law or policy issues on the part of the general public or relevant stakeholders.⁸⁵ Six agencies noted that the results of their advocacy efforts often have been successful based on one or more of these measures.⁸⁶

Eight agencies responded that they generally assess the success of advocacy efforts within a zero to three year time period.⁸⁷ Five agencies reported that success of advocacy activities generally is measured within a three to five year time period.⁸⁸ Several agencies responding to the survey noted that measuring success in CA may vary depending on the particular advocacy initiative, the audience, and other circumstances.⁸⁹ As a result, three agencies responded that they do not measure the overall success of advocacy activities by any particular time period.⁹⁰ Nine agencies responded that they do not yet have a formal system in place to measure the success of CA efforts.⁹¹

Five agencies which responses are cited below reported engaging in both shorter-term and longer-term competition advocacy assessments. For example, the Mexican competition authority responded that it engages in a bi-annual strategic planning process which includes the agency's advocacy activities, and that it has concentrated on analyzing the last 4-5 years (2004-2009) of its activities.⁹² Similarly, the U.S. FTC responded that it measures success "both through informal follow-up and by sending surveys to relevant parties asking them to assess the effectiveness of the advocacy. We have used this method to measure effectiveness of advocacies from 2001-2006, and currently we send these surveys out every six months."⁹³

The Norwegian competition authority responded that it conducts an annual survey of lawyers, academicians, business and industry leaders, media, business organizations, trade unions, other interest groups, and a representative sample of the general public that includes questions designed to "capture to what extent the different groups of respondents are familiar with competition law and the NCA work in that regard. The survey will reveal trends, and as such reflect success or failure with respect to some of our CA efforts." In addition, "[i]n its letter of assignment for 2009, the Ministry [of Government Administration and Reform] asks the NCA

⁸³ Member agency responses from the following jurisdictions: Poland, Romania, Slovak Republic, Turkey, U.S. DOJ, and U.S. FTC.

⁸⁴ Member agency responses from the following jurisdictions: Romania and U.S. DOJ.

⁸⁵ Member agency responses from the following jurisdictions: Romania and Slovak Republic.

⁸⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Lithuania, New Zealand, Korea, Spain, and Turkey.

⁸⁷ Member agency responses from the following jurisdictions: Croatia, Cyprus, EC DG Comp, Honduras, Hungary, Japan, Korea, and Slovak Republic. Four of these agencies -- Croatia, Cyprus, Hungary, and Korea -- reported that advocacy activities are assessed each year in connection with annual assessments or reports on the agency's work.

⁸⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Lithuania, Peru, Romania, and Tanzania.

⁸⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Switzerland, and U.S. DOJ.

⁹⁰ Member agency responses from the following jurisdictions: Germany, Switzerland, and U.S. DOJ. The German Bundeskartellamt emphasised that applying a uniform way of measuring success across a wide variety of specific agency CA activities would be very difficult.

⁹¹ Member agency responses from the following jurisdictions: Colombia, India, Jamaica, New Zealand, Russian Federation, Spain, Senegal, Turkey, and Zambia. The competition authority of Spain noted that it conducts informal evaluations, and that its Strategic Plan calls for laying the groundwork to start conducting ex post evaluations of CNC work, including competition advocacy. The competition authority of New Zealand noted that it monitors the outcome of its advice on legislative and regulatory proposals, and that it has raised its profile significantly through competition advocacy in the past last few years. The competition authority of the Russian Federation noted that while it does not have a formal procedure for measuring the success of its advocacy efforts, it reports annually on "the number of pro-competitive amendments passed to sector specific legislations and regulations as well as to the competition law itself and effects resulting from these amendments."

⁹² Response of Mexican Federal Competition Commission.

⁹³ Response of U.S. FTC.

to evaluate the effect of at least one CA effort ... where the NCA has called attention to a specific restrictive effect on competition.”⁹⁴

The Polish competition authority noted that it attempts to get feedback following advocacy actions, and results are measured through “public opinion polls, surveys, [and] through indirect contact with entrepreneurs/consumers.” In addition, the Polish competition authority reported that a three-year Competition Policy Strategy prepared by the competition authority “contains an annex with the assessment of the actions undertaken in the previous period.”⁹⁵

The U.K. OFT responded that it has “begun to regularly commission and publish in-depth *ex post* evaluations of OFT market studies. These tend to be contracted out to independent consultants to ensure objective analysis and are usually undertaken several years after any advocacy has been completed. *Ex-post* evaluations focus on what instruments and interventions are effective and in which circumstances, by type (e.g. enforcement, guidance, regulation, education) and by target/audience group (e.g. retailers and manufacturers of domestic electrical goods etc). They typically present a monetised estimate of the impact of the OFT intervention and suggest ways in which the delivery of the intervention might have been improved to maximise impact.” In addition, U.K. OFT reported that it has implemented “impact estimation, monitoring and evaluation into key OFT projects. Teams currently use an ‘impact estimation plan’ that outlines: what impact the project will have, if successful; the sequence of events that are due to take place in order to correct the harm identified in the theory of harm; the observable key indicators of success; and an action plan setting out what to monitor, how and when (between 3-5 years).”⁹⁶

EC DG COMP uses a set of simple indicators to measure the intensity of its advocacy activities on a yearly basis. For example, the number of recommendations concerning competition addressed to Member States in the framework of the Lisbon strategy illustrate the steps taken to ensure a pro-competitive regulatory framework at national level. Similarly, the number of negative opinions and conditional favourable opinions on inter-service consultations within the European Commission illustrates the steps taken to ensure a pro-competitive regulatory framework at national level. However, both sets of indicators measure rather the output of our advocacy activity and the actual impact of this activity is only seen on an ad-hoc basis (e.g. pro-competitive modifications to the latest Energy and Climate change package of the Commission). In the broader sense of advocacy (i.e. including the fostering of a competition culture), surveys conducted on average every 1 or 2 years provide feedback on support for competition among citizens and businesses.”⁹⁷

1.6. Challenges in conducting CA activities

The questionnaire asked competition authorities to describe challenges or difficulties they have faced with regard to their CA efforts. In response to this question, eight agencies responded that limited resources present challenges, and sometimes require choices, in conducting advocacy activities.⁹⁸ Seven agencies identified the lack of understanding of, or experience with, competition principles on the part of policymakers, businesses, and/or the

⁹⁴ Response of competition authority of Norway Competition Authority.

⁹⁵ Response of Poland Office of Competition and Consumer Protection.

⁹⁶ Response of U.K. OFT.

⁹⁷ Response of EC DG Comp.

⁹⁸ Member agency responses from the following jurisdictions: Canada, Brazil (SEAE), EC DG Comp, Honduras, New Zealand, Peru, Senegal, and U.K. OFT. *See also* response of competition authority of Romania (“In its early years of existence, RCC struggles with minimal personnel and financial resources in fulfilling its tasks. However, over the time the necessary to invest adequate resources into the strengthening of the administrative capacity of RCC became obvious and steps were taken to address those issues.”)

general public as a challenge in conducting CA.⁹⁹ Five agencies identified limited access to relevant data or information as a challenge in CA.¹⁰⁰

Five agencies identified challenges in persuading other institutions or entities to implement CA recommendations.¹⁰¹ Four agencies noted that acting in time to be effective in CA can be a challenge.¹⁰² Two agencies identified a lack of support for, or disinterest in, competition principles on the part of other government or other political actors as a challenge in conducting CA.¹⁰³ Two agencies identified challenges in advocacy capacity, such as the knowledge and skills of staff conducting advocacy activities.¹⁰⁴

Other agencies noted challenges in (1) conveying to recipients the “importance of giving due consideration to competition issues in the creation of policy and in deliberations,”¹⁰⁵ (2) successful lobbying in favor of consumer rights stemming from “a still incipient culture of consumer protection and the fact that the largest business groups have historically maintained very strong links with the political leadership of the country,”¹⁰⁶ (3) dealing with a lack of interest in CA issues by the media and the press,¹⁰⁷ or (4) building or maintaining support for the agency’s positions in the face of counter-arguments by other stakeholders.¹⁰⁸ One agency identified occasional circumvention of the agency as a challenge.¹⁰⁹ Another agency noted that a challenge in the current economic downturn is “[m]ore political focus on dealing with short-term economic issues, which might potentially conflict with long-term productivity.”¹¹⁰

The competition authority of India reported that the fact that it is not fully operational and has not begun enforcement activity is a challenge. The Indian competition authority noted that “[a]dvocacy work would be more effective side by side with the enforcement work.”¹¹¹ The Swiss competition authority noted that one challenge it faces in CA is the limited scope of authorized advocacy activities under the law.¹¹²

Columbia, Senegal and Zambia reported the lack of resources as a major challenge to the efficiency of their CA work.¹¹³

⁹⁹ Member agency responses from the following jurisdictions: Jamaica, Japan, Lithuania, Mexico, Poland, Tanzania, and Turkey.

¹⁰⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Tanzania, U.S. FTC, and Zambia.

¹⁰¹ Member agency responses from the following jurisdictions: Peru, Slovakia, Switzerland, U.S. DOJ, and Zambia.

¹⁰² Member agency responses from the following jurisdictions: Hungary, U.K. OFT, U.S. FTC, and U.S. DOJ. In this regard, U.S. DOJ stated that it has found that “effective competition advocacy requires continuous vigilance for government activity that may raise issues of competitive concern, expeditious action to ensure that our views are conveyed in a timely enough manner to have an impact on the decision-making process, and perseverance to ensure that potential harms to competition are effectively conveyed to, and understood by, our competition advocacy recipients.”

¹⁰³ Member agency responses from the following jurisdictions: Honduras and Norway.

¹⁰⁴ Member agency responses from the following jurisdictions: Croatia and Tanzania.

¹⁰⁵ Response of competition authority of Jamaica.

¹⁰⁶ Response of competition authority of Mexico.

¹⁰⁷ Response of competition authority of Croatia.

¹⁰⁸ Response of competition authorities of Germany, Russia, and U.K. OFT.

¹⁰⁹ See response of competition authority of Hungary.

¹¹⁰ Response of U.K. OFT.

¹¹¹ Response of Indian Competition Commission.

¹¹² Response of Swiss Competition Commission.

¹¹³ See the Member agency responses from the following jurisdictions: Colombia, Senegal, Zambia/

2. Institutional dimension of CA

2.1. CA with other government and non-government institutions – an overview

The responses for section 2 of the questionnaire reflect the importance that competition authorities place on the promotion of competition advocacy to other relevant institutions. There is no jurisdiction that does not include in its advocacy efforts the goal of developing and strengthening ties with government and non-government institutions.

Most of the agencies¹¹⁴ mentioned that they are engaged in advocacy activities with executive, legislative, and judicial bodies. For the first two, Competition Authorities recommend changes to existing and potential regulation that creates unnecessary restraints on competition. In the case of judicial bodies, advocacy efforts take the form of mutual training activities aimed at improving the understanding of competition issues with legal and economic reasoning.

Other respondents have a relationship with the executive and legislative bodies, but not with the judicial branch.¹¹⁵ There are other cases in which Competition Authorities are only engaged with the executive government bodies, but not with legislative and judicial bodies.¹¹⁶ In contrast, there is a case in which advocacy activities are only focused on legislative and judicial bodies, but not on the executive branch.¹¹⁷

Respondents listed the executive and legislative bodies as the government institutions most frequently targeted by competition authorities' advocacy efforts. The possibility to influence the drafting of particular legislative initiatives that impact competition is seen as the most important reason for conducting such efforts. The inclusion of a competition perspective in bills proposed to a legislature may ensure competitive outcomes in markets, to the benefit of economic agents and consumers.

Most of the competition authorities mention that they have engaged in advocacy directed at judicial bodies.¹¹⁸ The most common mechanisms mentioned involved training activities and seminars, where competition authorities and the judiciary share their knowledge and exchange viewpoints on competition issues. In this sense, some countries have recommended a broader approach to advocacy with judicial bodies to foster a deeper understanding of complex economic matters.¹¹⁹

The institutional relations with the three branches of government can be implemented by formal and informal mechanisms. The formal links may be established by the competition law, or through agreements between government agencies. With regard to informal links, some answers to the questionnaire reveal that these play a key role in the advocacy efforts.

The specific means for promoting competition policy vary from one jurisdiction to another. In general, authorities select the appropriate competition advocacy tools based on their specific

¹¹⁴ Based on section 2.2 of the questionnaire, these include, Croatia, Denmark, EC DG Comp, Germany, Hungary, Jamaica, Lithuania, Mexico, Norway, Romania, New Zealand (in this particular case it is the Ministry of Economic Development who is in charge of advocacy with Legislative bodies), Slovakia, Poland, Russia, Turkey, Zambia, and U.S. FTC and U.S. DOJ.

¹¹⁵ Based on section 2.2 of the questionnaire, these include the competition authorities of Brazil (SEAE), Canada, Japan, Korea, Peru, Tanzania, Switzerland, U.K., and Spain.

¹¹⁶ Based on section 2.2 of the questionnaire, these include the competition authorities of Colombia, Cyprus and India.

¹¹⁷ Based on section 2.2 of the questionnaire, the competition authority of Honduras responded to be engaged with legislative and judicial bodies, but not with executive bodies.

¹¹⁸ Member agency responses from the following jurisdictions: Croatia, Denmark, Germany, Hungary, Jamaica, Lithuania, Mexico, Norway, Romania, New Zealand, Slovakia, Poland, Russia, Turkey, Zambia, while U.S. FTC and U.S. DOJ mentioned amicus briefs.

¹¹⁹ For example, the competition authority of Hungary made concrete recommendation on "the education of the Judiciary, as the incompetence of judges in the field of competition law can have very counterproductive effects on the work of the competition authority."

target audience and previously established priorities. Competition authorities seem to take advantage of any available means to raise competition awareness and strengthen it among economic agents and government authorities. Most of the respondents regularly use consultations and meetings with interested parties as a way to promote their advocacy agenda.¹²⁰

Advocacy activities go beyond the relationship with the three branches of government, and are often conducted with non-governmental organizations. As the report will describe later, the main non-government recipients include consumer associations, the business community, media, and the general public.

The most common means for promoting competition are the issuing of non-binding opinions, guidelines, market studies, feedback from consultations, and interaction through workshops, seminars and meetings with different audiences. In addition, depending on budget limitations, some competition authorities have developed different advocacy materials such as booklets, DVDs and books, and have made use of their websites to publish relevant documents, press releases, speeches, and annual reports.¹²¹

Even though the respondents to the questionnaire noted that they are constantly engaged in competition advocacy efforts, many of them also recognize a lack of a strong competition culture in their particular countries.¹²² One of the major challenges is the lack of understanding by policymakers of the long-term costs that might result from barriers to competition. In addition, most of the competition authorities have expressed the need to adjust their advocacy activities and tools over time as local conditions evolve.

Consumer education is a key piece of the competition advocacy portfolio in all of the countries that answered the questionnaire. Although not all competition authorities are in charge of consumer protection, most of them are interested in raising competition awareness among the general public. Regarding private rights of actions, this legal instrument is present in 68% of the respondent jurisdictions, and is being considered by others. In jurisdictions where private rights of action are possible but not yet available, competition authorities often face impediments to implement these legal rights. The main obstacles are related to loopholes in the legal framework, and complexities in filing complaints before judicial bodies.¹²³ Respondents mentioned that further methodologies and advice on competition advocacy with other institutions are required by Competition Authorities. The majority of responses express the interest to develop additional work focused on government regulators and agencies, legislative and judicial bodies, business community, media, private bar associations, special interest groups, and consumer organizations.

Finally, at the end of this section some recommendations to the Steering Group are presented in order to update specific ICN work products.

2.2. Means for promoting competition policy

The opportunity to influence public policies and modify the regulatory framework is perhaps the most important goal of competition advocacy. Most of the answers to the questionnaire acknowledged the importance of having competition authorities participate in the assessment of regulatory proposals that have a direct effect on competitiveness and the functioning of

¹²⁰ Holding meetings with representatives of other institutions and consultations with interested parties are common for almost all the respondents to the questionnaire. Only Hungary and Senegal are the exceptions for consultations.

¹²¹ Member agency responses from the following jurisdictions: Canada, Cyprus, Croatia, Denmark, Honduras, Hungary, India, Japan, Korea, Mexico, and Tanzania.

¹²² Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, India, Jamaica, Japan, Lithuania, Mexico, Peru, Senegal, Slovakia, Spain, Tanzania, Turkey, U.K.OFT, and Zambia.

¹²³ Member agency responses from the following jurisdictions: Jamaica, Slovakia, and Russia.

markets.¹²⁴ In this sense, the most common tool used to influence this process comes in the form of non-binding opinions.

Many of the responding agencies mentioned that they are only empowered to make non-binding recommendations to other government agencies, which are required to consider such recommendations but are not obligated to implement them.¹²⁵ In spite of this limitation, in practice, there is a sense that such recommendations are generally taken into account by government agencies.¹²⁶ In some cases, when recommendations are rejected, agencies have to explain or justify this decision.¹²⁷

In the majority of cases when recommendations are non-binding, they are used as a means of voluntary persuasion with the purpose of calling attention to potentially negative effects on competition.¹²⁸ In such cases, these advocacy tools increase competition authorities negotiating power and provide important information for regulators/legislators in order to make better decisions in favor of competition.

