International Competition Network
Competition Policy Implementation Working Group: Sub group 1

Agency Effectiveness Project

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Contributions to this report were received from agencies in the following ICN member countries or agencies:

- *Brazil's Council for Economic Defense (CADE)*
- *Brazil´s Secretariat of Economic Law of the Ministry of Justice (SDE)*
- *Canada's Competition Bureau*
- *Chile's Competition Commission (Fiscalia Nacional Económica –FNE)*
- *Czech Republic's Office for the Protection of Competition*
- *European Community's Directorate General for Competition (DG-COMP)*
- *France´s Competition Council (Conseil de la Concurrence)*
- *France´s Directorate General for Competition, Consumers Affairs and Fraud Control (DGCCRF)*
- *Hungary's Competition Authority (Gazdasági Versenyhivatal)*
- *Italy's Competition Authority (Autorità Garante della Concorrenza e del Mercato)*
- *Japan Fair Trade Commission (JFTC)*
- *Jersey Competition Regulatory Authority (JCRA)*
- *Mexico's Federal Competition Commission (CFC)*
- *Peru's Competition Commission (Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual -INDECOPI)*
- *Russia´s Federal Antimonopoly Service (FAS)*
- *South Africa´s Competition Commission*
- *Spain´s Competition Commission (Comision Nacional de la Competencia - CNC)*
- *Turkish Competition Authority (Rekabet Kurumu)*
- *United Kingdom Office of Fair Trade (OFT)*
- *United States Department of Justice, Antitrust Division (DOJ)*
- *United States Federal Trade Commission (FTC)*

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Introduction

Since its creation, the International Competition Network has developed extensive analysis of competition policy practices around the world and also has provided member jurisdictions with useful recommendations and guidance on important competition issues. However, the effectiveness of competition policies depends not only on the quality of agency enforcement decisions and knowledge of best practice but also on the enforcers' capability to address the growing number of cases and workflow. For competition enforcement agencies with very tight budgets and/or a small number of staff, this can be particularly challenging.

Relatively little emphasis has been placed on the institutions and operational considerations through which competition law and policy are implemented. While institutional and operational questions were identified as important in ICN work products, there has not yet been a systematic examination of how agencies actually address institutional and operational needs and constraints. This report attempts to reconcile that gap, by presenting the experiences of 20 ICN member agencies. Although these are important issues for all ICN member agencies, it has special importance for younger agencies, in which organizational issues may still be in flux. Even more experienced agencies, in which a higher degree of institutional stability may have been achieved, improvements to resource allocation and enforcement capacity can be beneficial.

This report has been prepared pursuant to a work plan that sets out to identify and examine operational and organizational characteristics of competition agencies that may be important for a successful competition policy implementation. The survey was based on conference call or in-person interviews with 18 different jurisdictions and two NGAs that voluntarily offered to participate and contribute to the project. The report is a summary of those interviews and will constitute an input for the discussion panel at the ICN Annual Conference Kyoto.

Methodology

From October 2007 through February 2008, the survey was carried out with twenty competition authorities and two non governmental advisors from seventeen jurisdictions that volunteered to participate. Those twenty respondents include Brazil (CADE, SDE), Canada, Chile (Fiscalia), Czech Republic, DG-COMP, France (Conseil de la Concurence, DGCCRF), Hungary, Japan, Jersey, Mexico, Peru (INDECOPI), Russia, Spain, South Africa, Turkey, UK (OFT), and the US (DOJ and FTC).

The survey was prepared by subgroup members and advisors mainly by means of telephone or in-person interviews. The interviewers prepared a summary description of the interviews that serves as the basis for this report. All interviews followed a common guide, organized around three main topics:

1. Defining Objectives and Priorities: The purpose was to identify how the agency's objectives are chosen and prioritized.
2. Resource allocation: This topic examined human resources and budgets. The term "resource allocation" meant allocation of resources within the competition authority.
3. Decisions' effectiveness: This topic linked the process of organizational decisions to the effectiveness of an agency's actions, based on the premise that there is a direct link between effectiveness, and conscious and planned prioritization.[1]

The jurisdictions that participated in the project represent a wide range of economic conditions: agencies in three "transition economies", seven "developing" and seven "developed" economies responded to the questionnaire. This diversity is reflected in the responses. For example, one respondent had less than ten employees in the agency; another over one thousand employees.

Despite these differences a number of regular patterns and solutions emerged, which are summarized below.

[1] This is the proposed main subject of the second phase of the current project.

The three principal weaknesses of the survey methodology relate to (1) the level of subjectivity of certain responses, (2) the necessary interpretation by the authors of this report, and (3) any sampling biases resulting from the fact that the survey only covers volunteering agencies. The first weakness is not easily rectified, but the Subgroup has tried to address it by consulting other sources of information, such as annual reports. The solution to the second possible weakness identified was to have the same individual interpret all of the responses. The third weakness could be mitigated if additional surveys were conducted. The Subgroup will consider whether this is possible in the next phase of the project.

I . Defining Objectives

1.1 - Objective setting

The data suggest that the agencies' objectives are principally set both by law and by the authority, as indicated in eight[2] out of twenty responses. This suggests that the larger goals are set by law, but the objectives that relate to how the law is implemented is set by the authority. Only three[3] agencies answered that the authority sets the objectives itself, while seven[4] stated that their objectives are set by law. In the case of the European Community and Russia, the objectives are established by the central governing body, based in advice from the agency. As for DG Competition, strategic objectives are defined in line with the European Commission's overall policy objectives. These strategic objectives are translated at operational level into competition specific objectives.

1.2 - Proactiveness

Competition authorities usually promote a competitive environment in three different ways: preventing anticompetitive mergers, bringing enforcement actions against anticompetitive conduct, and engaging in advocacy to promote competition and a competition culture.

[2] Canada, Czech Republic, France (DGCCRF), Hungary, Peru (INDECOPI), UK (OFT), US (DOJ and FTC)
[3] Brazil (SDE), Chile (Fiscalia) and France (Conseil de la Concurrence)
[4] Brazil (CADE), Japan, Jersey, Mexico, South Africa, Spain, Turkey.

Against this background, the majority of respondents identified themselves as either reactive, or a combination of reactive and proactive. The main reason offered for the reactive nature of agency work was limited resources, many of which are devoted to merger review, particularly in agencies from developing and transition economies.

Ten[5] agencies considered themselves more reactive than proactive. Nine[6] answered they are equally reactive and proactive.

In most of the cases, these "reactive" answers reflect the high number of merger reviews submitted to the authorities, which they considered as the principal element that restricts that agency's ability to be proactive. The U.S. FTC, while recognizing that merger review requires a reactive approach, seeks to be proactive with respect to non-merger work by identifying sectors and conduct where its intervention is most likely to make a positive difference.

Brazil (SDE) was the only authority that classified itself as more proactive than reactive.[7] In 2003, Brazil (SDE) shifted towards a more proactive policy due to the prioritization of cartel cases and the introduction of a leniency policy. Such prioritization was combined with the creation of "fast track" procedures for simple merger cases and joint merger analysis by SDE and SEAE (the Secretariat for Economic Monitoring of the Ministry of Finance of Brazil, another body part of the Brazilian Competition Policy System), which freed up resources, allowing for more focus on cartel work.

In this regard, it is worth mentioning the Spanish experience. Spain, which has recently approved the new Spanish Competition Act, intends to become more proactive in the near future. The new law merged the two previous competition authorities, the Servicio de Defensa de la Competencia and the Tribunal de Defensa de la Competencia, into a single

[5] Brazil (CADE), Chile (Fiscalia), Czech Republic, France (Conseil de la Concurrence), Jersey, México, Peru (INDECOPI), South África, Spain, US (DOJ)
[6] Canada, DG-COMP, France (DGCCRF), Hungary, Japan, Russia, Turkey, UK (OFT), US (FTC).
[7] SDE is one of the investigative bodies of the Brazilian Competition Policy System. The Secretariat can start an investigation *ex officio* as well as offer the possibility of signing a leniency program to the involved parties

body, the Comisión Nacional de la Competencia (CNC), and introduced the leniency program, "aiming to improve competition policy effectiveness". Moreover, (i) the CNC has created a whole new Department for Advocacy, devoting more resources to this activity, mainly proactive, compared to the past, (ii) ex-officio investigations have increased dramatically: during the first eight months of 2007, only 13% of the antitrust cases were initiated ex-officio. From September 2007, this percentage increased to 46%, and (iii) more inspections are taking place now compared with the past. All these provisions, they believe, will allow them to be more proactive.

In terms of the criminal investigation, Japan (JFTC) has become more proactive in part because of its granted criminal investigation power granted by the 2005 amendments. Since then, the power has been enforced by the Criminal Investigation Department which has been newly established in the Investigation Bureau of JFTC. From the effective date of the 2005 amendments, the JFTC has filed criminal accusations on three cases[8].

