

**[Slide 1 - Competition Assessment Sub-module]**

**[Slide 2 - Michele Pacillo and Molly Askin]**

MICHELE PACILLO: Hello, welcome to this ICN training module on competition assessment. My name is Michele Pacillo from the Italian Competition Authority, where I work in the International Office.

MOLLY ASKIN: And my name is Molly Askin. I work at the Federal Trade Commission in the United States in the Office of International Affairs.

MICHELE PACILLO: This is the first of three short modules each lasting ten minutes on competition assessment.

**[Slide 3 - Why a module on Competition Assessment]**

MOLLY ASKIN: Why a module on competition assessment? Because it is an important part of the competition advocacy function.

**[Slide 4 - Competition Advocacy Module]**

MOLLY ASKIN: Let me remind the audience that there is a dedicated ICN module which discusses competition advocacy more generally titled, Competition Advocacy.

**[Slide 5 - Definition]**

MICHELE PACILLO: Perhaps a good place to begin with this module is by defining precisely what we mean by competition assessment.

**[Slide 6 - Competition assessment work product]**

MICHELE PACILLO: According to the ICN recommended practices for competition assessment, which are available in English, French, Spanish, and Arabic languages on the ICN website --

**[Slide 7 - What is Competition Assessment]**

MICHELE PACILLO: -- competition assessment is a review that identifies proposed or existing policies that may unduly restrict competition and evaluates the policies' likely impact on competition --

**[Slide 8 - First Task]**

MICHELE PACILLO: -- indeed, a significant part of advocacy activity. So many competition authorities is dedicated to addressing public restraints on competition.

MOLLY ASKIN: Let me jump in here to stress that these competition assessments or reviews can take many forms and have many variations. It may range from recommendations supported by general economic theory to more resource-intensive competition impact assessments, which aim at quantifying the costs of the policy through empirical analysis. A competition assessment may also be based on existing studies or an enforcement experience of the agencies themselves. Regardless of its form, a competition assessment can include advocacies, as well as provide a foundation for or be an input into later advocacies.

MICHELE PACILLO: Indeed, let's not forget that through competition assessment competition agencies should accomplish at least two tasks.

**[Slide 9 - Competition Assessment - Tasks]**

MICHELE PACILLO: First, urging policymakers to consider the likely impact on competition of the proposed policy when deciding whether this policy is appropriate and, second, identifying whether justifications exist for any restrictions on competition. There is an additional task demanded to competition assessment and that is, where possible, to include suggestions for alternative approaches to achieve the policy goals while reducing at the same

time restrictions on competition. In other words, competition agencies should be more proactive or could be more proactive and suggest to policymakers whether less restrictive alternatives would achieve the intended public policy goal. However, being proactive means more resources involved and this is not always possible.

**[Slide 10 - Competition Minded]**

MICHELE PACILLO: But let's start from the first task, how to urge policymakers to be competition minded.

MOLLY ASKIN: That's not easy, Michele. Policymakers may not regularly consider or assess the impact of their proposed policies on market competition for three reasons. First, they may have to balance a wide variety of public policy considerations, and as such, governments and legislators may consider competition as a secondary concern or one among many.

Second, even if they make an attempt to consider competition issues, they may only do so at a late stage of policymaking as competition remains a secondary concern. Third, they may not have sufficient expertise to make a thorough competition assessment.

MICHELE PACILLO: For instance, this can be the case of public procurement sector. Despite the economic relevance of this sector, it accounts a good portion of the GDP. In many ICN jurisdictions, procurement officials have often no or little expertise in recognize the potential signs of abnormal behavior internal procedures and, more importantly, in designing tender procedures in order to minimize the risk of collusive behavior. The legitimate objective of procurement officials is to ensure the continuity of the procurement and terminate retainer procedures as quick as possible. For these reasons, many competition authorities devote

significant resources in capacity-building activities towards procurement officials.

MOLLY ASKIN: Thanks, Michele, for that excellent example. So what does it take to accomplish the first task, urging policymakers to be competition minded? A mix of factors, including some institutional circumstances, may prove very conducive to a competition-minded environment.