However, there are authorities that have the power to issue binding opinions requiring recipients to comply with recommendations that are made at the early stages of legislative process or regulatory reform.¹²⁹

The issuing of guidelines is another common practice used by authorities to promote competition.¹³⁰ These appear to be a common tool to enhance the transparency and understanding of competition procedures. Some examples of guidelines focused on merger control,¹³¹ abuse of dominance,¹³² leniency programs,¹³³ broadband suppliers,¹³⁴ consumer rights,¹³⁵ vertical agreements,¹³⁶ regulatory impact,¹³⁷ predatory pricing,¹³⁸ setting fines,¹³⁹ government procurement,¹⁴⁰ and electric power trade.¹⁴¹

¹²⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Denmark, EC DG Comp, Germany, Honduras, Hungary, India, Jamaica, Japan, Mexico, Korea, New Zealand, Norway, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K., U.S. DOJ, U.S. FTC, and Zambia.

¹²⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Colombia, Croatia, Cyprus, Denmark, Germany, Honduras, Hungary, Jamaica, Japan, Korea, New Zealand, Norway, Peru, Poland, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K., U.S. FTC, U.S. DOJ and Zambia.

¹²⁶ Member agency responses from the following jurisdictions: Croatia, New Zealand, Russia, and U.S. DOJ.

¹²⁷ Member agency responses from the following jurisdictions: India, and U.K. OFT.

¹²⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Japan, Mexico, Korea, New Zealand, Norway, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia.

¹²⁹ The Competition Commission of India (CCI) responded that recipient institutions are required by law to consider or comply with the Competition Authority inputs. In Mexico, the competition law grants the Federal Competition Commission (CFC) powers to issue non-binding and binding opinions on laws and regulations that impact the competition process and the efficient functioning of the markets. The Romanian Competition Council (RCC) has the power to issue binding opinions on draft laws and governmental ordinances that may have an anticompetitive impact. In the United States, the U.S. DOJ responded that “[i]n general, the [Antitrust] Division engages in competition advocacy as a means of persuasion, and recipients generally are not required to comply with the Division’s input... In some circumstances, agencies are required by law to consider the Division’s input... In other cases, federal legislation has provided the Division with a specific role in agency decision-making”. In the EU other services and DGs are required by internal rules of procedure to consider DG Comp comments made in the context of interservice consultations.

¹³⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Denmark, EC DG Comp, Hungarian, Indian, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Polish, Romania, Russia, Slovakia, Spain, Swiss, Turkish, U.K., U.S. DOJ, U.S. FTC, and Zambia.

¹³¹ Member agency responses from the following jurisdictions: Croatia, Denmark, Japan, Mexico, Slovakia, U.K. OFT, U.S. DOJ, and U.S. FTC

¹³² Response of competition authority of Denmark.

¹³³ Response of competition authority of Slovakia

¹³⁴ Response of competition authority of Norway.

¹³⁵ Response of competition authority of Zambia.

¹³⁶ Response of competition authority of Switzerland.

¹³⁷ Response of competition authority of Korea.

It is a common practice to upload guidelines and other documents¹⁴² on the authority's websites. The possibility to make these documents available in their original languages and provide translations into English was considered as an advantage, according to one of the agencies.¹⁴³

Other examples of the most common targets of advocacy efforts and the tools used by competition authorities to approach them include the following:

- Government bodies from the executive branch (federal and local): Recommendations, consultations, meetings, workshops, opinions on new policies and legislation, speeches and advocacy materials.
- Legislative bodies: Recommendations, consultations, suggestions on draft legislation, market studies, and interviews in media.
- Judicial bodies: Consultations, joint trainings, meetings, booklets, books translation, and advocacy materials.
- Special interest groups: Consultations, meetings, and website.
- The business community: Meetings, joint trainings, survey reports, and workshops.
- The mass media and journalist community: regular interviews, joint trainings, advocacy materials.
- Non-commercial non-government organizations, including consumer associations: meetings, booklets and advocacy materials, articles on website.
- General public: publications, interviews to the media, provide information.

However, the respondents have identified that the most effective tools to promote competition advocacy with other institutions are: opinions, recommendations on legislative proposals,¹⁴⁴ market studies,¹⁴⁵ workshops,¹⁴⁶ meetings with specific groups,¹⁴⁷ public lectures,¹⁴⁸ cooperation with regulatory authorities,¹⁴⁹ consultations,¹⁵⁰ and conferences.¹⁵¹

¹³⁸ Response of competition authority of Brazil (SEAE).

¹³⁹ Member agency responses from the following jurisdictions: Poland, and Slovakia.

¹⁴⁰ Response of competition authority of Russia.

¹⁴¹ Response of competition authority of Japan.

¹⁴² Competition Authority's annual reports, market studies, case resolutions, opinions, press releases, as well as presentations and speeches of competition officials are usually uploaded on the authority's website.

¹⁴³ Response of competition authority of Croatia.

¹⁴⁴ Member agency responses from the following jurisdictions: Jamaica, Honduras, Croatia, Korea, Lithuania, Romania, Mexico, Spain, U.K., Switzerland, and Peru.

¹⁴⁵ Member agency responses from the following jurisdictions: Honduras, Croatia, Korea, Lithuania, Russia, U.K., Zambia, U.S.FTC, U.S. DOJ, Turkey, Germany, and Peru.

¹⁴⁶ Member agency responses from the following jurisdictions: Jamaica, Slovakia, Poland, U.K., Zambia, Mexico, Tanzania, and U.S FTC, and U.S. DOJ.

¹⁴⁷ Member agency responses from the following jurisdictions: Jamaica, India, Lithuania, Slovakia, Russia, U.K., U.S. FTC, U.S. DOJ, Turkey, Mexico, and Germany.

¹⁴⁸ Member agency responses from the following jurisdictions: Jamaica, Norway, Mexico, New Zealand, U.K., and U.S. FTC, and U.S. DOJ.

¹⁴⁹ Member agency responses from the following jurisdictions: Hungary, Brazil (SEAE), Lithuania, Poland, Mexico, U.K., and U.S. FTC, and DOJ.

¹⁵⁰ Member agency responses from the following jurisdictions: Korea, Norway, Slovakia, Russia, Spain, U.K., Zambia, U.S. FTC, U.S.DOJ, Turkey, Mexico, and Germany.

Nevertheless, authorities select their tools to promote competition by taking into consideration the desired outcome, strategic planning of priorities, the political environment, the different possible channels of communications, and the budgetary restrictions of the authority. It can be observed from the agency questionnaire responses that competition authorities basically engage in two key processes for selecting the activities and tools to be used in competition advocacy.

The first one is related to priority setting.¹⁵² For example, in the United Kingdom, “The OFT uses published prioritisation principles to determine which work to carry out. These principles focus on the impact of the work, its strategic significance, resource cost and risk. For advocacy, there is frequently a choice about how to attempt to influence government. The OFT’s tools range from formal public market studies to informal private advocacy advice to government. The will vary on a case by case basis, depending on our experience of which approaches have been successful in the past.”

The second process is selecting the target audiences and analyzing the context in which these are immersed.¹⁵³ The response from Slovakia illustrates this mechanism: “Our decision in this matter reflects the measurement of activities from previous years, outside incentives or informal discussions with stakeholders.”

However, in some occasions there are other factors that determine the advocacy activities that will be undertaken by agencies.¹⁵⁴

Informal advocacy mechanisms represent another viable option to interact with other institutions in a more flexible way. For example, U.S. FTC pointed out the benefits of engaging in informal contacts.¹⁵⁵ “It can be beneficial to have a variety of tools available to the agency. Formal advocacy can be effective, but informal advocacy sometimes allows greater flexibility, and may be the only option when there are tight deadlines. Research is key to understand markets and to provide empirical estimates of the cost to consumers from certain government-imposed restraints on competition. By doing so, the cost of regulation becomes more transparent, and the political process can better address whether those costs are meaningful.”¹⁵⁶ Moreover, the U.S. DOJ states that: “The Division has found that the tools and activities that are most effective in competition advocacy depend on the circumstances, and may vary across jurisdictions based on their individual characteristics. We recommend that agencies remain flexible, not limit themselves to any particular set of tools or activities, and take the opportunity to engage in competition advocacy through the best available means based on the circumstances. In addition, it is important not to be too prescriptive. Some of the Division’s most effective advocacy work is done informally and behind the scenes. Over the years, our staff lawyers and economists have established very effective working relationships with their counterparts at other government agencies. These relationships enable the Division to give competition advice informally and on a day-to-day basis. Also, through these contacts, we become aware of policy initiatives and industry developments that might otherwise go unnoticed¹⁵⁷.”

¹⁵¹ Member agency responses from the following jurisdictions: India, Poland, Spain, U.K. OFT, U.S. FTC, DOJ, Senegal, Mexico, and Germany.

¹⁵² Member agency responses from the following jurisdictions: Croatia, Hungary, Mexico, Romania, and U.K. OFT.

¹⁵³ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Denmark, Germany, Honduras, India, Jamaica, Japan, Korea, Lithuania, Norway, Peru, Russia, Senegal, Slovakia, Spain, Turkey, U.S. FTC, DOJ, and Zambia.

¹⁵⁴ For example, results of social research serve as a tool for planning advocacy campaigns in Poland.

¹⁵⁵ The U.S. DOJ also supports this alternative: “In many cases, the Division staff have developed effective working relationships with officials at these agencies, thereby establishing lines of communication that allow us to influence policy-making on a more informal level as well.”

¹⁵⁶ Response of U.S. FTC.

¹⁵⁷ Response of U.S. DOJ.

In the case of the U.K., “the Office of Fair Trading (OFT) promotes competition policy to central government informally and formally. Formally, through the process of advising departments preparing impact assessments on new policies and legislation. Informally, by providing advice to departments where it has been identified by OFT or the department that there is a need to think through competition policy issues on a given issue.”

Nevertheless, competition authorities’ efforts are not limited to government recipients. Based on the answers to the questionnaire it appears that the non-governmental institutions that received the most attention are consumer associations,¹⁵⁸ followed by the business community,¹⁵⁹ mass media,¹⁶⁰ and the general public.¹⁶¹ The focus on mass media is understandable when considering its power to deliver competition advocacy messages to the general public. Developing a strong media strategy is seen as beneficial for advocacy activities, especially for young competition authorities that struggle with the challenge of promoting a competition culture during their early years of operation.

Other targets for advocacy activities include academic institutions,¹⁶² and special interest groups.¹⁶³ For example, in Japan, with the aim of promoting a competition culture in schools, the JFTC is “focused on developing/improving lessons on antitrust for junior high or senior high school students among the general public.” In the case of Korea, the Korea Fair Trade Commission (KFTC) is currently committed to competition advocacy efforts in the form of lectures and presentations for promotion and education on competition law. “Over the total 66 occasions between April and December of 2008, Chairman directly promoted KFTC policy and activities to business, academic and media circles, and moreover, the KFTC held education and counseling sessions for those engaged in the sectors where antitrust infringements tend to occur frequently.”

Given that competition is a dynamic process, it is necessary to adapt advocacy activities over time so as to ensure the most convenient outcomes within target institutions. In most cases, Competition Authorities have acknowledged the need to adjust their advocacy efforts in order to respond to the dynamic of markets.¹⁶⁴ For example, Poland responded that “as the process of competition protection has been developing over time, naturally the advocacy tools, mechanisms have changed as well.”

The U.S. DOJ mentioned that “the Division’s advocacy activities have evolved over time in response to emerging market developments, new legislative and regulatory initiatives, and our ongoing identification of competitive issues that are well suited for competition advocacy.”

¹⁵⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia.

¹⁵⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Slovakia, Spain, Tanzania, Turkey, U.K., U.S. DOJ, and Zambia.

¹⁶⁰ Member agency responses from the following jurisdictions: Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Tanzania, Turkey, U.K. OFT, U.S. FTC, U.S. DOJ, and Zambia.

¹⁶¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Peru, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K. OFT, U.S. FTC, U.S. DOJ, and Zambia.

¹⁶² Member agency responses from the following jurisdictions: Germany, Hungary, India, Japan, Korea, Mexico, Romania, Senegal, Slovakia, Spain, and Turkey.

¹⁶³ Competition agencies of Mexico and Spain do not have any advocacy activity dedicated to special interest groups.

¹⁶⁴ Member agency responses from the following jurisdictions: Cyprus, Germany, Hungary, Japan, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Romania, Russia, Slovakia, Spain, Turkey, U.K. OFT, U.S. FTC, U.S. DOJ.

EC DG Comp reported that “[c]ompetition advocacy has been stepped up following the entry into effect of adoption of Regulation No 1 in 2004 which enables the Commission to carry out competition law sector inquiries. Experience of the use of this instrument so far has shown that the follow-up of sector inquiries – in addition to the key issue of enforcement - will often require competition advocacy aimed at inter alia shaping the regulatory framework in the sector concerned in a more competition-friendly way.”¹⁶⁵ Hungary responded that “the competition advocacy activity of the Hungarian Competition Authority (GVH) has broadened and become more active during the last couple of years. In this regard the establishment of the Competition Culture Centre, a specialized unit within the GVH, considerably intensified the advocacy activity. In the traditional advocacy area (influencing the legislative process) a more and more active approach has been developed over time. Recently, in its annual reports, the GVH initiates legislative steps for the Parliament.”

Romania responded that “the advocacy activities and tools have been reoriented, diversified or amplified in particular, towards certain target groups in accordance with the outputs and the lessons we learnt from the surveys performed in 2004 and then, in 2007 and of course with the legal changes triggered by the Romania’s accession to EU.”

However, for different reasons, there are some agencies that do not adjust advocacy activities over time. For instance, the Fair Competition Commission of Tanzania mentioned that its advocacy mechanism has not changed because it is still in the early stage of competition policy implementation. Another example is found in the Competition Commission of India (CCI). The Croatian Competition Agency (CCA) responded that it has not really changed its advocacy activities and that the only change that has taken place is concerning ability of the Agency to identify competition problems more easily.

2.3. Policies advocated

All respondents provided examples of the policies that they advocate (please refer to the questionnaires for specific details). This section will only cover some relevant examples:

- The U.S. FTC responded that “in 2003 it held a series of workshops to examine potential government-imposed barriers to e-commerce. In conjunction with the workshop, the U.S. FTC released a report examining barriers to the online sale of wine in the U.S., which primarily arose due to laws prohibiting direct shipment of wine from out-of-state sellers. The report contained empirical evidence that such restrictions can cause consumers to pay higher prices for wine, and clearly reduced the available varieties. In 2005, the U.S. Supreme Court, in *Granholm v. Heald*, 544 U.S. 460 (2005), relied heavily on the U.S. FTC’s wine report to strike down as unconstitutional, state laws that banned direct wine shipment.”
- The Competition Commission in India (CCI) responded that “the Indian Post Office (amendment) Bill 2006 proposed to liberalize the mail industry by opening up ‘formally’ the handling of letters above 300 grams to the private sector, along with contribution towards Universal Service Obligation (USO). The sector is currently open on an informal basis and international courier companies are operating in the country. The proposal envisaged registration by the private players. The dominant incumbent, Department of Posts (DoP), would continue to have monopoly over a letter delivery up to 300 grams, which constitutes over 90 per cent of the market. DoP will act as the regulator for the sector as well as it would remain beyond the pale of regulation. Ceilings on foreign investment in the sector were also mooted. Issues like the need for reserving up to 300 grams for the incumbent, the need for having reservation plus contribution by the

¹⁶⁵ Response of EC DG Comp.

private players for USO, the need for excluding DoP from the pale of regulation etc were raised by the Commission. Besides, the golden rule of regulation viz. separation of policy making, operations and regulation appeared to get compromised¹⁶⁶.”

CCI took up the matter with DoP a number of times and had meetings with senior officials. Based on comments, *inter alia*, from the Commission the process of legislation which appeared to have the potential of hampering competition in markets has been delayed. Reports in the press indicate that DoP has also diluted the provisions in the draft Bill to make it more competition oriented.