South Africa identified themselves as being historically more reactive in concentration on refining its merger procedures and initiating cases based solely on complaints received. However, it is becoming more proactive with a change in focus to enforcement activities.[9]

In fact, the survey showed that measures and policies related to repression of anticompetitive conducts, mainly the leniency policy, are elements that increase proactiveness in the authorities. The level of proactiveness also increases when the authorities have powers to initiate an *ex officio* investigation or, as it is the case of DG COMP, to carry out sector-wide inquiries into those sectors of the economy where are grounds to suspect that competition may be restricted or distorted [10].

[8] As of March 2008.
[9] In Spanish case, when the Competition Act introduced the leniency program, the CNC chose to create a whole specialised unit to deal with leniency applications and with cartel cases, which makes it clear that the CNC is willing to fiercely fight against the most harmful anticompetitive practices and to devote resources to that. In South Africa, the corporate leniency policy is not the reason they have become more proactive, but it is one of the tools that they are using which has resulted in an increase in prosecuting cartel cases.
[10] In competition advocacy all authorities declared themselves as proactive.

1.3 - Priorities and Strategic Planning

Priorities can be set by law (as for example in Turkey), formally set through strategic planning (as is the case in the UK OFT), or even informally agreed/defined and then communicated within the agency (as is the case in Brazil (CADE) and Spain).[11]

Not surprisingly, all authorities indicated that they engage in some form of prioritization, as would be expected in environments with limited resources and (in theory) unlimited demand for intervention.

Ten respondents[12] indicated that they engage in strategic planning. Four authorities (Czech Republic, France (DGCCRF), Hungary, Spain) indicated that this planning included multi-annual performance contracts, long-term planning, and action planning. In the United States, the FTC reports that in addition to internal planning processes, strategic planning is required at one level by a government-wide requirement that all agencies report on its objectives and performance measures under the Government Performance and Results Act. It addresses problems it observes in the market through a mix of law enforcement, competition advocacy and industry and policy studies, as appropriate. The latter are part of a larger competition policy research and development effort to inform itself and relevant stakeholders about how well markets are working and what obstacles to competition exist. Mexico reported that it has just begun work in this area.

Seven[13] authorities have none[14] or less than one year experience with formal/informal strategic planning. Five[15] authorities have 1 to 5 years experience with formal/informal

[11] The questionnaire did not provide a definition for *formal strategic planning*, since the establishment of its definition – as well as procedures to achieve it – could inhibit some authorities from sharing their experience in less formal but nevertheless relevant planning. This particular observation is important to introduce the answers regarding the existence of a formal strategic planning.
[12] Brazil (SDE), Canada, Chile (Fiscalia), DG-COMP, Peru (INDECOPI), Russia, South Africa, UK (OFT), US (DOJ and FTC).
[13] Brazil (CADE), France (Conseil de la Concurrence), Japan, Jersey, Mexico, Spain, Turkey. Note: Brazil (SDE) and France (DGCCRF) did not answer this question.
[14] Brazil (CADE), France (Conseil de la Concurrence), Japan, Jersey and Turkey
[15] Hungary, Peru (INDECOPI), Russia, South Africa, and United Kingdom (OFT).

strategic planning. Canada, DG-COMP and the US (DOJ and FTC) have more than 5 years experience.

The US (DOJ) has extensive experience in strategic planning. Its internal strategic plan is used as a general guide to assess the priority of subject areas handled by the Division. This plan is reviewed periodically by senior management to ensure it remains an accurate outline of the Division's overall mission and the work necessary to meet objectives. The Division's overall goals and priorities are established and reviewed throughout the year, as needed, to address new investigations and issues, priority matters proceeding to trial, important doctrinal issues, and overall workload management. An even broader approach to strategic planning takes place at DG COMP. Its competition policy objectives are aligned with the five-year strategic objectives and annual policy strategies defined at the level of the European Commission.

This type of broad strategic planning that remains relatively constant is contrasted with the UK (OFT). The OFT has a dedicated Strategy and Planning Team (S&P) to provide focus for OFT strategy and to plan delivery and implementation of strategy throughout the OFT. This involves the definition, development, refinement, and communication of strategy and its realization through the actions of the OFT as covered in organizational and functional plans. All business plans for each group, for example, are subject to a prioritization process by S&P.

1.4 - Accountability/ Issuing a Report

Accountability is an important instrument to measure the achievement of the authorities' goals. In addition, it is an instrument which can provide the necessary feedback for agencies to address their problems and the respective causes and provide input for review or adjustment.

In this sense: six[16] authorities are accountable to other governmental offices. Twelve[17] are accountable to the public and/or issue a report[18]. The Czech Republic[19] and Peru reported that they are not accountable to any other authority, but it is unclear whether this represents a true difference or simply the way they reported their answer. As noted below, other agencies, such as the France (Conseil de la Concurrence), Spain, Turkey, the US (FTC) and DG-COMP, while in some respects independent, reported that they are accountable to their respective congress/parliament/European parliament, with reporting required as part of budget allocation and are in that sense accountable to it.

Three[20] authorities have not answered this question or have considered it as not applicable.

It is interesting to note that, although the majority of the authorities establish their own priorities, accountability is not generally considered a relevant issue in the prioritization procedures. There are some exceptions. The OFT, for example, has committed to the UK Treasury that it will deliver benefits to consumers that represent five times its annual budget over the 2008-2011 period. In addition, the OFT intends to demonstrate wider indirect benefits to consumers and the economy as a whole, for example through the deterrence effects of enforcement actions**.**

1.5 - Thresholds

The existence of thresholds for mergers and safe harbors for conduct can be considered a form of prioritization since they may prevent authorities from expending resources on cases which would not adversely affect competition.

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[16] Chile (Fiscalia), DG-COMP, France (Conseil de la Concurrence and DGCCRF), Russia and US (DOJ)
[17] Brazil (CADE and SDE), Canada, France (Conseil de la Concurrence and DGCCRF), Japan, Russia, Spain, South Africa, UK (OTF) and US (DOJ and FTC)
[18] Chile Czech Republic and Peru (INDECOPI) also issue a report. However, the answers indicated that the report is to the other government bodies or internal and therefore may not be considered as accountability to the public. South Africa accounts to parliament. The report is a public report. The general public can therefore hold the South African Competition Commission accountable through that report.
[19] Although Czech Republic has answered that the authority is not accountable to any other authority, they issue annual reports to be presented to Czech government.
[20] Hungary, Jersey and Mexico .

Thirteen[21] authorities use thresholds for merger review. Among those, six authorities (Czech Republic, DG-COMP[22], Hungary, South Africa, Spain and UK (OFT)) mentioned to have thresholds applicable for anticompetitive cases as well.

In the UK there are statutory thresholds for merger jurisdiction, and the OFT will generally consider as de minimis (and therefore not subject to investigation) transactions valued at less than 10 million GBP (subject to certain caveats). DG COMP is another authority using guidelines for developing a transparent and predictable business environment, for example, DG COMP published two extensive papers, in the form of the Commission Notices, on the assessment of non-horizontal and horizontal mergers.

Six[23] authorities answered that they do not use thresholds.

Two experiences demonstrate how a threshold can be used as a prioritization tool.

According to the Brazilian Competition Law, any transaction which involves parties that have a BRL 400 million gross revenues or 20% market share shall be submitted to the authorities for review. Since the law does not define the geographic scope of the legal threshold, Brazil (CADE), the competition tribunal, defined that it should refer only to the gross revenues related to the Brazilian territory. This interpretation led to a 42 percent reduction in the number of merger notifications.

In Canada and United States, merger notification is only mandatory for transactions over established threshold, but the competition authorities of these countries have the authority to review any other transaction where the circumstances warrant such a review.

[21] Brazil (CADE), Canada, Czech Republic, DG-COMP, Hungary, Japan, México, Peru (INDECOPI), Russia, South Africa, Spain, Turkey and UK.
[22] However, the hardcore restrictions, such as price fixing and market sharing, are prohibited irrespective of the market shares of the companies concerned.
[23] Brazil (SDE), Chile (Fiscalia), France (Conseil de La Concurrence), Jersey, US (DOJ and FTC).

Jersey, in this context, does not have a threshold, but the law requires an "appreciable effect" for analyzing competition cases, without defining it. The definition of "appreciable effect" can be used as a tool for prioritization[24].

It is worth scrutinizing some answers from the 6 authorities which do not use thresholds.