**[Slide 11 - Institutional arrangements]**

MOLLY ASKIN: In some jurisdictions, the legal framework itself already provides for a clear process for drafting and adopting new policies with appropriate periods for review and comment by interested parties. This process may also include written procedures for considering a regulatory impact assessment of proposed policies. For instance, in jurisdictions such as Colombia, Finland, France, the Gambia, Greece, Korea, Mexico, the Netherlands, Portugal, and Spain, there is a specific legal basis for the competition agency to conduct ex ante competition assessment. And in some of them, for example, Colombia, the Gambia, Korea, Portugal, and Spain, the ex ante competition assessment is compulsory.

**[Slide 12 - Process for Impact Assessment]**

MICHELE PACILLO: In other cases, there might not be a clear process or specific regulatory impact assessment exercise required by the competition agency or, where applicable, another government body may have the appropriate legal authority to conduct competition assessment upon referral or on its own initiative, which could include a formal role for the competition agency to offer input early in the policy drafting process. For example, in Canada, the government body may choose to consult the Competition Bureau, but it is not obliged to do so. Similarly, in Israel, the Competition Authority is consulted on a case-by-case

basis at the discretion of the responsible body.

In several other jurisdictions, such as Bulgaria, Canada, Finland, France, the Gambia, Israel, Italy, South Africa, Sweden, United Kingdom, United States, and Zambia, the mandate for competition assessment of competition authorities derives from a general legal basis for agencies' advocacy activity.

**[Slide 13 - Institutional arrangements (continued)]**

MOLLY ASKIN: In absence of formal involvement, competition agencies may seek other avenues to express their views to members of government, the legislature or other bodies, for instance, through hearings, studies, or offering informal opinions. This is possible in several jurisdictions mentioned by Michele: Canada, Colombia, the EU, Finland, France, Italy, Mexico, Russia, Spain, Switzerland, and in the United States. In some other jurisdictions, you may find explicit commitment by the relevant government bodies to consider competition assessments and any accompanying recommendations from competition authorities.

MICHELE PACILLO: An example comes from my country, Italy. According to a law enacted in 2009, every year, the government is asked to present to the Parliament a liberalization bill taking into account the opinions and the recommendations delivered by the Italian competition authorities in the previous years. Therefore, since 2010, the Italian Competition Authority has submitted heavier to the government a report containing all its advocacy proposals. In any event, regardless of the institutional arrangements, which may vary from jurisdiction to jurisdiction, what is crucial for the success of advocacy action remains an early involvement of competition agencies in the drafting process.

MOLLY ASKIN: Another important element contributing to building an

environment favorable to competition assessment is transparency.

**[Slide 14 - Transparency as a tool to...]**

MOLLY ASKIN: First, being transparent in how agencies conduct competition assessments can include seeking input from stakeholders along the way and publishing formal final competition assessment recommendations. In addition, publishing any material related to that competition assessment, which could include press releases, articles, speeches, and interviews by agency staff and leadership, can significantly contribute to transparent competition assessment processes. This can be a powerful tool to spur a public debate about how proposed or existing regulations impact competition and consumers and also it can be the basis for engagement in discussions with government officials and decision-makers, including the legislature or in other governmental bodies.

**[Slide 15 - Transparency]**

MICHELE PACILLO: Molly, you are bringing here a very important point. I would go further to say that transparency could also be used as a tool to provide guidance to promote compliance. In other words, competition agency should develop guidance or tools for conducting their own competition assessments or provide support for others to engage in assessments --

**[Slide 16 - Toolkits and Resources]**

MICHELE PACILLO: -- relying on existing tools, such as the ICN and the OECD competition assessment toolkit. Such guidance or tools may help policymakers identify the main issues to address as a part of a competition assessment. They may also serve to encourage policymakers to conduct [indiscernible] assessments of the proposed policies where

relevant.

**[Slide 17 - Drafting guidance for policymakers]**

MOLLY ASKIN: When the competition agency drafts guidance, it should explain the main aspects and steps of competition assessment, when it is desirable to seek an opinion from the competition agency and the general substantive criteria used to conduct the assessment. It may also describe the types of provisions that are likely to restrict competition, how those restrictions can be avoided, and how less restrictive measures could achieve the same legitimate public policy goals.

**[Slide 18 - Thank you]**

MICHELE PACILLO: We will talk about all these aspects in the third submodule.

MOLLY ASKIN: Thank you for joining us for this competition assessment module.

MICHELE PACILLO: Thank you.

**[Slide 19 - Thank you Michele Pacillo Autorita Garante]**