- The Korean Federal Trade Commission (KFTC) responded that “it has mainly presented recommendations regarding regulations concerning entry restriction, price controls, regional restriction, undue collaboration, exclusive import right and prohibited conduct by trade associations. For example, in the case of some amendment of the Ship Investment Company Act under the Ministry of Marine Affairs and Fisheries, the original provision stipulated that one ship investment company was allowed to charter its ship to only one shipping company. The KFTC concluded that when it comes to chartering a ship, choosing which and how many shipping company to charter should be up to the decision of ship investment companies not by the government. In this sense, it deemed that the amendment excessively constrained options of transaction partners for ship investment companies, thereby standing to undermine competition between ship investment companies or between shipping companies. Accordingly, the KFTC recommended the Ministry in question to remove the provision, which agreed to do so.”
- The Federal Competition Commission of Mexico (CFC) responded that most recently in its Foreign Trade Opinion, “the Commission identified important regulatory obstacles through tariff and non-tariff barriers. The CFC made recommendations to simplify customs procedures and to reduce tariffs unilaterally in order to provide a competitive boost to Mexican manufacturing. These recommendations were implemented by the Ministry of Economy”
- The National Commission for Defence of Competition of Spain (CNC) responded that “when the new Competition Act 15/2007 entered into force, the CNC launched a communication campaign with no precedents in order to communicate to businesses, consumer associations and the public in general the main novelties introduced, which included independence from the Government, reinforced investigation and advocacy functions of the Competition Authority, and a new leniency program. A few months later, the CNC published its Strategic Plan for 2008-2009, where emphasis was made on the priorities of the CNC (fighting the conducts most harmful to consumers, and exercising its advocacy powers especially in a number of sectors).”
- EC DG Comp indicated sector related policies and promotion of leniency programme as these pursued by CA means. Additionally to that the recent examples of the agency CA efforts “...concerns the introduction of competition disciplines (such as the principle of auctioning) in the context of the recently adopted (December 2008) energy and climate change package. Likewise in the context of ensuring competition in the area of payment cards and payment systems DG COMP has been successful in its advocacy efforts (drawing on the sector inquiry into this area which was launched in 2005). Among many other examples DG COMP contributed to the adoption by the Commission of a mechanism to ensure that air transport agreements between the EU and third countries comply with fundamental competition rules. DG COMP has also been effective in

¹⁶⁶ Response of competition authority of India.

promoting competition in the area of regulated professions based on in-depth studies and analysis in this area carried out in particular in 2004 and 2005.” Danish Konkurrencestyrelsen / Danish Competition Authority also reported the use of CA with business community as an important means of implementing the cartel leniency program in the country.¹⁶⁷

When competition policies are advocated, most of the agencies encounter different obstacles that hinder their efforts. The most common difficulty reported is related to the fact that competition is not always recognized as a priority by other public agents because of: a lack of competition culture, difficulties in understanding the benefits of the competition process, or political reluctance to accept the authority’s views.¹⁶⁸ Nevertheless, there are other types of obstacles such as limited resources,¹⁶⁹ conflicts with special interest groups (public or private) and their ability to lobby government,¹⁷⁰ a lack of proficiency or adequate staff,¹⁷¹ regulatory capture,¹⁷² problems in obtaining information,¹⁷³ exceptions from competition law,¹⁷⁴ non-binding recommendations,¹⁷⁵ timing and the need for an invitation prior to opining on certain issues.¹⁷⁶ Only two agencies explicitly mention that they do not face major difficulties in promoting competition within the institutions identified in section 2.2 of the questionnaire.¹⁷⁷

2.4. Consumer education

All agencies responding to the questionnaire showed interest in consumer education. However, their level of involvement in this area varies significantly. In 17 jurisdictions¹⁷⁸ consumer education has become part of the competition agency’s agenda, 10 agencies¹⁷⁹ report no such type of activities, and 1 agency¹⁸⁰ has been involved to some extent in consumer education.

Member agencies from the following jurisdictions, Japan, Jamaica, Korea, New Zealand, the U.S. DOJ and the U.S. FTC show strong commitment to consumer education. The four agencies (Jamaica, Japan and both U.S. agencies) mentioned that education is part of their competition advocacy activities through the publication of press releases, reports, articles, guidelines or magazines that summarize the facts and present arguments in favor of competition, and the promotion of seminars on competition antitrust legislation.

¹⁶⁷ See the relevant competition authorities’ responses for a reference.

¹⁶⁸ One or more of these conditions were mentioned by competition authorities of Brazil (SEAE), Jamaica, Japan, Lithuania, Mexico, Spain, Tanzania, Turkey, U.K.OFT, , and Zambia.

¹⁶⁹ Member agency responses from the following jurisdictions: Croatia, Cyprus, Honduras, Jamaica, Norway, Poland, and Senegal.

¹⁷⁰ Member agency responses from the following jurisdictions: Germany, Hungary, and Russia.

¹⁷¹ Member agency responses from the following jurisdictions: Hungary, and India.

¹⁷² Response of competition authority of Mexico.

¹⁷³ Response of competition authority of Croatia.

¹⁷⁴ Response of competition authority of Norway.

¹⁷⁵ Response of competition authority of Switzerland.

¹⁷⁶ Response of U.S. FTC.

¹⁷⁷ Member agency responses from the following jurisdictions: New Zealand and Romania.

¹⁷⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Hungary, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Peru, Poland, Romania, Senegal, U.K. OFT, U.S. FTC U.S. DOJ, and Zambia.

¹⁷⁹ Member agency responses from the following jurisdictions: Croatia, Cyprus, Denmark, Germany, India, Russia, Slovakia, Spain, Switzerland, Tanzania, and Turkey. Denmark, however, indicated that, nevertheless, “the consumers have access to information on the DCA’s homepage and they may informally consult the DCA on competition related matters through the competition hotline.”

¹⁸⁰ Response of competition authority of Norway.

In addition, JFTC provides courses on antitrust for junior or senior high school students and has a website for kids on topics related to competition;¹⁸¹ the Jamaica Fair Trade Commission has done something similar, targeting students at all levels and publishing a book on Competition for children under ten years old.¹⁸²

The U.S.D.O.J. has recently focused on “the development and launch of a consumer-oriented real estate website to educate consumers and policymakers about the nature of and differences among the types of real estate brokerage services available, the potential benefits that competition in brokerage services can bring to consumers, and barriers that may inhibit such competition. The website, launched in October 2007, has been cited in numerous consumer and industry-oriented publications.”¹⁸³ The U.S. FTC is interested in helping consumers appreciate the role of competition, so it has released a “Competition Counts” brochure, and published “A Guide to the Antitrust Laws” in order to help businesses and individuals to understand the U.S. antitrust law. This agency has also developed a website to children that teaches them how to be savvy consumers.¹⁸⁴

The agencies of Jamaica Fair Trade Commission and New Zealand Commerce Commission hold meetings with specific business sectors and industry/professional groups. Additionally, New Zealand Commerce Commission makes information materials available and publishes the results of its enforcement activities. The Commission is also responsible for enforcing some consumer protection legislation.¹⁸⁵

According to the EC DG Comp “...consumer education is not a specific activity of the competition portfolio, the interest of consumers is at the heart of the DG Comp policy, a fact which is reflected not least in DG Comp communications policy. As mentioned above DG Comp intends to deepen its cooperation with consumer bodies. In addition it should be noted that a dedicated Consumer Liaison Unit has been recently set up within DG Comp.”¹⁸⁶

Finally, as part of its commitment to consumer education, in September 2007, the KFTC has been very active in establishing its Consumer Safety Division. During the last two years, the Division has developed a Consumer Competence Index, established a cooperative network for consumer education, provided a consumer education program for vulnerable groups and ran an anti-fraud campaign to raise awareness of consumer frauds.¹⁸⁷

Member agencies from such countries as Mexico, Honduras, Zambia, Romania and the U.K.¹⁸⁸ get involved in consumer education mainly through the development and distribution of printed material, mass media publications and/or the promotion of conferences, seminars and symposiums focused on competition policy.

The U.K. OFT and the Mexican CFC also provide consumers with materials that explain the agencies’ work and the law. In order to increase interaction with consumers, the U.K. OFT will soon publish its findings on market studies and the Mexican CFC conduct conferences and seminars for consumers, trade/business associations and academic institutions.¹⁸⁹

The Romanian Competition Council (RCC) noted that it focuses its activities on the promotion of competition awareness among consumer associations. It just concluded two

¹⁸¹ Response of competition authority of Japan.

¹⁸² Response of competition authority of Jamaica.

¹⁸³ Response of U.S. DOJ.

¹⁸⁴ Response of the U.S. FTC.

¹⁸⁵ The Fair Trading Act 1986 (FTA), and the Credit Contracts and Consumer Finance Act 2003 (CCF Act).

¹⁸⁶ Response of EC DG Comp.

¹⁸⁷ Response of competition authority of Korea.

¹⁸⁸ Response of U.K. OFT.

¹⁸⁹ Responses of competition authorities of Mexico and the U.K. OFT.

collaboration protocols with national consumer organizations in order to strengthen cooperation ties.¹⁹⁰

To a lesser degree, the member agencies from the following jurisdictions, Poland, Peru and Lithuania have initiated educational campaigns to help consumers and the business community to understand the rationale for competition enforcement. In Hungarian competition authority draws consumer attention to specific practices, markets or products, while competition agencies from Senegal and Brazil generally noted that they have an interest in consumer policy.¹⁹¹

Norway, India, Russia and Slovakia report that they are involved in consumer education only to some extent. For example, the Norwegian Competition Authority (NCA) acknowledges the importance of providing exhaustive information to consumers on competition issues, and hosts websites where consumers can get updates on electricity prices. It allows the agency to implement “measures to promote market transparency”.¹⁹² The Competition Commission of India explains that even though consumer protection is not part of the direct mandate for the CCI, advocacy with consumer organizations is part of its agenda. The Russian Federal Antimonopoly Service (FAS) reported that it only makes consumers aware of their rights with regard to monopolistic abuses and promotes meetings with consumer associations.

The rest of the countries¹⁹³ indicate that consumer protection is not part of their competition advocacy portfolio. Some of them say that their agencies have no immediate formal responsibility in consumer protection,¹⁹⁴ while others mention that other agencies are in charge of consumer protection.¹⁹⁵

2.5. Private rights of action – CA aspects

Twenty-two¹⁹⁶ of the 32 agencies responding to the questionnaire reported that private rights of action are possible and considered in their respective competition laws. The Norwegian Competition Authority mentioned that such actions are possible, but are not explicitly included in its competition law.

The EC DG Comp reported that although exercise of private rights of action is legally possible in the EU it needs additional advocacy efforts. For example “[t]he Commission Green and White Paper on antitrust damages actions which has been widely debated (large public consultation, numerous conferences, bi- and multilateral meetings with various stakeholders, debates in the European Parliament, the Council and the European Economic and Social Committee).”¹⁹⁷

The Korean Federal Trade Commission (KFTC) responded that, under the Monopoly Regulation and Fair Trade Act (MRFTA), private actions can be classified into “injunctive relief” and “compensation on damages”. At present the KFTC only acknowledges the latter classification, but is contemplating the introduction of the former.

¹⁹⁰ Response by competition authority of Romania.

¹⁹¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, Lithuania, Poland, Peru, , and Senegal.

¹⁹² According to the response of competition authority of Norway, this initiative follows section 9 of the Norwegian Competition Act.

¹⁹³ Member agency responses from the following jurisdictions: Croatia, Cyprus, Russia, Spain, Switzerland, Tanzania, Turkey, and Germany.

¹⁹⁴ Member agency responses from the following jurisdictions: Cyprus, Croatia, Germany, Turkey, and Spain.

¹⁹⁵ Response by competition authority of Tanzania.

¹⁹⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Colombia, Cyprus, Denmark, EC DG Comp, Germany, Hungary, Jamaica, Japan, Lithuania, Mexico, New Zealand, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, Turkey, and U.S. FTC, and U.S. DOJ.

¹⁹⁷ Response of EC DG Comp.

Member agencies from Senegal, Peru, Croatia, Honduras and Poland¹⁹⁸ responded that private rights of action are not considered in their statutory provisions, and none of them are considering advocating the introduction of a law before the country's parliament to enable such actions.

The Competition Commission of India noted that once it becomes fully operational, it will consider the issue of private rights of action.¹⁹⁹

With respect to the impediments that the agencies have identified during the implementation of the private rights of action, three²⁰⁰ of them responded that the weaknesses and gaps in the legislation, and the lack or complexity of the procedures (to file the complaint at a court) have posed challenges that, for the most part, have to be overcome through direct advice from the authorities. For example, the JFTC has prepared a set of standards to provide materials related to individual cases that are published on its website. These materials are aimed at supporting claims for damages by victims of violations of the Antimonopoly Act.

Some of the agencies, while not specifying any difficulties in the implementation of these rights, mentioned that they are considering advocating²⁰¹ or have pursued²⁰² changes to the legislation. The Turkish Competition Authority noted that, as this report is drafted, there is a bill in Parliament to amend the Turkish Competition Law, which covers the possibility for endorsing private actions.²⁰³

One agency responded that no such action has been brought before the country's court,²⁰⁴ and another agency considers that obstacles or difficulties to implement these rights are not excessive.²⁰⁵

With respect to the advocacy efforts with parties that may exercise these rights, four agencies noted that they have not conducted any advocacy efforts aimed at promoting private actions.²⁰⁶ One agency mentioned that these advocacy activities are currently being planned in order to reach key stakeholders such as lawyers and Judges.²⁰⁷ The member agencies from Mexico, Russia, and Poland responded that they work closely with consumer groups to promote the possibility of claiming, on an individual basis, compensation payments in the courts;²⁰⁸ cooperate with legal and business institutions, courts, and business organizations such as chambers of commerce.²⁰⁹ They also have conducted periodical meetings with the legal community where agency officials explain the issue.²¹⁰

Two U.S. agencies responded that in certain cases they have filed or joined *amicus curiae* or "friend of the court" briefs in federal and state courts outlining their position on antitrust issues arising in private antitrust litigation and sharing their view on the impact on competition of a particular conduct at issue in litigation. The U.S. DOJ participates in private cases solely to represent the public interest, and does not represent the views of private litigants. Its *amicus*

¹⁹⁸ Response by competition authority of Poland. ("We are in the process of enhancing and advancing private enforcement of competition rules...").

¹⁹⁹ Response of competition authority of India.

²⁰⁰ Member agency responses from the following jurisdictions: Jamaica, Slovakia, and Russia.

²⁰¹ Member agency responses from the following jurisdictions: Hungary, New Zealand, and Switzerland.

²⁰² Response of competition authority of Mexico.

²⁰³ Response of competition authority of Turkey.

²⁰⁴ Response of competition authority of Romania.

²⁰⁵ Response of competition authority of Spain.

²⁰⁶ See Member agency responses from the following jurisdictions: Lithuania, Spain, Switzerland, and New Zealand.

²⁰⁷ Response of competition authority of Slovakia.

²⁰⁸ Response of competition authority of Mexico.

²⁰⁹ Response of competition authority of Poland.

²¹⁰ Response of competition authority of Russia.

activity is generally directed to cases pending in federal courts of appeals or the U.S. Supreme Court involving issues of precedential significance.²¹¹

2.6. Examples of successes in CA with government and non-government institutions – experience to share

In addition to the examples provided in the sections above, there are other successful examples of competition advocacy:²¹²

The U.K. OFT responded with respect to professional services reform that its “report in 2001 recommended lifting restrictions in professional services (lawyers, architects, accountants etc). This led to reforms in the regulation of professional services, removal of barriers to entry, and improving consumer redress. For example, OFT’s market study in 2002 prompted the government to relax entry controls for some pharmacies. An evaluation by the Department of Health (DH) showed that this has created improved access (around 140 more pharmacies by 2006) and services for consumers. In addition, OFT’s 2006 market study on the commercial use of public information recommended that government make public sector information more readily available to stimulate competition.”

The U.S. FTC responded that “in 2004-2005 the [U.S.] FTC and DOJ engaged in advocacy to convince states not to enact laws that prevented real estate brokers from rebating commission fees to their clients and laws that mandated the services that a real estate broker must perform for his or her client (so-called “minimum service laws”). This advocacy took the form of informal consultations with state policy makers and formal advocacy comments to regulatory and legislative fora, and it was largely (although not uniformly) successful. In 2005, the [U.S.] FTC and [U.S.] DOJ also jointly held a workshop on competition in the real estate industry, which eventually led to a report. The advocacy program also worked in tandem with enforcement actions against private parties brought both by the [U.S.] FTC and the [U.S.] DOJ.”

The Secretariat for Economic Monitoring (SEAE) of Brazil responded that “in 2006, SEAE’s analysis of the Brazilian Portland cement market led to the suspension of the antidumping measure in that market. SEAE recommended Chamber of Foreign Trade (CAMEX) to drop the existing measures as means of promoting competition in the industry in the north of Brazil, since there was only one producer of Portland cement in the region, prices were higher than in other parts of the country and the antidumping measures represented a barrier to imports from Mexico and Venezuela. In November 2006, CAMEX suspended the antidumping measure for the state of Roraima.” The Norwegian Competition Authority (NCA) responded that “in February 2009, the NCA will present a publication named “Competition in Norway”, consisting of 11 different chapters, with six chapters dedicated to an assessment of the competitive situation in six different sectors, [listed in the next sentence] the competitive concerns and NCA suggestions as to how to deal with these concerns. The sectors are retail pharmacy, retail electric power, grocery, milk production, payment services and broadcasting.”

The Jamaica Fair Trading Commission responded that “workshops for the Judiciary have proven very useful as we have managed to share with them many aspects and issues of Competition Law & Policy, including demonstrating how their responsibility impacts on business and by extension, the economy. Their understanding of the issues is reflected in the quality of their judgments with respect to specific Competition concerns.”

²¹¹ Response of the U.S. DOJ (“For example, the Division filed or joined amicus curiae briefs in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S. Ct. 2705 (2007), and *Verizon Communications Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398 (2004). In all three cases, the U.S. Supreme Court issued decisions consistent with the position taken in the amicus curiae briefs”).

²¹² Please refer to the responses for further examples, available at ICN web-site.

The Fair Competition Commission of Tanzania responded that “workshops for members of parliament and the government high level officials on competition policy and law and the benefits therein. The result was [that] 234 members of parliament and 22 permanent secretaries educated on how Tanzania could benefit from competition policy and law.”

3. Sectoral directions of CA

3.1. Sectors of economy targeted by CA efforts

The responding agencies have undertaken their CA efforts in the following sectors listed in an order of their decreasing recurrence in the answers to the Review and Update Project Questionnaire²¹³:

1. Energy, including supply of electricity, natural gas, oil, gasoline (21)²¹⁴
2. Telecommunications (16)²¹⁵
3. Transportation, including highways, railroads, sea ports etc (15)²¹⁶
4. Financial services and banking²¹⁷: (14)²¹⁸
5. Health services, pharmaceuticals: (10)²¹⁹
6. Professional services (9)²²⁰
7. Agricultural goods, grain, fertilizers and retail networks (8)²²¹
8. Postal service (6)²²²
9. Environment, sustainable development, water and sanitation services (5)²²³
10. Real estate (5)²²⁴

²¹³ This information is provided in the answers to Question 4.1 of the Questionnaire – see Annex 1.