The Brazilian competition law defines thresholds for merger review. However, SDE[25] must investigate all cases brought to the authority, even those which would not be admitted under the threshold, since SDE has no adjudicative power to dismiss the case. Only CADE may dismiss a case below the minimum threshold. Due to this division of competences, although there is a legal threshold, SDE cannot use it as a tool of prioritization.

The US (DOJ and FTC) uses no formal threshold in deciding whether to open an investigation. Before opening an investigation, both agencies consider whether there is sufficient indication of an antirust violation, whether the matter is significant, and the resources that are available to devote to the investigation. Most merger investigations involve transactions that are filed with the antitrust agencies according to notification thresholds; however, the agencies have the authority to investigate mergers below the notification thresholds. On civil conduct matters, the request to open an investigation is reviewed by senior management to determine if the alleged conduct constitutes a violation. Therefore, not every complaint leads to an investigation. Conversely, the agencies generally do not give priority to cases that lack significant impact on commerce.

1.6 - Who Determines the Priorities within the Authorities

Fifteen authorities indicated that, within the agency, priorities are set by the leadership (the head of the agency and/or the board).[26] In at least some of the cases, for example the OFT, the leadership makes the final decision, but only after extensive discussions with staff. In

[24] It is similar to e.g. DG-COMP, where arrangements with near zero impact do not fall under the Law.
[25] SDE is the investigative body of the Brazilian Competition Policy System. SDE shall issue a non-binding opinion in all cases before sending to CADE for judgment.
[26] Here were also considered Czech Republic and UK (OFT), where the directors and seniors executives are consulted.

fact, with a recent procedure any staff member formally can propose a "priority" to the leadership so long as he/she has the support of one director.

Five authorities – Brazil (SDE), Mexico, Peru, Spain and US (DOJ) – set the priorities with the direct participation of the staff.[27]

It is interesting to note that none of the respondents said that their priorities are defined by one person; all respondents indicated that there was some form of collective consultation or decision making.

1.7 - Criteria for Priorities

The authorities indicated different criteria for priorities in dealing with their work load. Most of them identified more than one criterion:

Eleven[28] respondents indicated the impact on economy and on consumer welfare as criteria of prioritization. Law, experience, specific sectors, and public interest were some other criteria listed by respondents.

US (DOJ), in its discretionary power, considers the likelihood of finding a violation and whether the matter is significant. Determining which matters are significant is a flexible, matter-by-matter analysis that involves consideration of a number of factors including the volume of commerce affected; the geographic area impacted; the impact of the investigation; whether the conduct affects the federal government; and if criminal, the degree of culpability of the conspirators and deterrent impact. Similarly Peru (INDECOPI) can prioritize *ex officio* investigations based on the eventuality of an anticompetitive practice.

[27] The staff is consulted, and then it is approved by leadership afterwards. At US DOJ, senior managers consult frequently with Division attorneys, economists and administrators to assess current and pending workload, statutory and other timing requirements, staffing and funding availability, and other challenges and constraints.

[28] Brazil (SDE), DG-Comp, France (DGCCRF), Hungary, Jersey, Mexico, Peru, South Africa, Spain, US (FTC).

The OFT is currently moving away from prioritization by sectors, to a principled-driven approach. The new prioritization principles, available for public comment, refocus the agencies' activities to those of greatest consumer harm. According to the principles, when considering possible programmes of work, the OFT will take into account the:

1) direct and indirect effect on consumer welfare in the market or sector in which the intervention will take place;
2) strategic significance of the work;
3) risks (the likelihood of a successful outcome); and
4) resource implications of engaging in the enforcement or advocacy work.

The OFT believes that incorporation of these principles into each and every activity the agency undertakes will result in greater benefits to consumers and better functioning markets.

Turkey was the only authority to answer that there is no criterion[29] to establish priorities. The authority reported that all complaints are evaluated on the same grounds and every single compliant is dealt with by same care.

1.8 - Sector Specific Prioritization

Thirteen[30] respondents have prioritization criteria aimed at prioritizing sectors of industry. Sectors with market failures were often mentioned as a concern to the agencies. Regulated sectors, and more specifically telecommunications and energy are examples of sector prioritized by these jurisdictions.

Hungary specifically prioritizes sectors on the basis of recent liberalization and privatization efforts. Alternatively, in Turkey, although there is no sector specific priority

[29] As mentioned before, the Turkish Competition Authority's priorities arise from the Law
[30] Brazil (SDE), Canada, Czech Republic, DG-COMP, France (Conseil de la Concurrence and DGCCRF), Hungary, Japan, Mexico, Peru, Russia, South Africa, Spain.

set by law, antitrust enforcement priorities are included during the privatization and liberalization processes.

Seven[31] authorities answered they do not specifically prioritize sectors.

The US (DOJ, FTC) organizes some civil enforcement sections along sectoral lines so that investigators develop expertise in certain industries. DG COMP is another example of sector-oriented authority, but in its case an additional instrument dimension has been introduced. It also means that DG COMP has moved to the matrix organizational structure.

1.9 - The Impact of the Priorities

In general, the respondents did not identify any impact of the priorities on the day-to-day work. In DG COMP individual cases are subject to the priority setting procedure, including allocation of resources to specific priority projects. At the U.S. FTC, opening of investigations requires approval of managers, who consider how the particular investigation relates to the agency's priorities before deciding whether to approve. As regards the other authorities, changes in the resource allocation after setting priorities within the agency can be noticed through the answers, as shown below:

Ten[32] authorities did not mention any impact or reported that there was no impact. Chile (Fiscalia) answered that, although has not had impact yet, expect it to be expressive. Six[33] authorities pointed out changes in resource allocation after setting priorities. Two[34] authorities mentioned the need to adjust the allocation of resources on an ongoing basis to address matters requiring more or less work than initially anticipated and newly identified matters requiring attention.

[31] Brazil (CADE), Chile (Fiscalia), Jersey, Turkey, UK (OFT), US (DOJ and FTC)
[32] Canada, Chile (Fiscalia), Czech Republic, France (DGCCRF), Hungary, Japan, Jersey, México, Peru (INDECOPI) and Turkey .
[33] Brazil (CADE, SDE), South Africa, Spain and US (DOJ and FTC).
[34] France (Conseil de la Concurrence) and US (DOJ).

An example of resource allocation was the infra-legal measures adopted to by Brazil. In 2004, the Brazilian authorities established a “fast track” procedure for simple merger cases, which reduced the period of analysis in approximately 16 days. Moreover, CADE adopted “briefs” – a compendium of decisions in similar cases with the same interpretation, which main objective is to give legal predictability to firms and also to shorten decision process. The Brief 1 confirmed the geographic scope of the turnover threshold. Two other Briefs were also issued. Those measures reduced the period of analysis and therefore, time, costs and human resources allocated to simple cases can be reallocated for complex cases and priorities.

As noted above, the OFT expressly considers (among other facts) direct and indirect consumer welfare in its prioritization decisions. Recently the agency has reduced the number of cases, to focus on those with the greatest consumer impact.

Russia pointed out impacts external to the competition policy (e.g. inflation).

1.10 - Evaluation (instruments)

The agencies were able to indicate more than one evaluation instrument to assess the achievement of the objectives:

Thirteen[35] interviewees pointed management report / annual report as the instrument to assess achievement of their objectives. Brazil (CADE) and Turkey mentioned the Peer Review (OECD). Hungary and Peru (INDECOPI) counted on audited documents to assess the achievement of objectives. Japan and Turkey answered they take into consideration academic opinions.

[35] Brazil (CADE), Canada, Chile, Czech Republic, DG-COMP, France (Conseil de la Concurrence and DGCCRF), Hungary, Japan,Jersey, Mexico, Russia, Spain,

Eight[36] interviewees mentioned others instruments such as workload statistics, Global Competition Review, AMCHAM Report, Internal Merger Assessment process, periodical meetings with the Board and Staff, opinions by the Appeal Court and Yearly Conferences. Peru INDECOPI has an interesting experience. The authority has a continuous[37] process of authority's evaluation due to the ISO certification for procedures. These instruments aim the improvement of the quality of the decisions.

The OFT engages in extensive evaluation efforts that go beyond the scope of an annual report or other statistical reporting. For example, in 2007 the OFT's work was subject to a variety of evaluations. The UK Department for Business, Enterprise and Regulatory Reform conducted a peer review of competition policy. In addition, the Trade and Industry Select Committee prepared a report on the work of the OFT. There is also an evaluation team in the agency, that commissions independent ex post evaluations of discrete projects, and research into the wider benefits of the OFT's work, that are then published on the OFT's website. Also in 2007, for example, the OFT commissioned Deloitte to report on the deterrent effect of competition enforcement in the UK. The report assesses the extent to which the OFT and the Competition Commission's enforcement work in the areas of merger control (OFT and CC) and competition law (OFT only) deters anticompetitive mergers and possible infringements. The report suggests that the deterrent effect is significantly greater than the direct effect of enforcement in all areas of merger control and enforcement of competition law against both anti-competitive agreements and unilateral conduct.

1.11 - Addressing Problems[38]

Thirteen[39] authorities answered that when objectives are not accomplished, causes are identified and addressed through policy evaluation documents/experiences and/or periodical meetings.

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[36] France (Conseil de la Concurrence), Japan, Peru (INDECOPI), Russia, South Africa, Turkey, UK (OFT) and US (DOJ)

[37] INDECOPI evaluate itself four times each a year and are audited twice a year internally and also by a private external firm.

[38] the authorities were able to indicate more than one way used to address difficulties

Four authorities did not address this topic. For instance, France (DGCCRF) has not identified problems.

Four experiences are noteworthy.

Czech Republic answered that difficulties can be addressed internally by re-organizing and re-allocating resources as well as externally, by proposing legal amendments or in cooperation with other regulator/association.

DG COMP's reaction depends on the gravity of the problem. Systematic problems receive a systematic response. For example, the appointment of a Chief Competition Economist was the direct consequence of the fact that in the beginning of the current decade the authority became increasingly confronted with the need to investigate complex cases requiring in-depth fact finding and rigorous economic analysis.

Hungary has a salary incentive system (bonus or deductions) for the staff for good or bad performance. Annual sum is also granted for awards to the staff members.

At the end of each year, US (DOJ) evaluates the performance of each of its program areas and the performance of each individual in the Division. If areas of improvement are needed, Division policy, training and administrative managers are consulted and new or updated policies, specific training, and/or administrative adjustments are pursued.

II. Resource Allocation

The resources are allocated by thirteen agencies[40] through strategic planning prepared on the basis of experiences, necessities and/or priorities.

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39 Brazil (Cade, SDE), Canada, Chile, France (Conseil de la Concurrence), Mexico, Peru, Russia, South Africa, Spain, Turkey, UK (OFT) and US (DOJ).

[40] Brazil (SDE), Canada, Czech Republic, DG COMP, France (Conseil de la Concurrence, DGCCRF), Japan, Peru, Russia, South Africa, UK, US (DOJ, FTC)

In most of the jurisdictions[41], allocation of personnel is based on the needs assessment among different branches and influenced by the priority areas. Most respondents say that their principal priority area is the antitrust law and policy. But there are also those jurisdictions that work in other areas such as consumer protection [42] , state-aid monitoring[43]and supervision of liberalization[44]. According to the answers, allocation of financial resources is not handled in a special way and most of the time allocated on the basis of a strategic plan and/or experience and necessity.

2.1. Human Resources

2.1.1. Determination of the number of employees

In some of the jurisdictions, the number of the employees is determined on the basis of budget availability which is most of the time a government decision. This is the case in the following twelve agencies: Brazil (CADE and SDE), Canada, Czech Republic, DG COMP, France (Conseil de la Concurrence), Jersey, Hungary, Spain, UK (OFT), US (DOJ and FTC).

DG-COMP, Japan, South Africa and UK (OFT) also answered that the number of employees is developed from the business planning/challenges and identified priorities.

Other answers involves prioritization determined on the basis of law[45] and the decision of central governments[46]

[41] Czech Republic, Hungary, France (Conseil de la Concurrence), DG COMP, Japan, Jersey, UK, Canada, Chile, South Africa, Peru, Spain, Turkey, Russia, US (DOJ and FTC).
[42] Brazil (SDE), France (DGCCRF), Hungary, Japan, Peru, UK, US (FTC)
[43] DG COMP, Russia
[44] Czech Republic
[45] Chile
[46] México and Russia

2.1.2 Hiring/Dismissal Procedures and Personnel Allocation Criteria

In most of the agencies recruitment is based on national personal agency examinations as the case for Japan and Turkey or there is a predetermined number based on the number of civil servant posts as is the case in Mexico. Fourteen respondents showed that the hiring process is mainly based on different types of oral and/or written evaluations that vary from agency to agency, including interviews and/or civil service examinations[47]. However, the requirements of the normal civil service examination process is relaxed in significant degree for hiring of professional staff – lawyers and economists – in the U.S. Respondents from Czech Republic, Jersey, South Africa, Turkey and US (DOJ and FTC) mention that their hiring process is initiated by advertisements announced on their web-site and/or press.

Eight respondents[48] state that they do not have a formal policy regarding the split of economists and lawyers in their agencies and the staff allocation is generally carried out by the high level organization by taking priorities into consideration[49]. For instance, although the Canadian Competition Bureau has kept the number of employees stable in the last few years, it has a rotation program whereby 5 to 10 percent of staff rotate to other Branches thereby enabling both career development and flexibility in resource allocations. In the U.S., investigations are led by lawyers, with economists providing expert support, and consequently, the majority of professional staff are lawyers. In other agencies, such as Mexico, the reverse is true, which may lead to a different balance between lawyers and economists.

Moreover, although there are budgetary and time constraints, nearly all the agencies[50] use outside expertise in dealing with their work.

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[47] Brazil (SDE), Canada, Czech Republic, DG COMP, Japan, Jersey, Mexico, Peru, Russia, South Africa, UK (OFT), Turkey, US (DOJ, FTC)
[48] Canada, Czech Republic, Spain, South Africa, Mexico, UK (OFT), Mexico
[49] Czech Republic, France (DGCCRF), Japan, Hungary, South Africa, Turkey
[50] Brazil (CADE, SDE), Canada, Chile, Czech Republic, DG COMP, France (Conseil de la Concurrence), Hungary, Japan, Jersey, Mexico, Russia, South Africa, Turkey, UK, US (DOJ and FTC).

The most common way of identifying the lack/excess of personnel is determined through needs assessment within the organization as indicated by the majority[51] (twelve) of the respondents. Priority areas are evaluated in this assessment.

Dismissal processes in most of the responding agencies[52] (fifteen) are governed by strict labor laws and detailed procedures to dismiss civil servants.

2.1.3. Career Planning and Training of Personnel

A number of agencies[53] say that there is no career planning for the technical staff at their agencies. However, some respondents consider career planning to be important to the mission of the agency. Such planning can be based on "learning" and skills training programs such as in Canada, Peru and Turkey. In this regard, although there is no formal career planning for the technical staff of the Turkish Competition Authority, the agency works on the educational opportunities to increase the skills and capabilities of its staff. Similarly, the Competition Bureau of Canada offers mandatory training (including professional learning plan training) for competition law officers. Further, they developed a list of core courses, identified on the job learning activities and prepared a list of reading materials for the competition law officers to utilize in the development of their competencies. Meanwhile, career planning exists in DG COMP, France (Conseil de la Concurrence), Russia, UK (OFT) and US (DOJ and FTC).

Another issue which is relevant to the human resources is the training of newly hired staff. Jersey, Czech Republic, Chile explicitly stated that there is no training for the newly hired staff. However, 90% of the agencies - Brazil (CADE and SDE), Canada, Chile, Czech Republic, DG COMP, France (Conseil de la Concurrence and DGCCRF), Hungary, Japan, Mexico, Peru, Russia, South Africa, Spain, Turkey and US (DOJ, FTC) - explained that

[51] Canada, Czech Republic, DG COMP, Hungary, Japan, Jersey, Mexico, South Africa, Turkey, UK, US (DOJ, FTC)
[52] Brazil (CADE), Chile, Czech Republic, DG COMP, Hungary, Japan, Jersey, Mexico, Peru, Russia, South Africa, Spain, Turkey, US (DOJ, FTC)
[53] Brazil (CADE, SDE), Chile, Czech Republic, Jersey, Hungary, Mexico, Peru, Russia, Spain, Turkey

they have staff training programs although they differ from each other in duration and content.

2.1.4 Addressing Staff Retention

Staff retention is considered an important issue in some jurisdictions[54] whereas it does not lead to any difficulties at all in others[55] for various reasons. Agencies that consider staff retention as a priority try to address it via different tools. In this vein, Brazil (CADE), Canada and Spain offer learning and training opportunities to minimize employee turnover while France (Conseil de la Concurrence) and Hungary offer financial incentives. South Africa also offers training and development opportunities and in addition is finalizing a reward and remuneration strategy. The US (DOJ and FTC) note that while the agency cannot match all the financial incentives available in the private sector, retention can be addressed through improving the working environment with well-designed training programs, encouraging good managers and allowing professional growth by gradually increasing responsibility.