²¹⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Denmark, EC DG Comp, Germany, Honduras, Jamaica, Japan, Lithuania, Mexico, New Zealand, Peru, Poland, Romania, Russia, Slovakia, Spain, Tanzania, Turkey, U.S. DOJ, U.S. FTC, and Zambia.

²¹⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Denmark, Colombia, EC DG Comp, India, Mexico, New Zealand, Romania, Senegal, Slovakia, Spain, Tanzania, U.S. DOJ, U.S. FTC, and Zambia..

²¹⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Denmark, EC DG Comp, India, Korea, Lithuania, Mexico, Poland, Romania, Russia, Spain, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia.

²¹⁷ For the purposes of this report financial services and banking were combined in one sector.

²¹⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Denmark, EC DG Comp, India, Jamaica, Mexico, New Zealand, Poland, Russia, Slovakia, U.K. OFT, U.S. DOJ, and Zambia

²¹⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Honduras, India, Slovakia, Spain, U.K. OFT, U.S. DOJ, and U.S. FTC

²²⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Denmark, Lithuania, Poland, Slovakia, Spain, U.K. OFT, U.S. DOJ, and U.S. FTC

²²¹ Member agency responses from the following jurisdictions: Croatia, Honduras, Peru, Slovakia, Spain, Tanzania, U.K. OFT, and U.S. DOJ.

²²² Member agency responses from the following jurisdictions: Denmark, Poland, Romania, Senegal, Slovakia, and U.S. DOJ.

²²³ Member agency responses from the following jurisdictions: Brazil (SEAE), New Zealand, Russia, Slovakia, and U.K. OFT

²²⁴ Member agency responses from the following jurisdictions: India, Jamaica, U.K. OFT, U.S. DOJ, U.S. FTC

11. International trade (2)²²⁵

The energy sector²²⁶ was listed most frequently as a sector in which the responding ICN members have been recently engaged in CA efforts.

The responding agencies' choice of sectors where the competition agency CA efforts are most actively engaged or required²²⁷ was remarkably close to the focus of their recent CA activities (see above). In the order of decreasing recurrence in the agencies' answers to the Questionnaire the sectors where CA efforts are most actively engaged or required are listed as follows: energy (26 of the responding agencies)²²⁸, telecommunications (25)²²⁹, financial services (21)²³⁰, transport (20)²³¹, professional services (17)²³², natural monopolies and regulated utilities (16)²³³, privatization and regulatory reform (13)²³⁴, postal services (10)²³⁵, state created monopolies (9)²³⁶, intellectual property rights protection and anticompetitive use of IPRs (8)²³⁷, government and private standard setting (6).²³⁸

The agencies also indicated some other sectors not specifically mentioned in the Questionnaire as sectors where CA efforts are engaged or required: health services and pharmaceuticals (6)²³⁹, water and sanitation and water consumption (2)²⁴⁰, international trade

²²⁵ Member agency responses from the following jurisdictions: Mexico, U.S. DOJ

²²⁶ Mainly eclectic power and natural gas supply.

²²⁷ This information is provided in the answers to Question 4.2. – See Annex 1.

²²⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Cyprus, EC DG Comp, Honduras, Hungary, India, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K. OFT (sector regulator), U.S. DOJ, U.S. FTC, and Zambia

²²⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Colombia, Croatia, Cyprus, EC DG Comp, Honduras, India, Jamaica, Japan, Korea, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovakia, Spain, Switzerland, Turkey, U.K. OFT (sector regulator), U.S. DOJ, U.S. FTC (wi-fi), and Zambia

²³⁰ Member agency responses from the following jurisdictions: Croatia, Cyprus, Denmark, EC DG Comp, Honduras, Hungary, India, Korea, Lithuania, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovakia, Switzerland, Turkey, U.K. OFT, U.S. DOJ, and Zambia

²³¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, EC DG Comp, Honduras, Hungary, India, Japan, Korea, Lithuania, Mexico, Norway, Romania, Russia, Slovakia, Spain, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, and Zambia

²³² Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Cyprus, Hungary, India, Korea, Lithuania, Mexico, Norway, Romania, Slovakia, Spain, Turkey, U.K. OFT, U.S. DOJ, and U.S. FTC

²³³ Member agency responses from the following jurisdictions: Brazil (SEAE), Cyprus, Honduras, India, Jamaica, Japan, Lithuania, Mexico, Norway, Romania, Russia, Switzerland, U.K. OFT (In the main, natural monopoly markets are covered by sector regulators, specifically in energy, communications (telecoms and broadcasting), water, post, rail, airports), U.S. DOJ, U.S. FTC, and Zambia

²³⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Colombia, India, Japan, Korea, Mexico, Romania, Russia, Switzerland, Turkey, U.K. OFT (largely sector regulators), U.S. DOJ, and Zambia

²³⁵ Member agency responses from the following jurisdictions: Cyprus, Hungary, India, Mexico, Poland, Romania, Slovakia, Switzerland, U.K. OFT (sector regulator), and U.S. DOJ.,

²³⁶ Member agency responses from the following jurisdictions: India, Mexico, Romania, Russia, Tanzania, Turkey, U.K. OFT, U.S. DOJ, and Zambia

²³⁷ Member agency responses from the following jurisdictions: India, Mexico, Russia, Spain, U.K. OFT, U.S. DOJ (viewed from a position of “intersection of intellectual property rights and competition”), U.S. FTC, and Zambia

²³⁸ Member agency responses from the following jurisdictions: EC DG Comp, Honduras, Russia, Tanzania, U.K. OFT, and U.S. FTC

²³⁹ Member agency responses from the following jurisdictions: Hungary, Korea, Romania, U.K. OFT, U.S. DOJ, and U.S. FTC

²⁴⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), and Russia

(2)²⁴¹, real estate (2)²⁴², road building, construction (2)²⁴³, retail distribution (2)²⁴⁴, agriculture and diary²⁴⁵, environmental and sustainability (2)²⁴⁶, and securities (1).²⁴⁷

The competition agencies engagement in advocacy in the **energy** sector developed in two major directions: (1) improving regulation in segments that exhibit characteristics of natural monopolies, and (2) liberalization of energy markets that can effectively perform on a competitive basis. The first kind of CA activity can be well exemplified by the New Zealand Commerce Commission where the Commerce Act passed through major revisions of regulation of electricity distribution and transmission services as well as of gas pipeline services. Meanwhile, Poland's Office of Competition and Consumer Protection (OCCP) focused on the second direction. Agency experts prepared a report on the power sector in connection with the planned liberalization of energy prices. The report recommended directions for the development of the energy market and presented specific suggestions of changes that would result in the establishment of efficient competition in this sector. The report also focused on the issue of protecting weaker market participants, since, according to agency's analysis, introducing free competition in this industry is not possible in the short-term without detriment to consumers.²⁴⁸

Applicably to energy as well as to transport and professional and financial service markets the EC DG Comp emphasized a necessity of continuing its CA efforts not only in the course of their liberalization but after its completion, as well. "Competition advocacy thus aims at ensuring that regulation or other public policy measures unduly strengthen or protect the position incumbent operators – i.e. normally the previous monopolists." Additionally to that the EC DG Comp mentioned the energy sector, including gas and electricity as the one where CA efforts are particularly effective.²⁴⁹

The Russian FAS pursued both of the above mentioned objectives while playing a major role in structural separation of RAO ES, the world's largest regulated utility that supplied electric power countrywide. Based on FAS recommendations, the national Parliament passed the special Law "On electric power production." The agency advocated competition by means of insisting on separation of power generating plants from electricity transmission lines. Eventually the power plants began to sell their electricity on a competitive basis while for the transmission lines the Law provided for non-discriminatory access of all the power producers and consumers and fair pricing for services. Recently FAS successfully advocated the introduction of a series of amendments to existing electricity regulations intended to facilitate competition and provide equal opportunities to all suppliers and consumers in energy market.²⁵⁰

The German Bundeskartellamt also mentioned the energy sector as a major area of its CA efforts in recent years and used competition advocacy in the energy sector in conjunction with its work on antitrust cases. In particular, "in 2007 the Bundeskartellamt conducted a survey of the gas prices for household customers of 739 gas providers and published them on its website. As a result of the publication of the gas prices for household customers the market became more transparent for consumers. In 2008, 37 proceedings were initiated against gas providers following an amendment to the law. The proceedings were instituted based on the suspicion of abusively excessive gas prices. Twenty-eight of the proceedings have been concluded. The

²⁴¹ Member agency responses from the following jurisdictions: Mexico,, and U.S. DOJ

²⁴² Member agency responses from the following jurisdictions: Romania,,and U.S. DOJ

²⁴³ Member agency responses from the following jurisdictions: Romania, and Russia

²⁴⁴ Member agency responses from the following jurisdictions: Russia, and Spain

²⁴⁵ Member agency responses from the following jurisdictions: Peru, andU.S. DOJ.,

²⁴⁶ Member agency responses from the following jurisdictions: EC DG Comp, and New Zealand

²⁴⁷ See U.S. DOJ response.

²⁴⁸ Responses of competition authorities of New Zealand and Poland.

²⁴⁹ Response of EC DG Comp.

²⁵⁰ Response of competition authority of Russia.

anticompetitive practices that had been established could thus be largely stopped. The publication of the gas prices for household customers and the conducted abuse proceedings complemented one another in their competition advocacy effects.”²⁵¹

In many of the ICN member jurisdictions, the reforms of the energy sector are currently at an early stage or still incomplete, e.g., Poland, Romania, Spain, Tanzania, Turkey. In other member jurisdictions, although the regulatory paradigm in the sector has been established, the national competition agencies work on its improvement, e.g., US and Russia. This may explain why a number of agencies indicated the energy sector not only as the area in which they have been recently engaged in CA (21 of the responding agencies²⁵²) but also as a sector where CA efforts are most actively engaged or required (26 of the responding agencies²⁵³).

Although the **telecommunications** sector has been already liberalized in most of the responding jurisdictions, a considerable number of the antitrust agencies continue their CA activities in this sector, mainly in order to maintain and facilitate competition in the sector, including the prevention of restrictive practices by dominant firms²⁵⁴.

Technological changes like the introduction of broadband Internet connection or wi-fi (wireless) also warranted some agencies' efforts on prophylaxis of anticompetitive practices of the relevant service providers and explanatory work on what practices the antitrust agencies would consider as anticompetitive. For example, the New Zealand Commerce Commission released the Guidelines for Broadband Suppliers in August 2007.²⁵⁵ As another example for many years, the US DOJ has been examining and supporting the emergence of competition for consumer voice, video and broadband services. The Division had some success in this area by submitting letters to several state legislatures regarding proposed legislation to reform the process for granting franchises to new video-service providers, and by submitting comments to the FCC advising that the FCC promulgate appropriate regulations or guidance on unreasonable refusals to award additional competitive franchises by local franchise authorities²⁵⁶.

Competition agencies of Brazil, Korea, Mexico, New Zealand, Romania, Slovakia and the US DOJ listed a wide range of recent advocacy in the sector. Of the responding agencies, 16 have been active in CA in telecommunications in the recent past²⁵⁷ and 25 consider telecom as a sector in which the agency's CA efforts are most actively engaged or required.²⁵⁸

Several responding agencies are also actively engaged in advocating competition in a variety of branches of the **transportation** sector. Many of them are advocating simultaneously in several types of transportation means and facilities like motor roads, air transport, ports, shipping, rail system etc., e.g., the agencies from such countries as Brazil, India, Korea, Mexico, Poland, Peru, Romania, Russia, Spain, UK, US. Similar to the energy sector, the transportation sector is another sector where competition advocacy has been most active recently and being undertaken or required at present. According to the responding agencies: 15 of them reported

²⁵¹ Response of competition authority of Germany.

²⁵² See Footnote 215.

²⁵³ See Footnote 229.

²⁵⁴ Member agency responses from the following jurisdictions: Member agencies from the following jurisdictions: Brazil (SEAE), Colombia, Croatia, Cyprus, EC DG Comp, Honduras, India, Jamaica, Japan, Korea, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovakia, Spain, Switzerland, Turkey, U.K. OFT (sector regulator), U.S. DOJ, U.S. FTC (wi-fi), and Zambia.

²⁵⁵ Response of competition authority of New Zealand.

²⁵⁶ The Division also sponsored a public symposium to examine the changing competitive landscape for pay TV, internet and telephone services, and its impact on consumers. See *Voice, Video and Broadband: The Changing Competitive Landscape and Its Impact on Consumer* (2008), available at <http://www.usdoj.gov/atr/public/reports/239284.pdf>.

²⁵⁷ See Footnote 216.

²⁵⁸ See Footnote 230.

their active involvement in advocacy in transportation sector in recent past²⁵⁹ and 20 listed it as an area in which their CA efforts are most actively engaged or required.²⁶⁰

Financial services was another important area for competition advocacy work by several responding agencies, including these from Brazil, India, Jamaica, Mexico, New Zealand, Poland, Russia, Slovakia, UK OFT, US DOJ, and Zambia. Meanwhile, the types of financial services that attracted the attention of the competition authorities were different. Poland, for example, contributed considerable effort to audit service, while UK OFT remained active in monitoring new financial regulations and advice to the government on its involvement in the banking market. Fourteen agencies reported their engagement in CA activity in the sector in recent past²⁶¹, while 21 identified it as an area in which their CA efforts are most actively engaged or required.²⁶²

Health services and pharmaceuticals markets were listed by 10 of the surveyed competition agencies as an area in which they have been recently engaged in competition advocacy.²⁶³ For example, the agencies of Brazil, Croatia, Honduras, India, the UK OFT, and the US FTC were active in examining pharmaceutical price regulations, advocacy aimed to reduce entry restrictions on new pharmacies and advice to the government on observing competition principles in regulation of health services and pharmaceuticals market.

There are also examples of international CA efforts dedicated to promotion of competition in this sector. According to the Norwegian response, the competition authorities of Denmark, Finland, Iceland, Norway and Sweden decided in 2007 that the theme of the next Nordic cooperation project should be the competition challenges in the pharmacy/pharmaceutical sector. The objective of the report presented in the fall of 2008, was to draw together the experience of various approaches to the regulation of structure and price, and various competition-related issues and experience in the pharmacy and pharmaceutical sector in the Nordic countries. This provides a better knowledge base for the respective competition authorities in their assessments of proposed changes in framework conditions for the sector, as well as a better basis for choosing where to direct their own initiatives.

Each of the **remaining sectors** where the responding competition agencies reported their advocacy activity (agricultural goods, grain, fertilizers and retail networks, professional services, environment, sustainable development, water and sanitation services, real estate, postal service, international trade) were listed by less than 1/3 of responses of the agencies regarding the sectors where they are engaged in competition advocacy. However, this does not necessarily imply little or no interest of other agencies in these sectors as areas of their actual or/and potential advocacy efforts. In the order of decreasing recurrence of these sectors in the agencies assessment of sectors where CA efforts are most actively engaged or required, these sectors can be listed as follows: professional services – 17 agencies²⁶⁴; natural monopolies and regulated utilities -16²⁶⁵ privatization and regulatory reform – 13²⁶⁶; postal services – 10²⁶⁷; state created monopolies – 9²⁶⁸; intellectual property rights protection and anticompetitive use of IPRs – 8²⁶⁹; government and private standard setting 6²⁷⁰.

²⁵⁹ See Footnote 217.

²⁶⁰ See Footnote 232

²⁶¹ See Footnote 219.

²⁶² See Footnote 231.

²⁶³ See Footnote 220.

²⁶⁴ See Footnote 233.

²⁶⁵ See Footnote 234

²⁶⁶ See Footnote 235.

²⁶⁷ See Footnote 236.

²⁶⁸ See Footnote 237.

²⁶⁹ See Footnote 238.

²⁷⁰ See Footnote 239.

Additionally to that several agencies identified sectors where their recent CA efforts proved to be particular effective. These sectors are: health insurance²⁷¹, retail trade networks²⁷², pharmaceuticals²⁷³, energy²⁷⁴, transport (especially international shipping and air transportation)²⁷⁵, professional services²⁷⁶, financial sector²⁷⁷, and agriculture²⁷⁸.

3.2. Sector specific scope and goals of CA efforts

In regulated sectors such as energy, transportation, and telecom, the agencies cited a number of objectives for their competition advocacy efforts. The goals pursued by most of the responding agencies by means of CA can be exemplified by the following citation from the US DOJ response:

“Through our competition advocacy efforts with federal and state government institutions, the Division seeks to further five goals: (1) to increase awareness of the benefits of competition and antitrust enforcement; (2) to eliminate unnecessary and costly existing regulation; (3) to inhibit growth of unnecessary new regulation; (4) to minimize the competitive distortions caused where regulation is necessary by advocating the least anticompetitive form of regulation consistent with the valid regulatory objectives; and (5) to ensure that regulation is properly designed to accomplish legitimate regulatory objectives and inhibit as little as possible competitive market forces. While the Division’s competition advocacy cuts across a diverse cross section of industries, the Division’s role in this area generally is to promote reliance on competition rather than on government regulation wherever possible and to ensure that necessary regulation is well designed to achieve its objectives and does not disrupt natural market forces more than necessary.”²⁷⁹

Some agencies are engaged in advocacy activities as a part of their ongoing responsibility under legislation providing for the sphere of their authority. For example, the UK OFT monitors new financial regulations as a part of its duties provided for by the Financial Services legislation.