2.1.5. Pros and Cons of Working at a Competition Authority

When the responses provided as to the pros and cons of working at a competition authority is examined, it can be said that the level of wages (compared with the private sector) is the most cited[56] challenge of working at a competition agency. Nevertheless, the following is regarded extremely advantageous by the respondents: civil service work being a stable job (Czech Republic), the opportunity to delve into a number of different industries while using a mixture of legal and economic concepts together (Brazil (CADE, SDE), Canada, Czech Republic, Spain), high satisfaction (DG COMP, US (DOJ and FTC), teamwork (Russia, Turkey, UK), independency of the case handlers (Mexico, Turkey).

[54] Brazil (CADE), Canada, Czech Republic, France (Conseil de la Concurrence), Jersey, Mexico, Peru, South Africa, Spain, UK, US (DOJ).
[55] DG COMP, , Japan, Hungary, Russia, Turkey
[56] Brazil (CADE and SDE), Canada, Chile, Czech Republic, Mexico, Peru, Russia, Spain, South Africa, US (DOJ and FTC)

2.2.1 Budget

2.2.1. Origin of Financial Resources and Procedural Fees

When the origin of financial resources is examined, initially it can be stated that every agency is subject to internal procedure with respect to allocation of resources within their country. Moreover, some of them have to have their budget approved by their respective parliaments such as Brazil (CADE), Canada, Chile, Czech Republic, France (Conseil de la Concurrence), Japan, US (DOJ, FTC). In addition to that there are also those agencies which receive their budget directly from the state budget such as Hungary, Japan, Russia, Spain, UK (OFT). Lastly, procedural fees constitute part of the budget of eleven agencies[57].

There are no procedural fees (for submission of merger; conduct analysis; consultation etc) in Chile, DG COMP, Japan and Turkey while thirteen[58] other agencies stated that there is a procedural fee in their jurisdictions. Among these thirteen agencies, eleven of them explicitly mentioned that procedural fees concern mergers. Furthermore, Brazil (CADE), Canada, Jersey and South Africa underline the fact that they have fees for guidance/consultation.

2.2.2. Budget Setting

Thirteen agencies[59] pinpoint that budget setting which is linked to priorities is rather flexible within the authority. The majority[60] (fifteen) of the agencies plan their expenses internally whereas in Brazil (CADE) and to some extent in Hungary expenses are planned externally as well while in Mexico they are planned only externally by other governmental offices.

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[57] Brazil (CADE, SDE), Canada, DG COMP, Hungary, Jersey, Peru, South Africa, Spain, US (DOJ, FTC).
[58] Brazil (CADE, SDE), Canada, Czech Republic, Hungary, Jersey, Peru, Mexico, Russia, Spain, UK, US (DOJ, FTC).
[59] Brazil (SDE), Chile, Czech Republic, DG COMP, Hungary, Japan, Jersey, Russia, Spain, Turkey, UK, US (DOJ, FTC).
[60] Brazil (CADE, SDE), Canada, Chile, Czech Republic, Hungary, Japan, Jersey, Peru, Russia, Spain, Turkey, UK, US (DOJ, FTC).

The objectives for budgetary allocation usually correspond to the current allocation in fourteen agencies[61]

2.2.3. Allocation Assessment

The allocation assessment is organized very differently among the agencies. The analysis of this topic showed that policy evaluation systems differ from one respondent to another. Some agencies use internal meetings as an allocation assessment and some prefer to use management reports such as Brazil (CADE). In this regard, some agencies prefer to have such an assessment done continuously (Peru) or periodically (Russia, US (DOJ, FTC) or once a year (Chile, Czech Republic).

Nine agencies[62] noted the possibility of a reduction of their budget in a following year or, as it is the case of DG COMP, even if the non-compliance has no immediate impact on the next-year allocation of human and financial resources, it is taken into account when assessing the authority's mid-term staff and financial requirements

III. Decision's Effectiveness

3.1. Impact of effectiveness objectives on definition of priorities/resource allocation

Seven respondents did not answer to this question or answered that it was not applicable (Brazil (SDE), France (Conseil de la Concurrence), Czech Republic, Japan, Jersey, Russia and Turkey).

[61] Brazil (SDE), Canada, Czech Republic, DG-COMP, Hungary, Japan, Peru, Russia, South Africa, Spain, Turkey, UK, US (DOJ and FTC). France (Conseil de la Concurrence) has its budget setting linked to the Parliament evaluation of the performance of the agency, which suggests it shall correspond to the objectives.
[62] Brazil (CADE and SDE), Czech Republic, France (Conseil de la Concurrence), Japan, Russia, South Africa, Spain, and US (DOJ and FTC). Note: Spanish incentives system makes a very small part of the authority budget, which is the one that can be affected by reductions due to non-compliance

Ten agencies (Brazil (CADE), Canada, DG Comp, France DGCCRF, Mexico, Peru, South Africa, UK (OFT), US (DOJ and FTC)) answers led to the conclusion that they do assess the impact of effectiveness on the prioritization/resource allocation.

No formal evaluation of the effectiveness of the Spanish authority's decisions has been put in place yet. However, the Spanish answer[63] led to the conclusion that sort of evaluation of effectiveness has had and will have an effect on priority setting and on resource allocation.

The U.S. FTC, pursuant to the government-wide Government Performance and Results Act, identifies strategic goals, objectives, performance measures, and measures performance against those measures. One of the strategic goals is to "Prevent Anticompetitive Mergers and Other Anticompetitive Business Practices in the Marketplace," and the objectives under that goal are to identify anticompetitive mergers and practices that cause the greatest consumer injury, stop anticompetitive mergers and business practices through law enforcement, prevent consumer injury through education, and to enhance consumer welfare through research, reports, advocacy, and international cooperation and exchange. Performance measures are established for each. For example, one of the performance measures for the law enforcement objective is to achieve savings to consumers through merger enforcement. In 2007, the agency targeted $500 million in savings, and actually achieved $805 million in savings.

Three agencies informed that they have not done any assessment.

From the reports, it can be concluded that there are no clear criteria or procedures for assessing the impacts of effectiveness in the agencies' prioritization plan. Some respondents brought up examples of effectiveness but did not address the relationship prioritization/resource allocation.

3.2. Is it discussed in Strategic Planning?

[63] The answer was: "The objectives and activities outlined in our Action Plan for 2008 and 2009 include an evaluation of the former competition authorities' successes and failures regarding the effectiveness of certain decisions"

Thirteen of the 20 interviewed agencies – approximately 70% of the respondents - did not analyze this issue. For those who have done it, seven interviewees affirmed they have been discussing it.

IV. Conclusion

The success of a competition agency depends heavily upon its skill in selecting priorities and designing a strategy for applying its authority. The results of this study in the past year display a broad awareness that competition agencies, new and old alike, should create effective, forward-looking mechanisms for choosing goals and devising ways to achieve them.

The need for strategic planning stems from several considerations. To a large degree, the imperative to set priorities is a function of resources. No competition agency enjoys unlimited funds, and the scarcity of resources demands choices among a range of possible applications of the agency's powers. Society has a vital stake in having the agency make these choices in a manner that most improves economic performance.

Without a conscious process of setting priorities and ranking possible activities according to their legal and economic significance, the competition authority is less likely to focus on what truly matters. Without a strategy, the agenda of the competition authority is prone to be the governed entirely by external impulses in the form of complaints from consumers, requests for action by business operators, or queries from legislatures and other government ministries. These impulses sometimes might channel a competition agency's efforts toward matters of the greatest significance, but this is not invariably or even routinely the case. Lest it merely respond to the random ordering of external events, even the most humble, least funded competition agency must strive to establish criteria for deciding which of the matters brought to its attention is worthy of further scrutiny.

The closely related exercises of setting a strategy and determining priorities also impose valuable discipline upon the competition agency. It is the first responsibility of agency leadership to define clearly what they intend to do. This requires a deliberate process for setting a strategy and explaining the agency's goals to its own staff and to outside observers. One measure of true greatness in an agency's leadership is the capacity to define and communicate the overarching themes that will guide the institution's work. A well-defined strategy clearly informs external observers – business managers, consumers, and government bodies – about the agency's intentions and guides the agency's own staff. If asked to state the agency's top five priorities in a minute or less, the agency's leaders and top managers should be able to do so with a half-minute to spare.

To insist that a competition agency consciously formulate a strategy is not to suggest that doing so is easy or that a plan chosen in advance can be followed mechanically and without adaptation. From the past year's work of the Subgroup and from a review of the literature on the implementation of competition policy, several lessons about how to set priorities and design a strategy to carry out the agency's aims. One useful technique is to engage in a process of internal planning through which the agency asks its professional staff to anticipate important commercial developments based upon past experience and their knowledge of current business practices. A number of agencies have sought to organize these efforts on a sector by sector basis and have engaged teams of sector-specific specialists to devote time to considering what emerging phenomena warrant attention.

A number of competition authorities have found that the process of internal deliberation can usefully be supplemented by external consultations with academic researchers, business operators, consumer advocates, and other government bodies. By convening conferences, seminars, and workshops, competition agencies can enlist knowledgeable outsiders to help identify matters that ought to be moved up on the list of priorities and to consider which policy instruments – the prosecution of cases, the pursuit of sector studies, the development of advocacy programs before other government bodies – should be used to address them. Specialists from public policy programs can assist the agency in deciding how to devise priorities and decide how to evaluate the relative merits of proposed agency initiatives. The

habit of engaging in external consultation is a valuable check against the tendency of an agency to set priorities simply by repeating past practice.

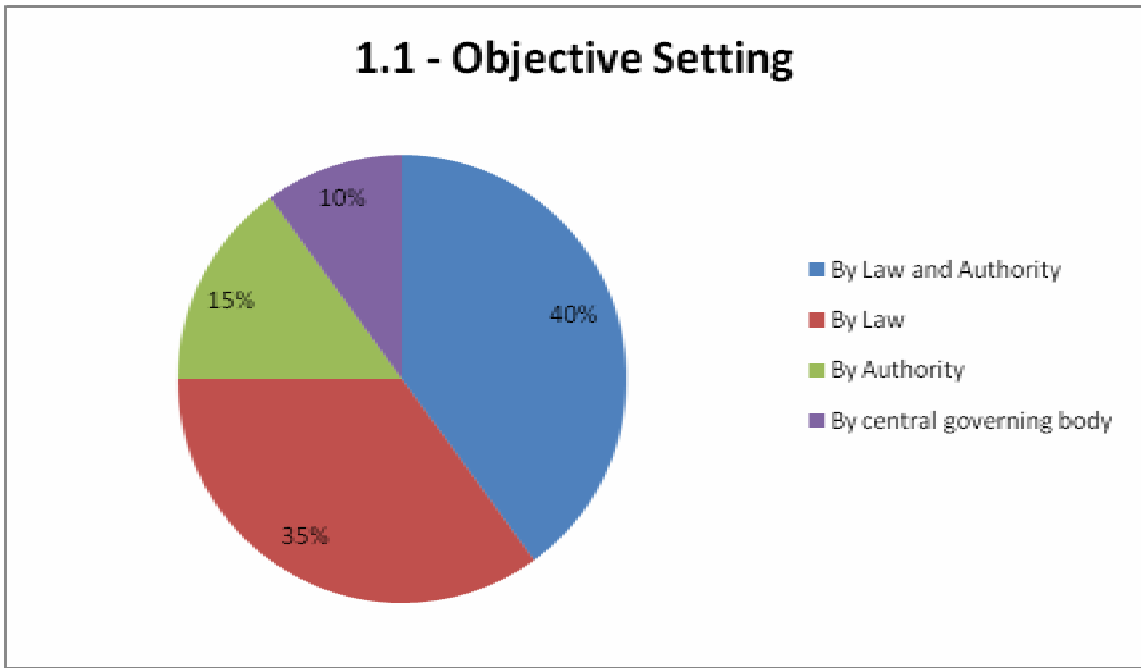
Through its own internal deliberations and through external consultations, ex post evaluation can be an informative ingredient of discussions about preparing a strategy and selecting tactics to implement it. A competition agency can learn a great deal from its past work. Recurring efforts to examine past experience can yield informative perspectives about how to allocate resources, how to choose the mix of litigation and non-litigation instruments to accomplish specific competition policy objectives, and how to build institutional capacity.

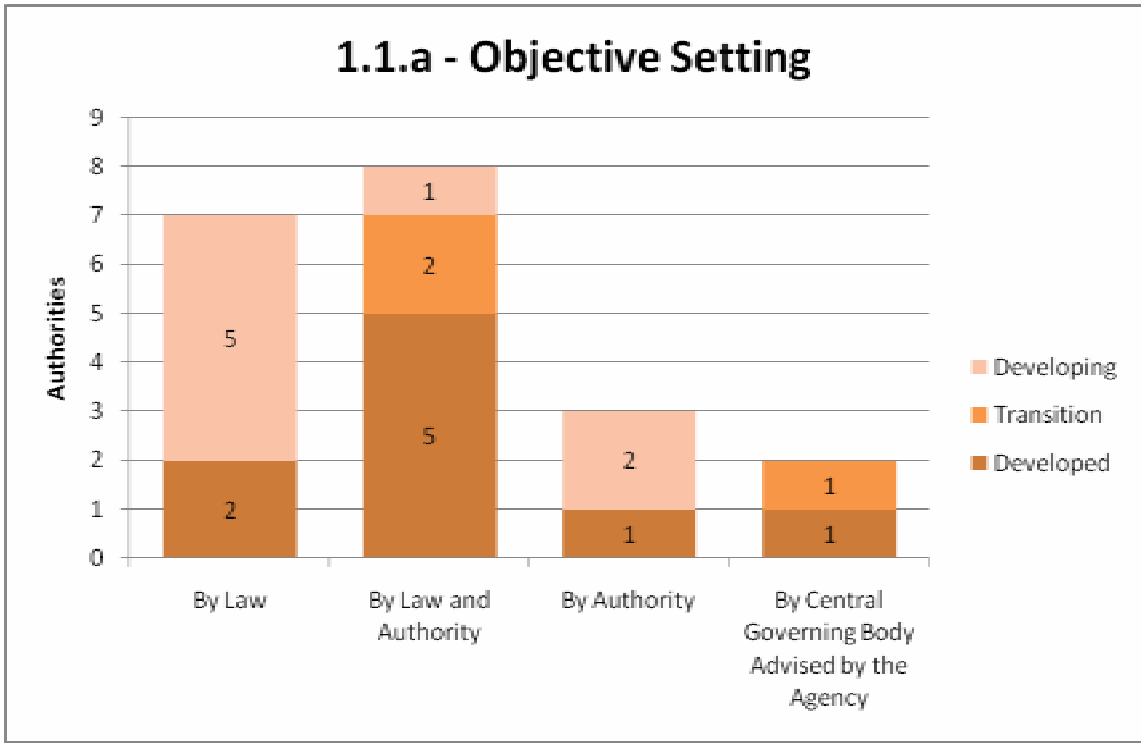
The possibilities to derive lessons from past activity do not reside solely in an examination of the competition agency's own experience. This is an area where comparative study has much to offer. The histories of other competition policy institutions, including efforts by other competition authorities to assess the results of past initiatives, can identify approaches for setting priorities generally, can illuminate the likely results of specific forms of intervention, and can point to superior techniques for implementing specific programs.

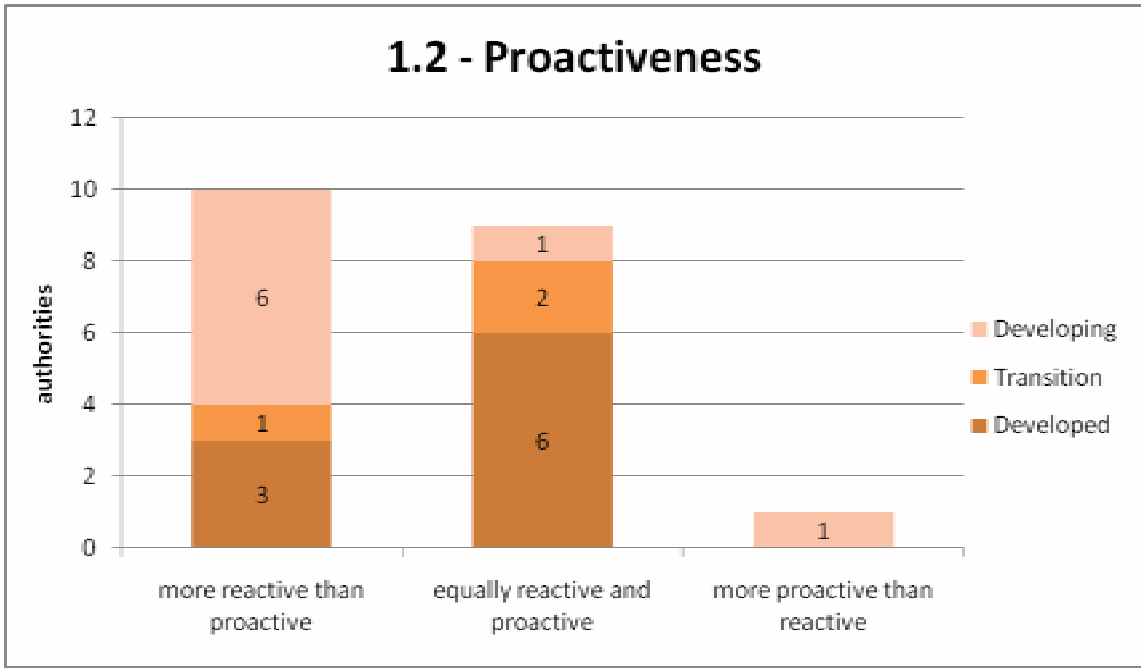
To improve the quality of an agency efforts to set priorities and choose implementing strategies, the exercises of self-assessment and inter-agency benchmarking require a high degree of candor within individual competition agencies and across competition authorities. No institution ever eliminated weaknesses by overlooking them, and programs rarely make the progression from "good to great" without honest stocktaking and a commitment to achieve improvements. The necessary starting point for choosing a sensible path going forward is for a competition agency to ask the toughest questions about the adequacy and effectiveness of its existing substantive programs, organization, and procedures. Difficult as this may be in the short term, it is an essential foundation for long term success.