In some countries, these sectors are currently in the stage of reform or revision of effective regulation that warrants additional efforts by a competition authority aimed at safeguarding competition principles in the course of such reform/revision.²⁸⁰ Liberalization of formerly

²⁷¹ Response of competition authority of Brazil (SEAE)

²⁷² Member agency responses from the following jurisdictions: Croatia (especially emphasized the effectiveness of market studies conducted in the sector), Hungary.

²⁷³ Response of competition authority of Hungary

²⁷⁴ Member agency responses from the following jurisdictions: Jamaica, Russia (recent reform of electric power production and distribution), and Zambia

²⁷⁵ Response of JFTC response.

²⁷⁶ Member agency responses from the following jurisdictions: Romania, Slovakia.

²⁷⁷ Member agency responses from the following jurisdictions: Slovakia, Zambia

²⁷⁸ Response of competition authority of Tanzania.

²⁷⁹ See U.S. DOJ response.

²⁸⁰ Examples of such efforts include but are not limited to the following:

- Brazil SEAE is actively advising to executive and legislative bodies in the course of a revision of operational models of such sectors as sanitation and natural gas exploration,
- Croatian CCA provided its remarks to energy laws,
- JFTC discussed measures necessary for liberalization of gas business in its “Survey of Trade in the Gas Business Field,”
- in India competition is actively advocated in the course of reform of the national postal service,
- Mexican CFC provided a series of recommendations to the Energy Regulatory Commission on modifying the terms of shipment of natural gas,

regulated sectors and introduction of competition principles, combined with providing fair access and pricing for the parts of these sectors that continue operating as natural monopolies are also the goals for CA in the sectors being reformed additionally to these mentioned above.²⁸¹

3.3. Examples of successes in sector advocacy – experience to share

Most of the responding competition agencies manifested a considerable success in their sector-oriented advocacy efforts. The success stories presented below are only a relatively small part of the examples of such successes and experiences to share.

Mexico – Retail trade in gasoline

In the early days of the Mexican Competition Commission, a study in the Mexican gasoline market was conducted. This investigation found that clearer guidelines were required for contracts and conditions established between the state-owned monopoly Pemex and private parties wishing to participate in this activity. In order to prevent possible anticompetitive practices, the Commission and Pemex developed a consent agreement to incorporate competition criteria in the establishment of new gas stations and in the marketing of complementary goods and services in this distribution channels. This agreement had three major benefits. First, as the number of gas stations progressively increased, travel distances between stations were reduced, and consumers underwent shorter waiting periods. Second, as competition between gas stations increased, services were improved as well as the variety of products offered. Third, there were more opportunities to open a gas station. As a result, millions of gasoline consumers in Mexico benefited from these actions.

Norway – Financial Services

The Competition Authority's efforts to promote competition in this sector require cooperation with other Norwegian authorities and representatives from the branch. In June 2007, for instance, a report on initiatives and schemes that could diminish negative consequences for customers who wish to change banks was presented to the Ministry of Finance. The working group responsible for this report comprised representatives from the finance branch and various authorities, including the Norwegian Competition Authority. The report recommends the introduction of a "Switching code," a scheme that makes it easier for customers to change banks. Competition issues and concerns in financial services is also one of the areas covered in publication "Competition in Norway".

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- Norwegian Competition Authority chaired the Nordic working group that indicated the threats to competition in energy market in its report on "Capacity for Competition", the Russian FAS suggested a series of amendments in the legislation on supply of natural gas to various types of consumers,
 - the U.S. FTC participated in five-agency Electric Energy Market Competition Task Force that delivered the Report to the Congress on Competition in Wholesale and Retail Markets of Electric Energy, etc.

²⁸¹ See responses of competition authorities of EC DG Comp, Germany and Russia as examples.

Russia – Electric power supply

Following the reform of the Russian electric power industry that resulted in its separation into competitive (electric power production at power plants) and natural monopoly (transmission and distribution of electricity) sectors, FAS successfully advocated introduction of additional rules providing for nondiscriminatory access of electricity producers and consumers to power transmission and infrastructure facilities, including services of the Trade Network Administrator. The latter is a kind of electricity exchange where wholesale consumers and producers of electricity can bargain over electricity prices. Considerable changes in execution of the antimonopoly regulatory provisions and control of wholesale and retail markets of electric power were introduced by the Federal Law of 04.11.2007 № 250-FZ «On introducing amendments to the certain legal acts of the Russian Federation due to undertaking of measures on reform of the Russian unified energy power system» to the Federal Law of 26.03.2003 № 35-FZ «On power industry».

Additionally the following regulations were adopted:

- The Resolution of the Government of the Russian Federation of 21.03.2007 № 168 «On introducing amendments to the Resolution of 27.12.04 № 861 «On confirmation of Rules of non-discriminatory access to the services on transfer of power energy and their rendering” ”,
- Rules of non-discriminatory access to the services on operative-dispatch management in the power industry and their rendering,
- Rules of non-discriminatory access to the services of the wholesale market administrator of trade system and their rendering, and
- Rules of technological connection of energy-receiving units (energy plants) of legal and private persons to the electric network systems.

US FTC – Pharmaceuticals

The FTC has held a series of hearings and released influential reports demonstrating how private parties can utilize the current system of intellectual property right protection to achieve anticompetitive ends, with special emphasis on pharmaceuticals. These reports, along with Congressional testimony and other advocacy, have led to positive legislative reforms.

Turkey – Telecom

The TCA asked for structural separation of cable infrastructure from fixed line telecom infrastructure, as it is expected that an independent cable infrastructure would introduce the possibility of facility-based competition in a market where there is a de facto monopoly. Additionally, the approach of the TCA in the sale of Telsim (mobile operator company) prevented Turkcell (incumbent mobile operator) from bidding such that a third company could purchase Telsim and enter into the market.

3.4. Sector oriented means of competition advocacy

The responding jurisdictions used a variety of means of sector oriented advocacy. Presented in the order of their decreasing recurrence in the agencies' responses these means are as follows: market studies: (25 agencies' responses)²⁸², consultations (24)²⁸³, joint workshops and seminars on specific antitrust topics (19)²⁸⁴, documents/guidelines (19)²⁸⁵, publications (17)²⁸⁶, periodical meetings (15)²⁸⁷, and participation in hearings (15)²⁸⁸.

Other CA means used by the responding agencies include ongoing cooperation with sector regulators (competition authority of Hungary), meetings with all stakeholders involved in competition matters, including other regulators, academia and professionals as well as supporting their competition related events (competition authority of India), cooperation with media (competition authority of Poland), participation of competition agency personnel in seminars organized by other regulators (competition authority of Spain), providing recommendations (competition authority of Switzerland), making public speeches and disseminating information on competition impact assessment (UK OFT), and issuing reports and public discussion of drafts of competition related legislations (competition authority of Peru).

Most of the agencies recommend using several or all²⁸⁹ of the above mentioned means: "All the methods listed above are very useful and each has its strong points. They should be undertaken jointly as they complement each other."²⁹⁰ Some of the agencies (e.g. competition authorities of Germany and Norway) warned against giving preference to particular means on the grounds that "...different CA activities will call for different means"²⁹¹ and "The adequate tools for CA activities have to be determined by the competition authority on the basis of the

²⁸² Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Cyprus, Denmark, Germany, Honduras, Hungary, India, Jamaica, Japan, Korea, Lithuania, Mexico, Norway, Poland, Romania, Russia, Spain, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia

²⁸³ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Colombia, Croatia, Germany, Honduras, India, Jamaica, Japan, Korea, Lithuania, Mexico, New Zealand, Norway, Poland, Romania, Russia, Slovakia, Tanzania, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia

²⁸⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Croatia, Cyprus, Honduras, Hungary, India, Korea, Lithuania, Mexico, Poland, Romania, Russia, Senegal, Slovakia, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia,

²⁸⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Denmark, Germany, Honduras, Hungary, India, Korea, Lithuania, Mexico, New Zealand, Poland, Russia, Slovakia, Turkey, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia

²⁸⁶ Member agency responses from the following jurisdictions: Canada, Croatia, Cyprus, Germany, Honduras, Hungary, India, Lithuania, Mexico, Norway, Poland, Romania, Russia, Spain (Market studies are made public through publication in the CNC website, and are object of press releases. Also they are published in paper and distributed.), U.K. OFT, U.S. DOJ, U.S. FTC

²⁸⁷ Member agency responses from the following jurisdictions: Brazil (SEAE), Colombia, Germany, Honduras, India, Lithuania, Mexico, Norway, Romania, Russia, Slovakia, Turkey, Turkey, U.K. OFT, U.S. DOJ

²⁸⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Colombia, Denmark, Germany, Honduras, Japan, Korea, Lithuania, Mexico, Norway, Russia, U.K. OFT, U.S. DOJ, U.S. FTC, Zambia

²⁸⁹ According to the response by the Canadian Competition Bureau "[a]ll of these means work in different environments. The issue is really having a good handle on the optimal strategy given budgetary constraints. There must be clear criteria for selecting advocacy initiatives along with a means to evaluate progress, success and the appropriate time to shift focus to other initiatives."

²⁹⁰ Response of competition authority of Poland

²⁹¹ Response of competition authority of Norway

individual competition situation as assessed by the agency and its competences”²⁹² and their choice “depend on circumstances.”²⁹³

Conclusions/recommendations on further ICN work on competition advocacy

As it was indicated above most of the responding ICN jurisdictions stressed the need for **continuing ICN work on CA both in institutional and sectoral directions**. We believe that the selection of the means for project implementation and types of the work products should be based on the jurisdictions’ attitude of their suitability for their needs. As a result of broad discussion of means and forms of CA work the CA Subgroup 1 group drew a conclusion that teleseminars should be chosen as a major means of such work. The major reasons for making emphasis on the teleseminars as a principal means for further CA work are as follows:

- The teleseminars proved to be a very popular and convenient form of experience-sharing in CA related matters among ICN Members that provides them with the possibility of online questions and answer sessions additionally to hearing presentations by most experienced CA experts and specialists, including senior agency officials.²⁹⁴
- Seminars can address CA issues in which a substantial diversity of approaches, regulatory paradigms and policies among ICN Members can be observed that makes these issues hard to address by means of ICN projects having a Report as their major work product. Practical recommendations on these issues can be very country specific and depend upon the prevailing legal, administrative, and economic environment, as well as on a competition authority’s powers and degree of involvement in the regulatory process in a particular country that makes it hard to reveal common approaches and best practices and summarize them in a Report. Country specific sector regulations in sectors such as energy, transportation, health services, professional services and some other sectors can serve as an example of these.
- The ICN already has a number of ongoing projects that involve a growing volume of member agency resources and launching another one can be burdensome for some ICN Members which may encounter a lack of resources for participating projects. Meanwhile, conducting teleseminars does require less human resource allocation by the ICN Members, thus making cost-benefit relationship more favorable for them.

We also believe that presentation of the teleseminars should be based on the existing ICN work products related to CA and can be viewed as a way of updating these work products. This work looks more efficient and less resource consuming compared to updating specific work products by means of preparing relevant reports. Another argument for this approach is that most of the CA-related work products remain up-to-date and are continuously used by ICN member jurisdictions, as it can be inferred from the graphs below and Annex 2.

²⁹² Response of competition authority of Germany.

²⁹³ Response of EC DG Comp.

²⁹⁴ A calculation of attendance rate of the seminars presented in this ICN year gave the following results: 28 jurisdictions were present at the first seminar, 22 at the second and 15 at the third. In several jurisdictions there were more than one persons present (the exact number of such jurisdictions/persons is hard to estimate because only a minority of the attendees registered in advance of each seminar). The NGA participation rate can be estimated at 3-5 persons per seminar.

According to the Mandate of the Review and Update Project, the project Team provides its recommendations at the ICN year 2009 - 2010. We recommend that basing on the topics covered by the seminar presenters and the project Team recommendations the chair of the subgroup makes conclusions and recommendations for further ICN work that can be considered by the Steering Group in the course of further planning.

Conducting teleseminars should be complemented by reinstating the CA Toolkit and making improvements that will allow broader use of the CA Toolkit.²⁹⁵ It is important that the Toolkit can be also used as a general means of information exchange and networking among the CA experts of the ICN member jurisdictions.²⁹⁶

We recommend that the selection of the teleseminar topics be based on the requests by the ICN Members and willingness of each jurisdiction to volunteer to present a seminar based its experience. We suggest to use the project findings below while selecting the seminar topics so that the frequency of their mentioning by the responding jurisdictions is taken into account.

Member recommendations for further ICN work in the institutional dimension of CA

Applicably to the *institutional dimension* of the ICN Members CA work these findings can be summarized as follows.

Based on the responses to the questionnaire, it was found that jurisdictions would benefit from additional ICN work related to CA with a number of different institutions: government regulators and agencies, legislative and judicial bodies, business community, media, private bar associations, special interest groups, general public and consumer associations, etc.

Competition Authorities are interested in developing and maintaining relationships with other institutions that are considered decisive in enhancing the process of competition in their respective jurisdictions. Some of the respondents have more experience than others in conducting advocacy activities, but all respondents emphasized the importance of their advocacy program.

Based on the responses, it can be inferred that government bodies will continue to be the principal audience for competition advocacy efforts.²⁹⁷ The most common mechanisms to influence these institutions are opinions,²⁹⁸ consultations,²⁹⁹ workshops,³⁰⁰ and meetings.³⁰¹ The business community,³⁰² media,³⁰³ and academic institutions³⁰⁴ appear to be the most common non-governmental recipients of competition advocacy. The most frequent means to promote

²⁹⁵ Please see Annex 3 for CA sg1 recommendations on improving the CA Toolkit.

²⁹⁶ See Annex 3.

²⁹⁷ 24 out of 32 Competition Authorities are currently focused their advocacy efforts on Government bodies: Brazil (SEAE), Croatia, Cyprus, Germany, Honduras, Hungary, India, Jamaica, Korea, Mexico, Peru, Poland, Romania, Russia, Senegal, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.K., U.S. FTC, U.S. DOJ, and Zambia.

²⁹⁸ 16 out of the 24 jurisdictions mentioned in footnote 310: Brazil (SEAE), Cyprus, Hungary, Korea, Mexico, Peru, Poland, Russia, Slovakia, Spain, Switzerland, Turkey, U.K., U.S. FTC, U.S. DOJ, and Zambia.

²⁹⁹ 5 out of the 24 jurisdictions mentioned in footnote 310: Croatia, Poland, Romania, Russia, and U.S. DOJ.

³⁰⁰ 4 out of the 24 jurisdictions mentioned in footnote 310: Croatia, Honduras, Hungary, and India.

³⁰¹ 4 out of the 24 jurisdictions mentioned in footnote 310: Brazil (SEAE), Cyprus, Honduras, and India.

³⁰² There are 17 out of the 24 jurisdictions mentioned in footnote 310 currently focused on business community: Croatia, Cyprus, Germany, Honduras, Jamaica, Korea, Lithuania, Mexico, Peru, Poland, Romania, Slovakia, Spain, Tanzania, Turkey, U.S. FTC, and U.S. DOJ.

³⁰³ There are 10 out of the 24 jurisdictions mentioned in footnote 310 currently focused on media: Germany, Honduras, Jamaica, Korea, Lithuania, Peru, Romania, Spain, Tanzania, and U.S. (DOJ).

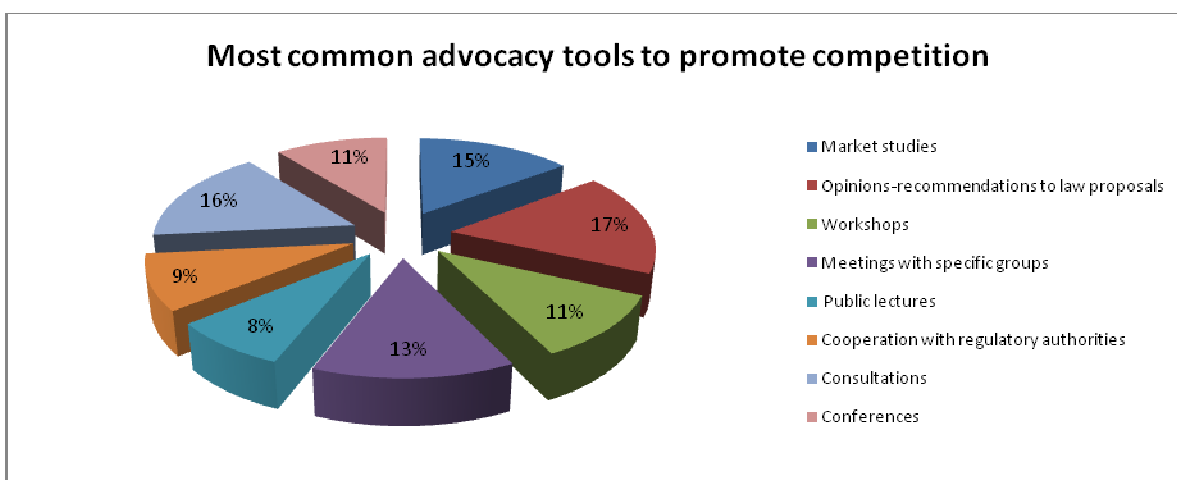
³⁰⁴ Some examples of CA with academic institutions are provided in responses of competition authorities from Hungary, Japan, Korea, Mexico, Poland, and Turkey.

competition with the private sector is to hold direct meetings,³⁰⁵ although other tools are used as well, such as market studies³⁰⁶ and special programs.³⁰⁷

With regard to media efforts, for example, the Romanian Competition Council (RCC) has designated “2 full-time officials, part of the Public Relations Unit are available to journalists for all questions concerning competition policy.” In the case of improving relations with academic institutions, the use of conferences³⁰⁸ is a regular practice. The Polish Office of Competition on Consumer Protection (OCCP) mentioned that to improve the relationship with the academic community, it has undertaken joint events like “a competition for the best Master’s Thesis regarding competition law that is organized along with student organizations.”