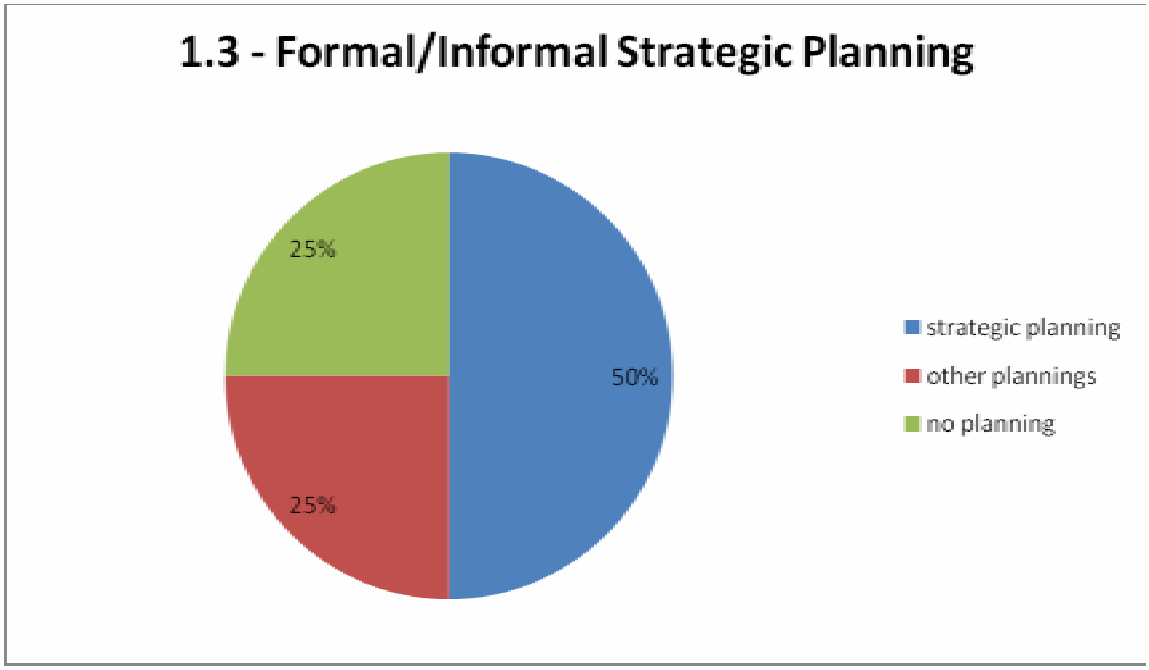
Appendix - 1

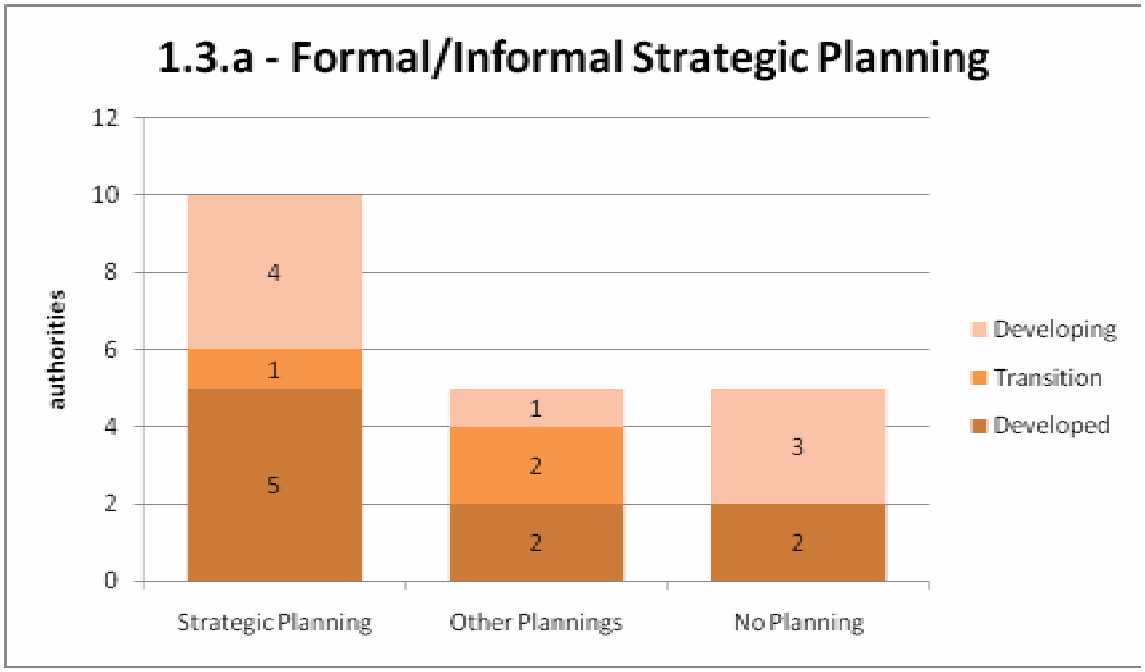
AGENCY EFFECTIVENESS PROJECT - Graphs



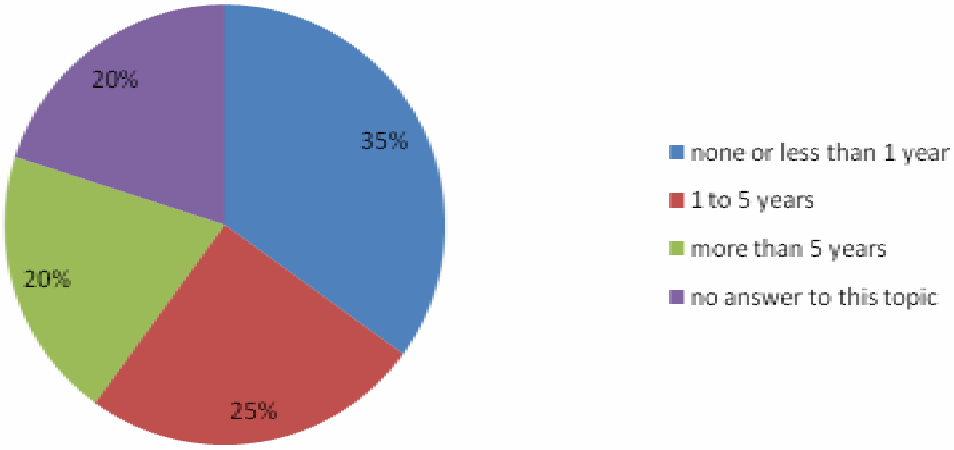



1.2 - Proactiveness
12
10
8
6
4
2
0
authorities
6
1
3
1
2
6
1
1
more reactive than proactive
equally reactive and proactive
more proactive than reactive
Developing
Transition
Developed

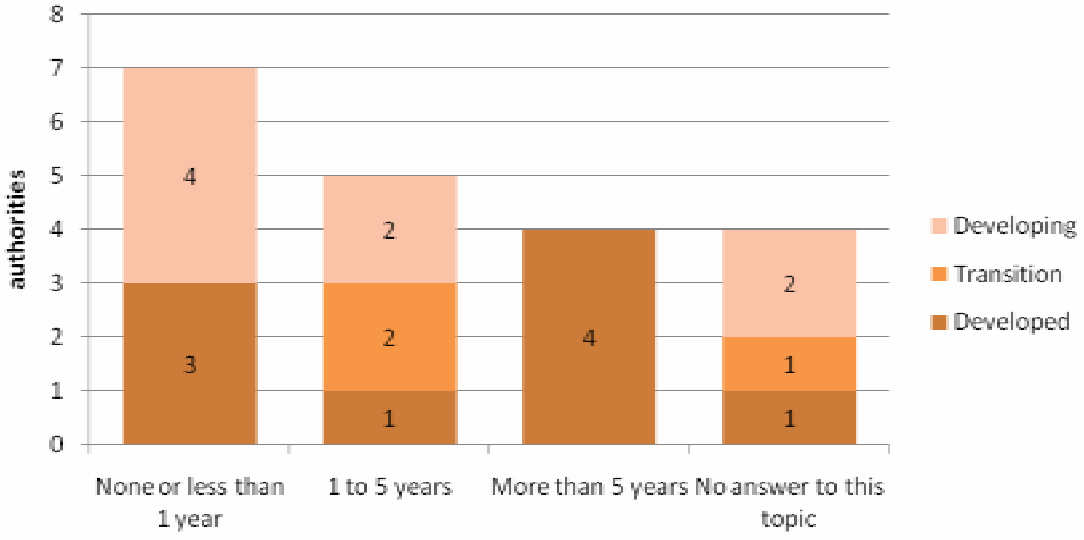

1.3 - Formal/Informal Strategic Planning
25%
50%
25%
strategic planning
other plannings
no planning