Graph 1 summarizes the relative importance given by the respondents to the above mentioned tools that are considered most effective in promoting competition.

Graph 1



Graph 1 is based on the most frequent means that have been found particularly effective by respondents (data identified in section 2.6).

With respect to private actions, sixteen³⁰⁹ of the 32 agencies responding to the questionnaire mentioned that their jurisdictions would benefit from additional ICN work related to *CA in introducing and/or exercising private rights of action* (one specific request is to identify the status of this issue in other countries);³¹⁰ discussions on useful techniques that could be incorporated to presentations made to lawyers;³¹¹ development of guidelines in specific topics that include best international practices in the introduction and/or exercising private rights of

³⁰⁵ Responses of competition authorities from Cyprus, Lithuania, and Mexico provide some examples of this practice.

³⁰⁶ Response of competition authority of Peru.

³⁰⁷ In Korea, for instance, there is an effort to vitalize its Compliance Program: “Since the announcement of the standard on the Compliance Program (CP) in July 2001 by CP Committee, the CP has been introduced by companies. The CP contributes to raising awareness of competition law within the corporate sector, nurturing the culture of respecting the competition principles and forming a voluntary monitoring system, thereby effectively preventing infringements in advance. As of December 2008, some 350 companies have introduced the CP and are enforcing it with sincerity.”

³⁰⁸ Member agency responses from the following jurisdictions: Hungary, Japan, Korea, and Mexico.

³⁰⁹ Member agency responses from the following jurisdictions: Croatia, Honduras, Norway, Poland, Hungary, Japan, Jamaica, Lithuania, Romania, Slovakia, Switzerland, Russia, Zambia, New Zealand, Spain, and Mexico.

³¹⁰ Response of competition authority of Rumania.

³¹¹ Response of competition authority of Jamaica.

action based on competition law;³¹² Best Practices documents that could be circulated among the members;³¹³ and a website where the competition authorities could share their advocacy experiences with one another including brief reports and links to other relevant public reports and documentation.³¹⁴

Suggestions on sector oriented CA work

In their responses to the Questionnaire, 24 competition agencies³¹⁵ indicated that they would benefit from additional ICN work in sector related competition advocacy to a varying extent. Regarding the type of this work the agencies provided their opinions either by indicating a sector / topic or the way in which the ICN work should be done. Among the sectors/topics in which agencies recommended further ICN work are competition in regulated markets and the role of competition agencies and sector regulators in its promotion³¹⁶, health sector and pharmaceuticals³¹⁷, financial and banking sector³¹⁸, waste management³¹⁹, retail chains³²⁰, and public procurement³²¹. As for the ways of implementing this work the agencies indicated workshops and teleconferences³²² as well as reports³²³. Other agencies preferred to express their interest in further ICN work on sector related CA in more general way, e.g. “...the ICN could develop studies that include best international practices in key sectors of an economy;”³²⁴ “we consider that the co-operation and exchange of experiences amongst peers facilitated through this kind of exercises is very useful for the development and refinement of a competition authority’s advocacy policy.”³²⁵

The top five sectors that agencies most frequently identified as where CA efforts are most actively engaged or required (i.e. energy, telecom, financial services, transport and professional services) are very close to the top five sectors where the agencies most frequently reported having recently engaged in advocating competition (energy, transportation, telecommunication, financial services, health services). Telecommunications sector have been already covered by the ICN Telecommunications Group Report that is considered as generally up-to-date one by numerous ICN member-agencies and does not need a substantial revision. Among the responding members six indicated the usefulness of updating the telecom work product and six pointed out the usefulness of additional ICN work in this area at present, that is considerably less compared to most of the other ICN work products related to CA (see Annex 2, including footnotes to it).

³¹² Response of competition authority of Mexico.

³¹³ Responses of competition authorities of Slovakia, and Zambia (“legislative review of proposals as well as solutions for a less strenuous and costly process in the exercise of private actions.”).

³¹⁴ Response of competition authority Spain.

³¹⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Colombia Croatia, Cyprus, EC DG Comp, Honduras, Hungary, India, Japan Lithuania, Mexico, Norway, Peru, Poland, Romania, Russia, Slovakia, Senegal, Spain, Tanzania, Turkey, U.K. OFT, U.S. DOJ, and Zambia

³¹⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Jamaica, and Russia (gas supply)

³¹⁷ Member agency responses from the following jurisdictions: Russia, Slovakia, and U.K. OFT,

³¹⁸ Member agency responses from the following jurisdictions: Russia, Turkey

³¹⁹ Response of competition authority of Slovakia

³²⁰ Response of competition authority of Slovakia

³²¹ Response of competition authority of Tanzania

³²² Member agency responses from the following jurisdictions: Hungary, Norway, and U.S. DOJ

³²³ Member agency responses from the following jurisdictions: , Mexico, and Poland

³²⁴ Response of competition authority of Mexico

³²⁵ Response of competition authority of Romania

The top three sectors where the CA is already present and demanded are energy, transportation and financial services. Additionally to that, as shown above some ICN members expressed an interest in ICN work on CA in such spheres as health services and supply of pharmaceuticals as well as in professional services. In these sectors, the agencies also provided examples of their efforts and their results, and indicated that they were willing to share these experiences with other members through ICN.

With regards to selection of topics of **sector oriented CA teleseminars** we suggest the following considerations.

Based on the review of recent CA activities and requests for further ICN work on CA by the reviewed jurisdictions as well as on examination of use of CA related ICN work products we recommend to focus this work on the following sectors listed in order of decreasing recurrence in jurisdictions responses³²⁶ and, thus, decreasing priority for ICN further work on sector oriented CA: ***energy, transportation, telecommunications, financial services, health services, pharmaceuticals, and professional services***. The choice from the above listed sectors looks most appropriate since each of them is an area of continued engagement in CA efforts by the **majority** of the responding jurisdictions. We also believe that reassessment of priority sectors may be needed after presenting a series of sector related CA seminars.

The jurisdictions' requirements with regard to institutional and sectoral directions of work on competition advocacy issues corresponds to their **assessment of desirability of updating the existing ICN work products related to advocacy** (see below).

The selection of these sectors is also determined by their significance for development of the national economies of most of the ICN jurisdictions as it may be seen from the following citation from the EU DG Comp response: "Sectors needs to be carefully selected based on the extent to which they contribute the competitiveness of the EU economy and which are also important parts of citizen's household expenditure. For 2009 competition policy will therefore contribute to ensuring competitive markets in industries, such as energy, ICT, transport, electronic communications and financial services. Competition enforcement will be pursued in network industries and innovative sectors, including by bringing a number of follow-on priority enforcement cases resulting from the energy and financial services sector inquiries to an end. We will also continue to deal with a number of pending standardization and interoperability cases in ICT that require timely intervention."

ICN Members suggestions for use of ICN work products and directions of further CA related work

The responding agencies supplemented their approaches to institutional and sectoral directions of CA work with their **suggestions for use of ICN work products and directions of CA related work** presented in Table 1 and comments below. Reference to these work products and issues indicated by the reporting agencies looks very useful for selecting topics and planning presentations of further teleseminars.

Table 1 summarizes the agencies' responses regarding the use of ICN work products and recommendations for means and directions of further ICN work on of CA.³²⁷

³²⁶ See Section 3.1.

³²⁷ Member requirements will be quoted whenever they are different to the ICN CA work products identified in section 5 at the end of the questionnaire.

Table 1

Competition Authority	Requirements for further methodologies and advice on Competition Advocacy
Brazil	Advocacy and Competition Policy Report, Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Report on Advocacy Provisions, Toolkit for Effective Advocacy, Competition Advocacy in Regulated Sectors (Examples of Success), Business Outreach by ICN Members (Challenges and Case Studies), State Created Monopolies Recommended Practices, 2004 AERS Report, 2005 AERS Report, Increasing Role for Competition in the Regulation of Banks (Best Practices), and the Role for Competition in the Telecommunications Services Sector (Suggested Best Practices).
Colombia	Work targeting judicial bodies will be quite useful, i.e, providing them with helpful guidance on how the judiciary should approach a competition law case from the judicial point of view. Training programs, workshops and seminars for the judiciary also would be of great benefit.
Croatia	This jurisdiction considers it would be useful to develop more work on “how to enhance mutual cooperation on competition advocacy.”
Cyprus	This jurisdiction considers it would be useful to develop more work on “new approaches to competition advocacy”.
Denmark	“A suggestion could be for the ICN to make a survey amongst companies and consumers of the general awareness of competition rules.” This jurisdictions also indicated that it would be generally interested in continuing ICN CA related work but “it is however, difficult to point out what specific type of work would be useful.”
Honduras	Report on Advocacy Provisions, Competition Advocacy in Regulated Sectors (Examples of Success).
Hungary	State Created Monopolies Recommended Practices, An Increasing Role for Competition in the Regulation of Banks (Best Practices), and The Role For Competition in the Telecommunications Services Sector (Suggested Best Practices). In addition, this jurisdiction considers it would be useful to develop more “seminars and workshops on competition advocacy.”
India	Advocacy and Competition Policy Report, Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Report on Advocacy Provisions, Toolkit for Effective Advocacy, Competition Advocacy in Regulated Sectors (Examples of Success), State Created Monopolies

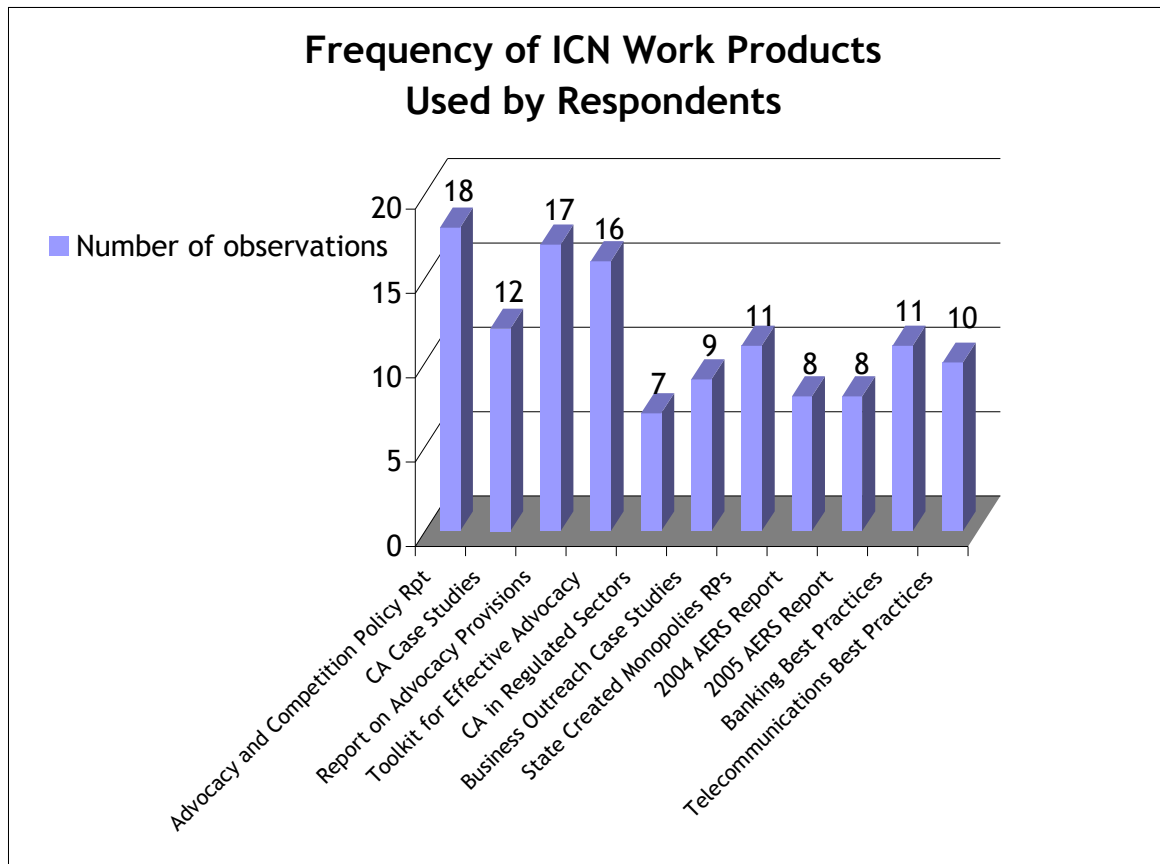
	Recommended Practices, 2004 AERS Report, and Increasing Role for Competition in the Regulation of Banks (best practices).
Jamaica	<p>Advocacy and Competition Policy Report, Report on Advocacy Provisions, Toolkit for Effective Advocacy, and the Role for Competition in the Telecommunications Services Sector (Suggested Best Practices).</p> <p>In addition, this jurisdiction considers it would be useful to develop more work on “highlighting experiences of other jurisdictions to demonstrate in a practical manner the benefits of competition.”</p>
Japan	This jurisdiction considers it would be useful to develop “ICN documents where many competition authorities in the world participate”.
Korea	Report on Advocacy Case Studies (telecommunications, energy, airlines, and legal professions), Competition Advocacy in Regulated Sectors (Examples of Success), and the Role for Competition in the Telecommunications Services Sector (Suggested Best Practices).
Lithuania	Report on Advocacy Case Studies (telecommunications, energy, airlines, and legal professions), 2005 AERS report, and Increasing Role for Competition in the Regulation of Banks (Best Practices).
Mexico	<p>Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Toolkit for Effective Advocacy, Competition Advocacy in Regulated Sectors (Examples of Success), Business Outreach by ICN members (Challenges and Case Studies), State Created Monopolies Recommended Practices, 2004 AERS Report, 2005 AERS Report, An Increasing Role for Competition in the Regulation of Banks (Best Practices), and The Role For Competition in the Telecommunications Services Sector (Suggested Best Practices).</p> <p>In addition, this jurisdiction considers it would be useful to develop more “workshops and seminars with international experts.”</p>
New Zealand	This jurisdiction considers it would be useful to develop more work on “competition advocacy with government regulators, agencies, and legislatives bodies.”
Norway	This jurisdiction considers it would be useful to develop more “workshops on competition advocacy.”
Peru	Advocacy and Competition Policy Report, Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and

	<p>Legal Professions), and An Increasing Role for Competition in the Regulation of Banks (Best Practices).</p> <p>In addition, this jurisdiction considers it would be useful to conduct more “trainings on topics of promotion of competition, directly with the most important groups of agents (politicians, consumers, journalists, media, etc.).”</p>
Poland	<p>Advocacy and Competition Policy Report, Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Competition Advocacy in Regulated Sectors (Examples of Success), State Created Monopolies Recommended Practices, An Increasing Role for Competition in the Regulation of Banks (Best Practices), and The Role For Competition in the Telecommunications Services Sector (Suggested Best Practices).</p>
Romania	<p>Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Report on Advocacy provisions, Toolkit for Effective Advocacy, and An Increasing Role for Competition in the Regulation of Banks (Best Practices).</p>
Russia	<p>This jurisdiction considers it would be useful to develop more work on “competition advocacy with private bar.”</p>
Slovakia	<p>This jurisdiction considers it would be useful to develop more work on “how to address effectively competition advocacy related issues.”</p>
Spain	<p>Advocacy and Competition Policy Report, and Report on Advocacy Provisions.</p>
Tanzania	<p>Toolkit for effective advocacy, Report on Advocacy Provisions, and Competition Advocacy in Regulated Sectors (Examples of Success).</p>
Turkey	<p>Considers it would be useful that “specific models can be developed by considering the target parties” (institutions where ICN work products could be expanded).</p>
UK OFT	<p>"We would support more teleseminars on advocacy topics and would like to see the development of the IA toolkit, particularly to allow jurisdictions to share examples of issues they have addressed through advocacy, and how they have gone about influencing outcomes.”</p>
U.S. DOJ	<p>“Conference calls on advocacy issues”.</p>
U.S. FTC	<p>Toolkit for effective advocacy.</p>
Zambia	<p>Advocacy and Competition Policy Report, Report on Advocacy Case Studies (Telecommunications, Energy, Airlines, and Legal Professions), Report on Advocacy Provisions, Toolkit</p>

	<p>for Effective Advocacy, Competition Advocacy in Regulated Sectors (Examples of Success), Business Outreach by ICN members (Challenges and Case Studies), State Created Monopolies Recommended Practices, 2004 AERS³²⁸ Report, 2005 AERS Report, An Increasing Role for Competition in the Regulation of Banks (Best Practices), and The Role For Competition in the Telecommunications Services Sector (Suggested Best Practices).</p>
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Graph 2 shows the number of ICN members that currently use ICN work product on competition advocacy. The questionnaire sought usage information provided by the following specific ICN work products: (1) Advocacy and Competition Policy Report; (2) Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession; (3) Report on Advocacy Provisions; (4) Toolkit for Effective Advocacy; (5) Competition Advocacy in Regulated Sectors: Examples of Success; (6) Business Outreach by ICN members: Challenges and Case Studies; (7) State Created Monopolies Recommended Practices; (8) 2004 AERS Report; (9) 2005 AERS Report; (10) An Increasing Role for Competition in the Regulation of Banks, Best Practices; and (11) The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices.

Graph 2

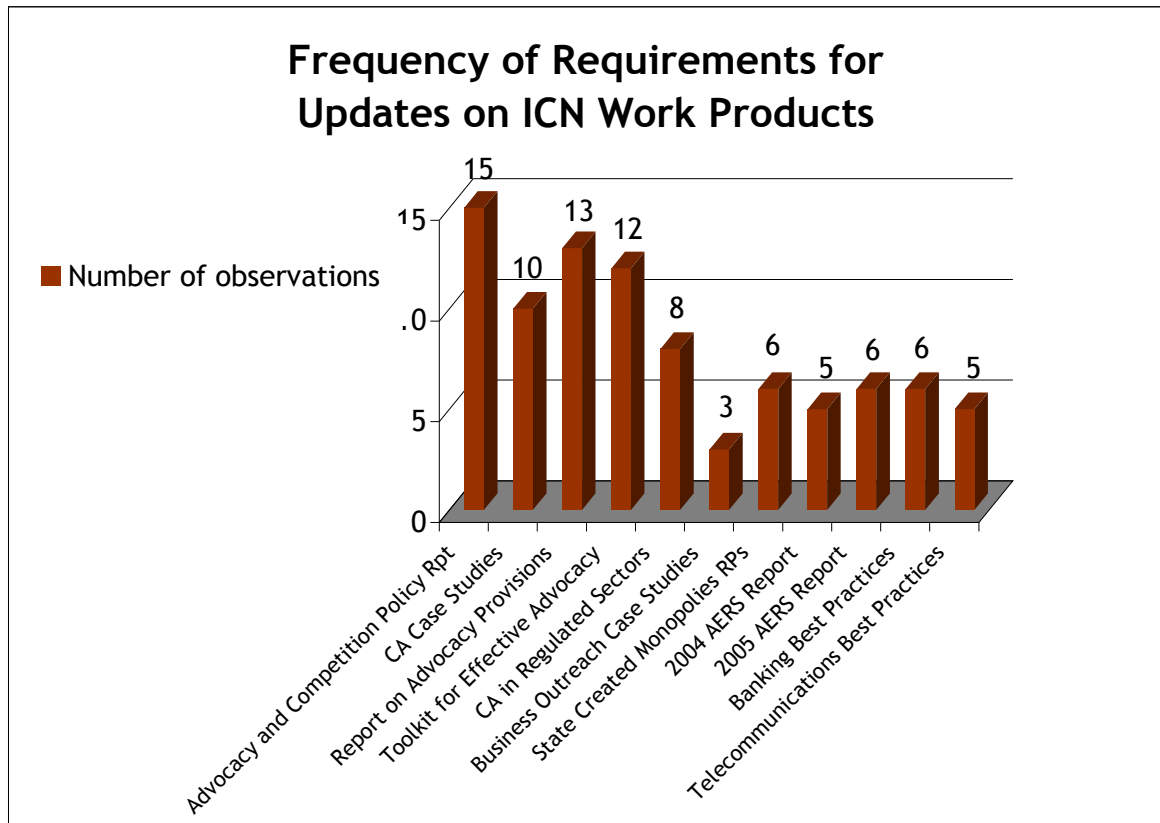


Graph 2 is based on the responses to section 5 of the questionnaire.

³²⁸ Antitrust Enforcement in Regulated Sectors.

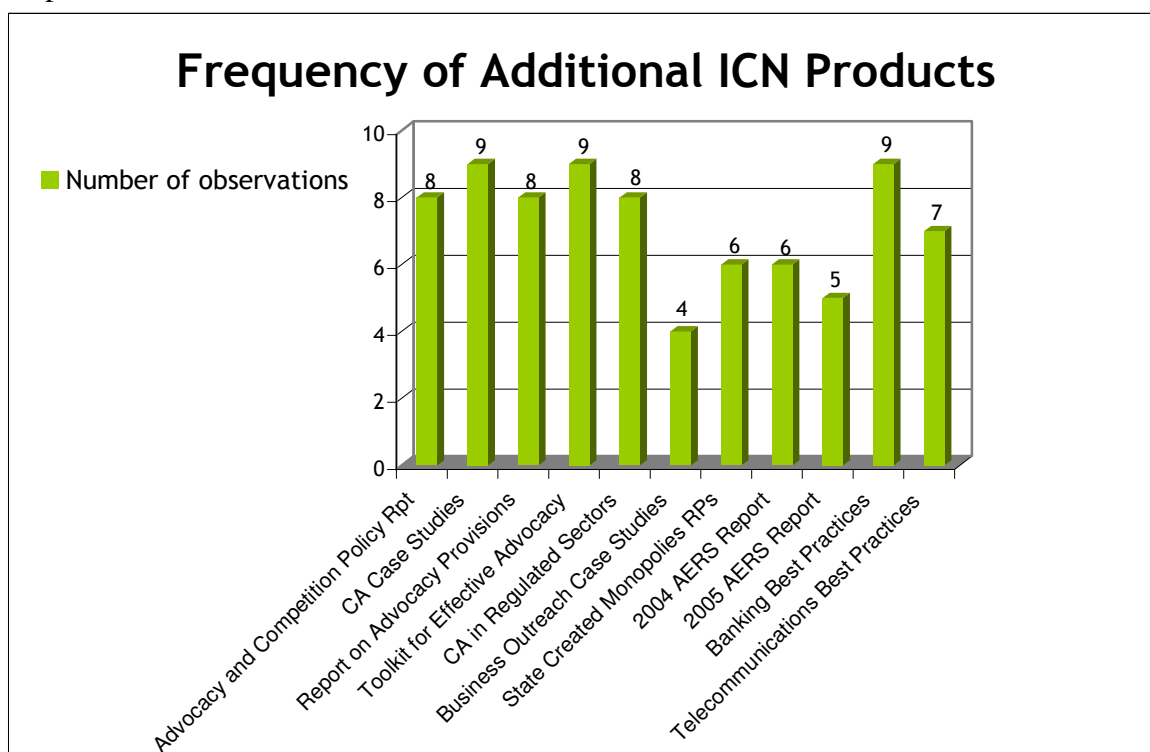
Graphs 3 and 4 show the respondents' interest for updating and developing additional ICN work products.

Graph 3



Graph 3 is based on the responses to section 5 of the questionnaire.

Graph 4



Graph 4 is based on the responses to section 5 of the questionnaire.

The most common ICN work products used by respondents are the: Advocacy and Competition Policy Report; Report on Advocacy Provisions; and Toolkit for Effective Advocacy. These products are the ones for which updates are suggested. However, when turning to Graph 4, the suggestions are related to the: Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession; Toolkit for Effective Advocacy; and An Increasing Role for Competition in the Regulation of Banks, Best Practices.

The recommendation will be to give special attention to the following reports while selecting the teleseminar topics and preparing presentations: (1) Advocacy and Competition Policy Report; (2) Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession; (3) Report on Advocacy Provisions; (4) Toolkit for Effective Advocacy; and (5) An Increasing Role for Competition in the Regulation of Banks. As mentioned above, we recommend the teleseminar presenters to refer to these work products in order to deepen the knowledge of this instrument and develop a better grasp of its contents.

Regarding the **type of work required by the ICN to assist competition authority in advocating an enhanced role for competition, the questionnaire responses** revealed many different suggestions.:

Nine agencies (Brazil SEAE, Croatia, Germany, Honduras, India, Mexico, Spain, U.K. OFT, and U.S. DOJ) responded that ICN work that would allow members to share information and experiences in various forms would be useful:

- Brazil's SEAE responded that "SEAE believes that the re-establishment of the competition advocacy group of the ICN will facilitate the exchange of information and experiences between jurisdictions."
- The Croatian competition authority responded that "[t]he exchange of experience and new ideas between competition authorities (especially between the authorities of similar size) on best practices and developments in competition policy through ICN instruments (teleconferences and reports of the working groups, workshops etc.) is very valuable in dealing with competition advocacy."
- The German Bundeskartellamt responded that "[t]he ICN's work assists the Bundeskartellamt's CA activities. The experience of other competition authorities provides very useful impulses and is taken into consideration in the planning and implementation of the Bundeskartellamt's CA activities."
- The Honduras competition authority responded that "support in learning lessons that other ICN members have acquired with competition policy experience" would be helpful.
- The Indian competition authority noted that "[s]uccess stories in other jurisdictions are very useful."
- The competition authority of Mexico responded, "At present, the CFC works with the ICN within the Vice-Chair for International Coordination in order to approach international organizations that may provide support for strengthening capacity for enforcement and advocacy efforts in competition authorities. The Competition Advocacy WG can be of help by sharing the experiences of other agencies in developing advocacy programs, and by making ICN experts available for the exchange of experiences and best practices on specific competition topics."
- U.K. OFT responded that "case studies from different countries where government has intervened in markets and there have been positive or negative effects" might be helpful.
- U.S. DOJ responded that "[t]he series of teleconferences on needs, approaches, and practical techniques for engaging in competition advocacy appears to be a very promising tool to promote an exchange of ideas among ICN members" and that "[a]dditional experience-sharing calls among ICN members on advocacy issues would be useful."
- Spain's competition authority responded that "[e]ventually, we would welcome a website where the competition authorities could share their advocacy experiences with one another including brief reports and links to other relevant public reports and documentation."

Three agencies (competition authority of Slovak Republic, U.K. OFT, and competition authority of Zambia) suggested further ICN work on ways to assess the effectiveness of advocacy activity. The competition authority of the Slovak Republic responded that it "would welcome workshops on the issue of assessment and evaluation of techniques applied in advocacy." U.K. OFT suggested that "[w]ork to assess the effectiveness of different advocacy tools," as well as "evaluation of the impacts of advocacy work" might be helpful. Similarly, the competition authority of Zambia suggested that ICN could "assist the Commission in developing and using the mechanisms for measuring advocacy efforts."

Two agencies (these from Hungary and Spain) suggested updating the 2002 ICN report on "Advocacy and Competition Policy." The competition authority of Spain also suggested that ICN could update the 2003 Advocacy Provisions report.

The Japan Fair Trade Commission responded, "The JFTC believes that the report, recommendation or any other document issued by the ICN where many competition authorities in the world participate would be helpful to us to perform competition advocacy in Japan,

because those are the views worldwide supported in respect of the method and role of competition authority in competition advocacy.”

The Korea Fair Trade Commission responded, “Particularly in a time of financial crisis that are facing us today, ICN’s research on the direction of competition policy and CA efforts in economic downturn would come very useful.”

The Norwegian competition authority of Norway responded, “It will always be of importance to get our views/decisions supported by the International Competition Network.... Moreover, a continued fight for competition law convergence is important. This will ease the individual CA efforts, as well as enable joint CA efforts in jurisdictions where convergence is already achieved.”

The Peru’s INDECOPI responded, “We would like the ICN to distribute regularly information or documents on issues of competition. We also would like the Peruvian competition agency to participate more in the seminars and forums organized by the ICN. Additionally, we would like to have the continued support of experts.”

The competition authority of Romania suggested further ICN work on competition advocacy in the financial services sector.

The competition authority of Russia suggested developing ICN work on competition advocacy in the following directions: (1) “[a]dvocating competition principles with judges and legal community,” (2) “[c]onsumer education and raising awareness of consumer rights for receiving goods and services on a competitive basis, and (3) “[a]dvocating competition principles in foreign trade.” FAS noted that it generally would be “interested mainly in essential parts of the arguments presented for the purposes of advocating competition within different categories of stakeholders than in formal, procedural, or technical matters. This is because the procedures of advocating competition with different government and non-government bodies are quite well established (meetings, consultations, exercising of formal powers etc.) while presenting pro-competitive arguments to different types of stakeholders seems to be a more challenging task.”

The competition authority of Tanzania suggested further ICN work in “capacity for making competition based analysis of government sectoral policies especially in agriculture, transport and distribution services.”

The competition authority of Turkey suggested that ICN could “develop recommended guidelines on advocacy to assist competition agencies.”

Annexes

Annex 1. Questionnaire

Competition Advocacy WG

Review and Update Project

QUESTIONNAIRE

The *purpose* of this Questionnaire is to reveal and assess the ICN Jurisdictions' requirements in improving their skills and implementing best practices in competition advocacy (CA). Based on the results of this assessment, the CA Review and Update Project will pursue its goal of providing ICN Steering Group (SG) with recommendations on updating the existent ICN work products directly or indirectly addressing the CA issue and/or suggest possible new projects in this area.

Pursuant to this goal, the Project is using the CA *definition* as provided in Advocacy and Competition Policy Report of 2002:

“Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for 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.”

For purposes of this project, the Questionnaire focuses on CA activities in *institutional* and *sectoral* areas that are closely related with each other and enforcement practices. The institutional area provides for targeting CA efforts at specific institutions, both public and private, and/or social categories, as well as at organized special interest groups (e.g. consumer associations, small business associations or pressure groups etc.) that may either facilitate or hinder competition, depending on character of a particular group. The sectoral area is characterized by CA focused on specific sectors where competition law enforcement is limited or not possible due to market failures and/or government policies.

This questionnaire is intended to assess the ICN jurisdictions' requirements in improving their activities in both institutional and sectoral areas of CA and the questions below are grouped accordingly.

Institutional

1. The Competition Authority

- 1.1. What type of advocacy efforts is your competition authority engaged in?
- 1.2. Are the advocacy efforts of your competition authority supervised, or otherwise subject to modification or review, by another authority or the courts? Please explain.
- 1.3. Does the degree of autonomy of your competition authority contribute to or detract from its advocacy activities? Why?
- 1.4. What is the legal background/authorization for competition advocacy in your jurisdiction?
- 1.5. Has the political environment restricted your competition authority's advocacy efforts? (Reversal of decisions, firing of competition officials of authority, etc.).
- 1.6. Please generally describe any other challenges or difficulties your agency has faced with regard to its CA efforts.
- 1.7. Do you have access to formal powers when engaging in advocacy efforts (including obtaining necessary information)? If so, what methods are used? Are formal powers used in every situation? If not, in what circumstances are they used?
- 1.8. How do you measure the success of your agency's advocacy efforts and what time period is used to do so? (0-3 years, 3-5 years, 5 -10 years?)
- 1.9. What resources or percentage of your budget does your agency allocate for competition advocacy?
- 1.10. Do you have any suggestions regarding the type of work required by the ICN to assist your competition authority in advocating an enhanced role for competition?

2. Government and non-government institutions

2.1. Is your agency or has your agency engaged in advocacy efforts with government and non-government institutions (Y/N)?

2.2. If the answer to 2.1. is "yes", please indicate with what type of institutions? (please check)

- executive government bodies other than the antitrust authority (federal and local),
- legislative bodies,
- judicial bodies,
- special interest groups
- the business community,
- the mass media and journalist community,

- non-commercial non-government organizations, including consumer associations,
- general public,
- other (please specify)

With which agencies, regulators or institutions mentioned above is your agency currently focused on developing or improving its competition advocacy efforts? Please describe.

2.3. What are the means (if any) of promoting competition policy within these institutions?

2.3.1. Are recipients (institutions mentioned in Question 2.2) required by law to consider or comply with your agency's input, including its recommendations and opinions made at the early stages of legislative/regulative reform?

2.3.2. Is your agency engaged in consultations, meetings, workshops? If yes, please explain.

2.3.3. Has your agency published documents/guidelines? If yes, please explain.

2.3.4. Are there other examples that have not been mentioned?

2.3.5. How does your agency decide what activities and tools to use in competition advocacy?

2.3.6. Have your advocacy activities and tools/mechanisms changed over time? If so, how and why?

2.4. Based on results, which means listed above would you recommend to other jurisdictions? Why?

2.5. What policies pursued by your agency are or/and can be promoted/implemented by means of competition advocacy (e.g. cartel leniency programmes, prophylaxis of other unilateral and concerted abuses etc.)? Does your agency have experience in pursuing such policies by means of competition advocacy? What type of other ICN jurisdictions' experience can be useful for your agency for pursuing its policies by means of competition advocacy?

2.6. Please provide examples of your agency CA efforts and their results.

2.7. What are the major difficulties limiting your agency's ability to promote competition policy within institutions mentioned in Question 2.2?

2.8. Is consumer education part of your competition advocacy portfolio? If yes, are there any particular aspects of consumer education that your agency is focused on developing or improving now? If so, please describe.

2.9. Are there institutions in which you found competition advocacy to be particularly important or effective? If so, please describe.

2.10. Would your jurisdiction benefit from additional ICN work related to competition advocacy with government regulators and agencies, legislative and judicial bodies, business community, media, private bar, general public and consumer associations, special interest groups and/or other institutions? If so, what type of work would be useful?

3. Private action

3.1. Are private rights of action based on your competition law legally possible in your jurisdiction (Y/N)?

3.2. If the answer for the Question 3.1 is “no” does your agency advocate (or plan to advocate) the introduction of a law enabling private antitrust action in your country’s Parliament (Y/N)? Why?

3.3. If the answer for Question 3.1 is “yes” but implementation of private rights of action is difficult due to various impediments: does your agency advocate (or plan to advocate) removal of these impediments (Y/N)? If so, in what institutions?

3.4. If the answer for Question 3.1 is “yes”: does your agency advocate its policies, approaches and methodologies with parties exercising private rights of action, e.g. plaintiffs, lawyers, advisors etc. (Y/N)? If so, how?

3.5. Would your jurisdiction benefit from additional ICN work related to competition advocacy in introduction and/or exercising private rights of action based on competition law (Y/N)? If so, what type of work would be useful?

➤ PLEASE INDICATE ANY OTHER INSTITUTIONAL AREAS OF COMPETITION ADVOCACY THAT YOU CONSIDER APPROPRIATE

Sectoral

4.1. Please indicate in which sectors your competition authority has been recently engaged in competition advocacy?

4.2. What are the sectors of your national economy/sector specific situations where your agency’s CA efforts are most actively engaged or required? (please check)

- natural monopolies and regulated utilities
- telecommunications
- energy
- transport

- professional services
- financial services
- postal services
- state created monopolies
- privatization and regulatory reform
- government and private standard setting
- intellectual property rights protection and anticompetitive use of IPRs
- other (please specify)

4.3. Please describe the scope and goals of the CA efforts that have been/are carried out in each of the sectors mentioned in Question 4.2?

4.4. What are the means (if any) of promoting competition policy within the sectors mentioned in Question 4.2? (please check)

- consultations
- documents/guidelines
- market studies
- periodical meetings
- publications
- participation in hearings
- joint workshops and seminars on specific antitrust topics
- other (please specify)

4.5. Please provide examples of your agency efforts and their results.

4.6. Based on results, which means listed above would you recommend to other jurisdictions? Why?

4.7 Are there sectors in which you found competition advocacy to be particularly effective? If so, please describe.

4.8 Would your jurisdiction benefit from additional ICN work in sector-related competition advocacy? If so, what type of work would be useful?

- PLEASE INDICATE ANY OTHER SECTORAL AREAS OF COMPETITION ADVOCACY THAT YOU CONSIDER APPROPRIATE

Assessment of existent ICN CA work products

5. Please indicate your agency's views on the following ICN work products by using the table below:

ICN work product	Please check as many as applicable:			
	Has your agency used this work product?	Would updating this work product be useful?	Would additional ICN work in this area be useful?	Not familiar with the product
CA Working Group:				
<u>Advocacy and Competition Policy.</u> This 2002 Report sets out a conceptual framework for competition advocacy and analyzes the results of a questionnaire to members about their advocacy activities. This report is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_1st_naples_2002/advocacyfinal.pdf				
<u>Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession.</u> This 2003 report includes submissions from eleven members describing advocacy efforts in four regulated sectors. This report is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_2nd_merida_2003/SG3_Report_1.pdf				
<u>Report on Advocacy Provisions.</u> This 2003 report contains a collection of advocacy provisions from the laws and policies of 30 member jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_2nd_merida_2003/ModelAdvocacyProvisions.pdf				

<p><u>Toolkit for Effective Advocacy.</u> This online toolkit identifies practical techniques on how to promote competition and enhance competition advocacy capabilities. These techniques include distributing publications, using strategic communications, creating education and compliance programs, educating decision makers, including government bodies, business and consumer groups, and individual citizens, attracting and dealing effectively with the media, and extending the reach of a web site. Available at: http://www.internationalcompetitionnetwork.org/media/archive0611/toolkit_intro.html</p>				
<p>CPI Working Group:</p>				
<p><u>Competition Advocacy in Regulated Sectors: Examples of Success.</u> These two related reports published in 2004 and 2005 examine competition advocacy efforts in regulated sectors in member jurisdictions (with an emphasis on developing and transition economies) and provide a compendium of case studies and accompanying analyses, highlighting successful experiences and strategies. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/capacitybuild_sg4_seoul.pdf and http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Competition_Advocacy_Review.pdf</p>				
<p><u>Business Outreach by ICN members: Challenges and Case Studies.</u> This 2006 report presents a range of activities undertaken by ICN member agencies to reach out to and engage businesses and business representative organizations and explore some of the challenges they faced in delivering these activities. Available at http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/business_report.pdf</p>				
<p>Unilateral Conduct Working Group:</p>				
<p><u>State Created Monopolies Recommended Practices.</u> The Recommended Practices are available at: http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_2.pdf.</p>				

<p>Antitrust Enforcement in Regulated Sectors (AERS) Working Group:</p>				
<p>2004 AERS Report. This report summarizes the 2003-2004 work of AERS. The first chapter addresses the limits and constraints facing antitrust authorities intervening in regulated sectors. The second chapter analyses the enforcement experience in regulated sectors and the third chapter studies the division of labor between regulators and antitrust authorities in different jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg1_seoul.pdf. (chapter 1); http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg2_seoul.pdf (chapter 2); http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg3_seoul.pdf (chapter 3).</p>				
<p>2005 AERS Report. This report discusses the interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Interrelations_Between_Antitrust_and_Regulation.pdf</p>				
<p><u>An Increasing Role for Competition in the Regulation of Banks, Best Practices.</u> These best practices are aimed at achieving a more competitive and more efficient banking industry through more extensive liberalization, appropriately designed regulatory institutions, a rigorous application of antitrust rules and competition advocacy. Available at http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/BANKS_Bonn_best_practice_suggestions.pdf</p>				
<p>Telecommunications Working Group Work Product:</p>				
<p><u>The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices.</u> The suggested best practices are a set of valuable lessons learned with respect to promoting and maintaining competition in the telecommunications sector. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/SuggestedBestPractices.pdf</p>				

Annex 2. List of ICN CA related work-products and data on their use by ICN jurisdictions

ICN work product	Please check as many as applicable:			
	Has your agency used this work product?	Would updating this work product be useful?	Would additional ICN work in this area be useful?	Not familiar with the product
CA Working Group:				
<u>Advocacy and Competition Policy.</u> This 2002 Report sets out a conceptual framework for competition advocacy and analyzes the results of a questionnaire to members about their advocacy activities. This report is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_1st_naples_2002/advocacyfinal.pdf	20 ³²⁹	17 ³³⁰	11 ³³¹	4 ³³²
<u>Report on Advocacy Case Studies: Telecommunications, Energy, Airlines, and the Legal Profession.</u> This 2003 report includes submissions from eleven members describing advocacy efforts in four regulated sectors. This report is available at: http://www.internationalcompetitionnetwork.org/media/library/conference_2nd_merida_2003/SG3_Report_1.pdf	13 ³³³	13 ³³⁴	10 ³³⁵	3 ³³⁶
<u>Report on Advocacy Provisions.</u> This 2003 report contains a collection of advocacy provisions from the laws and policies of 30	16 ³³⁷	13 ³³⁸	9 ³³⁹	4 ³⁴⁰

³²⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Germany, India, Jamaica, Korea, Lithuania, Mexico, Poland, Peru, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.S. DOJ, U.S. FTC (particularly definition of advocacy), Zambia

³³⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Germany, Honduras, India, Jamaica, Korea, Lithuania, Poland, Peru, Russia, Spain, Switzerland, Tanzania, Turkey, U.S. DOJ, and Zambia.

³³¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Germany, India, Jamaica, Poland, Peru, Russia, Spain, Tanzania, and Zambia.

³³² Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, Japan, Germany

³³³ Member agency responses from the following jurisdictions: Canada, India, Japan, Korea, Lithuania, Poland, Peru, Romania, Russia, Switzerland, Turkey, U.S. DOJ, and Zambia

³³⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Honduras, India, Lithuania, Mexico, Poland, Romania, Russia, Switzerland, Turkey, U.S. DOJ (additionally provided a comment that “[f]acilitating the exchange of recent competition advocacy case studies, strategies, and efforts may be a useful endeavor.”), and Zambia

³³⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, India, Korea, Lithuania, Peru, Poland, Romania, Russia, and Zambia.

³³⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, Peru, and Spain.

member jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_2nd_merida_2003/ModelAdvocacyProvisions.pdf				
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³³⁷ Member agency responses from the following jurisdictions: India, Jamaica, Korea, Lithuania, Mexico, Peru, Poland, Romania, Russia, Slovakia, Spain, Tanzania, Turkey, U.S. DOJ, U.S. FTC, and Zambia

³³⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), India, Jamaica, Korea, Lithuania, Poland, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, and Turkey.

³³⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, India, Jamaica, Romania, Russia, Spain, Tanzania, and Zambia.

³⁴⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Japan, Hungary, and Peru.

<p><u>Toolkit for Effective Advocacy.</u> This online toolkit identifies practical techniques on how to promote competition and enhance competition advocacy capabilities. These techniques include distributing publications, using strategic communications, creating education and compliance programs, educating decision makers, including government bodies, business and consumer groups, and individual citizens, attracting and dealing effectively with the media, and extending the reach of a web site. Available at: http://www.internationalcompetitionnetwork.org/media/archive0611/toolkit_intro.html</p>	18 ³⁴¹	15 ³⁴²	11 ³⁴³	5 ³⁴⁴
<p>CPI Working Group:</p>				
<p><u>Competition Advocacy in Regulated Sectors: Examples of Success.</u> These two related reports published in 2004 and 2005 examine competition advocacy efforts in regulated sectors in member jurisdictions (with an emphasis on developing and transition economies) and provide a compendium of case studies and accompanying analyses, highlighting successful experiences and strategies. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/capacitybuild_sg4_seoul.pdf and http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Competition_Advocacy_Review.pdf</p>	8 ³⁴⁵	11 ³⁴⁶	8 ³⁴⁷	5 ³⁴⁸ ;
<p><u>Business Outreach by ICN members: Challenges and Case Studies.</u> This 2006 report presents a range of activities undertaken by ICN member agencies to reach out to and engage</p>	10 ³⁴⁹	6 ³⁵⁰	5 ³⁵¹	7 ³⁵²

³⁴¹ Member agency responses from the following jurisdictions: Canada, Germany, Honduras, India, Jamaica, Japan, Korea, Lithuania, Romania, Russia, Slovakia, Spain, Switzerland, Tanzania, Turkey, U.S. DOJ, U.S. FTC, and Zambia.

³⁴² Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Germany, India, Jamaica, Lithuania, Mexico, Romania, Russia, Spain, Tanzania, Turkey, U.S. DOJ (commented that “[u]pdating some of these materials and links to supporting materials would be useful ».), U.S. FTC, and Zambia

³⁴³ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Germany, India, Jamaica, Romania, Russia, Spain, Tanzania, U.S. FTC, and Zambia,

³⁴⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Germany, Hungary, Poland, and Peru.

³⁴⁵ Member agency responses from the following jurisdictions: Canada, India, Romania, Russia, Switzerland, Turkey, U.S. DOJ, U.S. FTC, and Zambia

³⁴⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, India, Lithuania, Mexico, Poland, Russia, Tanzania, Turkey, U.S. DOJ (commented that “[f]acilitating the exchange of recent competition advocacy case studies, strategies, and efforts may be a useful endeavor.”), and Zambia

³⁴⁷ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Honduras, India, Korea, Poland, Russia, and Zambia

³⁴⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, Japan, Peru, and Spain.

businesses and business representative organizations and explore some of the challenges they faced in delivering these activities. Available at http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/business_report.pdf				
Unilateral Conduct Working Group:				
<u>State Created Monopolies Recommended Practices.</u> The Recommended Practices are available at: http://www.internationalcompetitionnetwork.org/media/library/unilateral_conduct/Unilateral_WG_2.pdf .	12 ³⁵³	8 ³⁵⁴	6 ³⁵⁵	4 ³⁵⁶

³⁴⁹ Member agency responses from the following jurisdictions: Canada, Korea, Lithuania, Romania, Russia, Slovakia, Spain, U.S. DOJ, U.S. FTC (emphasized that this work product is especially useful “...in technical assistance and to develop consumer outreach toolkit video”), and Zambia.

³⁵⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Mexico, Russia, Slovakia, Spain and U.S. FTC advised that “[a]dditional work is probably not necessary, but it may be interesting to remind members of this work.”

³⁵¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Russia, Spain, and Zambia

³⁵² Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Hungary, Japan, Peru, Poland, and Switzerland.

³⁵³ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Hungary, India, Korea, Romania, Russia, Slovakia, Switzerland, Turkey, U.S. DOJ, and Zambia

³⁵⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, India, Lithuania, Mexico, Poland, Russia, and Turkey.

³⁵⁵ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, India, Poland, Russia, and Zambia.

³⁵⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Japan, Peru, and Spain.

Antitrust Enforcement in Regulated Sectors (AERS) Working Group:				
2004 AERS Report. This report summarizes the 2003-2004 work of AERS. The first chapter addresses the limits and constraints facing antitrust authorities intervening in regulated sectors. The second chapter analyses the enforcement experience in regulated sectors and the third chapter studies the division of labor between regulators and antitrust authorities in different jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg1_seoul.pdf . (chapter 1); http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg2_seoul.pdf (chapter 2); http://www.internationalcompetitionnetwork.org/media/library/conference_3rd_seoul_2004/aers_sg3_seoul.pdf (chapter 3).	7 ³⁵⁷	6 ³⁵⁸	6 ³⁵⁹	7 ³⁶⁰
2005 AERS Report. This report discusses the interrelation between antitrust and regulatory authorities, based on information supplied by a number of ICN member jurisdictions. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/Interrelations_Between_Antitrust_and_Regulation.pdf	7 ³⁶¹	7 ³⁶²	5 ³⁶³ ;	7 ³⁶⁴
An Increasing Role for Competition in the Regulation of Banks, Best Practices. These best practices are aimed at achieving a more competitive and more efficient banking industry through more extensive liberalization, appropriately designed regulatory institutions, a rigorous application of antitrust rules and	12 ³⁶⁵	9 ³⁶⁶	10 ³⁶⁷	6 ³⁶⁸

³⁵⁷ Member agency responses from the following jurisdictions: India, Korea, Lithuania, Switzerland, Turkey, U.S. DOJ, and Zambia

³⁵⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, India, Lithuania, Mexico, and Peru.

³⁵⁹ Member agency responses from the following jurisdictions: Brazil (SEAE), India, Russia, Tanzania, U.S. DOJ (commented that “..experience-sharing calls among ICN members on competition advocacy issues in particular sectors might be useful.”), and Zambia,

³⁶⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Hungary, Japan, Peru, Poland, Romania, and Spain.

³⁶¹ Member agency responses from the following jurisdictions: India, Korea, Lithuania, Romania, Switzerland, U.S. DOJ, and Zambia

³⁶² Member agency responses from the following jurisdictions: Brazil (SEAE), India, Korea, Lithuania, Mexico, Peru, and Tanzania.

³⁶³ Member agency responses from the following jurisdictions: Brazil (SEAE), Lithuania, Russia, Tanzania, and Zambia

³⁶⁴ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Hungary, Japan, Peru, Poland, and Spain.

competition advocacy. Available at http://www.internationalcompetitionnetwork.org/media/library/conference_4th_bonn_2005/BANKS_Bonn_best_practice_suggestions.pdf				
Telecommunications Working Group Work Product:				
<u>The Role for Competition in the Telecommunications Services Sector: Suggested Best Practices.</u> The suggested best practices are a set of valuable lessons learned with respect to promoting and maintaining competition in the telecommunications sector. Available at: http://www.internationalcompetitionnetwork.org/media/library/conference_5th_capetown_2006/SuggestedBestPractices.pdf	11 ³⁶⁹	7 ³⁷⁰	7 ³⁷¹	5 ³⁷²

³⁶⁵ Member agency responses from the following jurisdictions: Canada, Hungary, India, Korea, Lithuania, Poland, Romania, Russia, Slovakia, Turkey, UD DOJ, and Zambia

³⁶⁶ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Hungary, India, Lithuania, Mexico, Poland, Romania, and Russia.

³⁶⁷ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Hungary, India, Lithuania, Peru, Poland, Romania, Russia, and Zambia.

³⁶⁸ Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Japan, Peru, Spain, and Switzerland.

³⁶⁹ Member agency responses from the following jurisdictions: Canada, Hungary, Jamaica, Korea, Lithuania, Romania, Russia, Slovakia, Turkey, U.S. DOJ, and Zambia

³⁷⁰ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Hungary, Jamaica, Mexico, Poland, and Tanzania.

³⁷¹ Member agency responses from the following jurisdictions: Brazil (SEAE), Canada, Hungary, Jamaica, Korea, Poland, and Zambia

³⁷² Member agency responses from the following jurisdictions: Brazil (SEAE), Honduras, Japan, Peru, and Spain.

Annex 3. Recommendations on Improving Competition Advocacy Toolkit

The suggested recommendations on improving CA Toolkit section of the CA part of the ICN web-site are mainly intended to increase the ongoing use of the CA Toolkit by the ICN member jurisdictions. The recommendations seek to facilitate an ongoing exchange of opinions between CA experts worldwide and keep them updated on the most recent developments, problems and ways of solving them. The CA Toolkit will be available for ICN jurisdictions and other stakeholders, as well as to scientific community, regulators and general public in online mode. The growing awareness of the importance of CA and most recent developments in it can be by itself viewed as an international contribution to the CA efforts and facilitating development of competition culture worldwide. The resulting growth of the efficiency of the web-site will be measured by the number of visits, postings made by the authorized CA experts.

Recommendations

1. Post the records of CA presentations at teleseminars on the CA Toolkit web-site. The series of teleseminars presented by ICN member agencies within CA Review and Update Project invoked a substantial interest of their participants. Many of these asked for the record of the seminars presentations. . To meet these requests we suggest to put the records of these presentations on the CA Toolkit web-site. Note: we recommend to publish the records of the presentations only and not question and answers sessions succeeding them.
2. Include “Postings” section in the web-site. The section will be used by the authorized CA experts for posting their articles and other materials that they may like to bring to attention of their colleagues worldwide, receive their opinions, advice and comments. It is desirable that the ICN decides to appoint a person responsible for administering the “Postings” section.
3. Create/update links to other CA related web-pages of ICN site and work products.