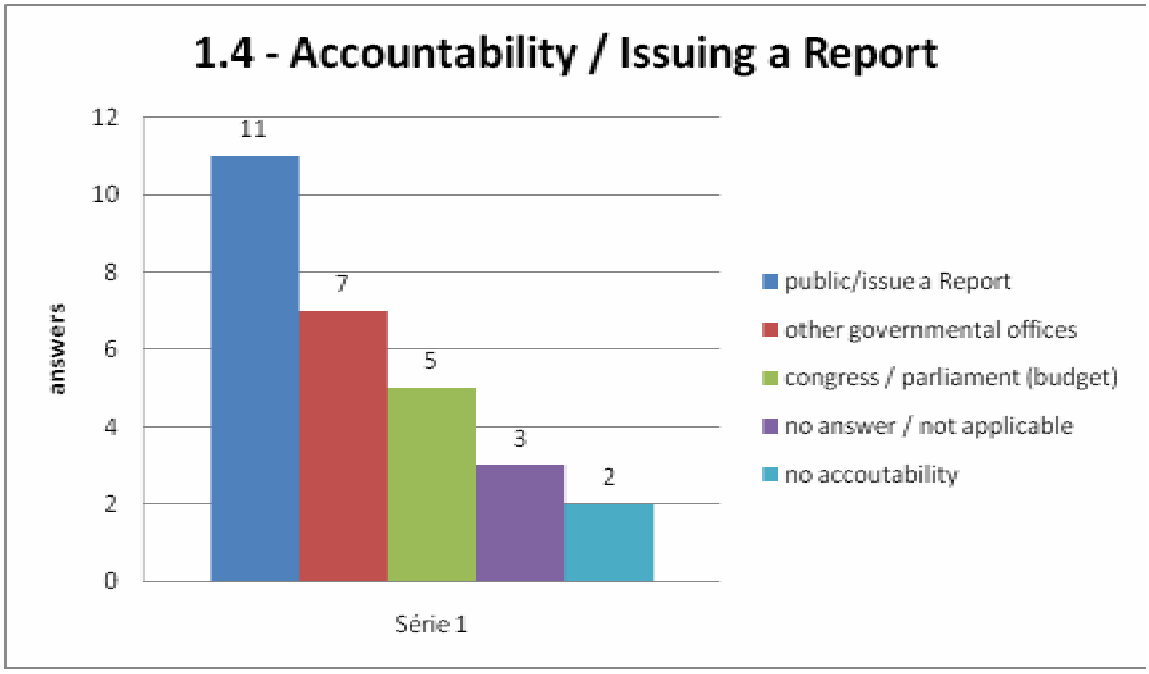

1.3.a - Formal/Informal Strategic Planning
authorities
12
10
8
6
4
2
0
4
1
5
1
2
2
3
2
Strategic Planning
Other Plannings
No Planning
Developing
Transition
Developed

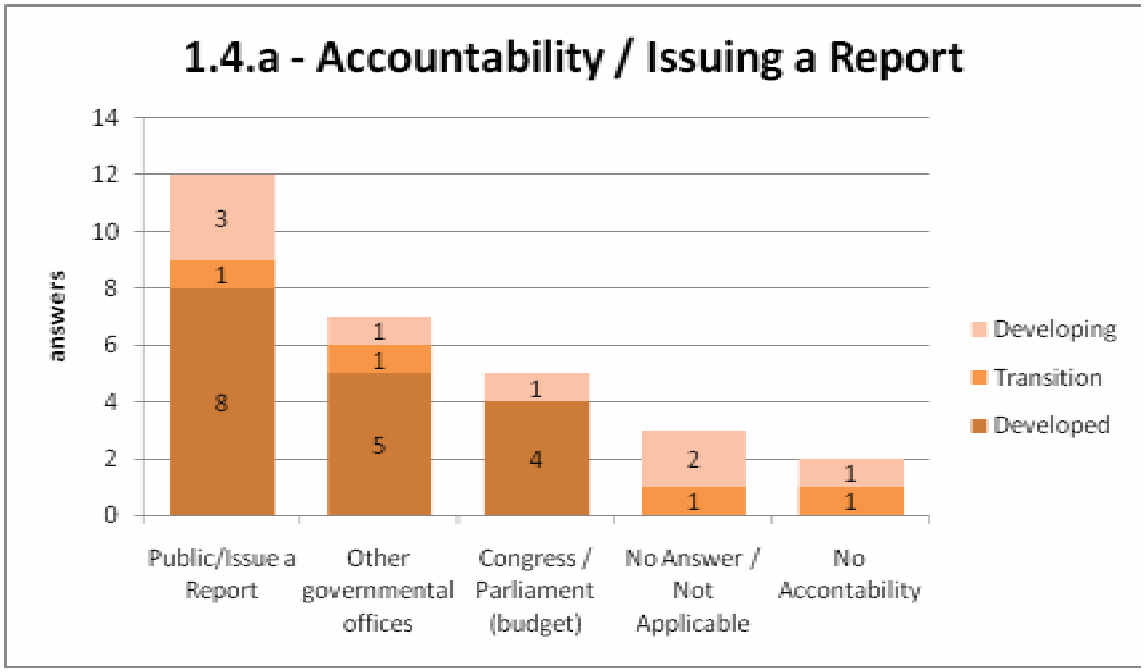
1.3.b. Planning Experience

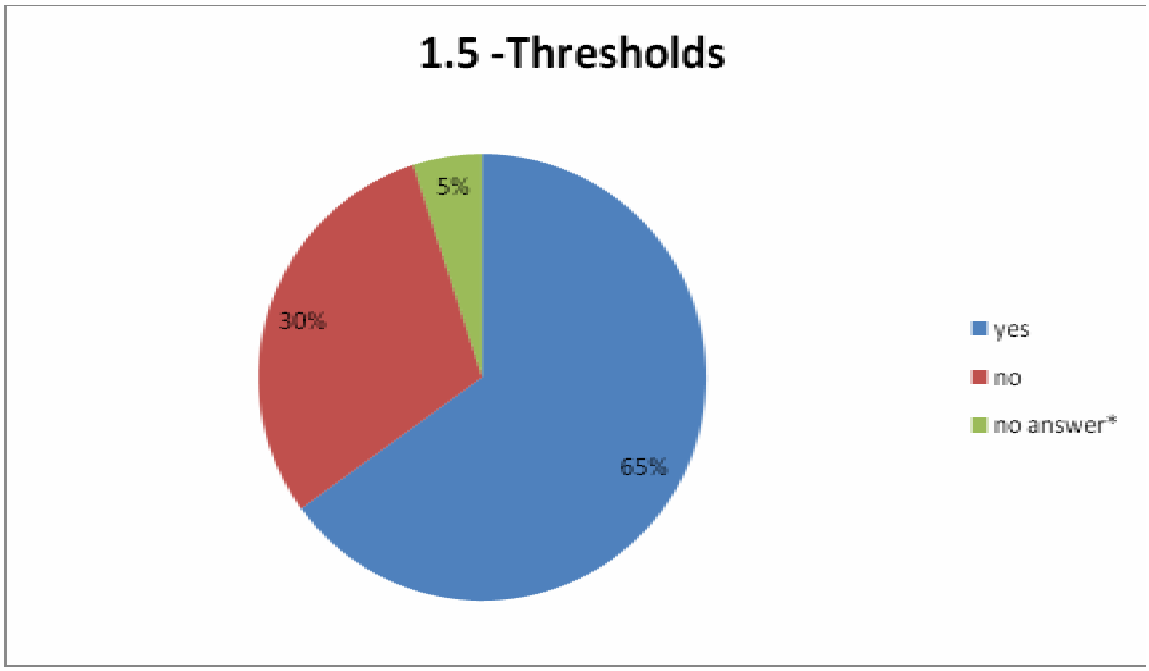


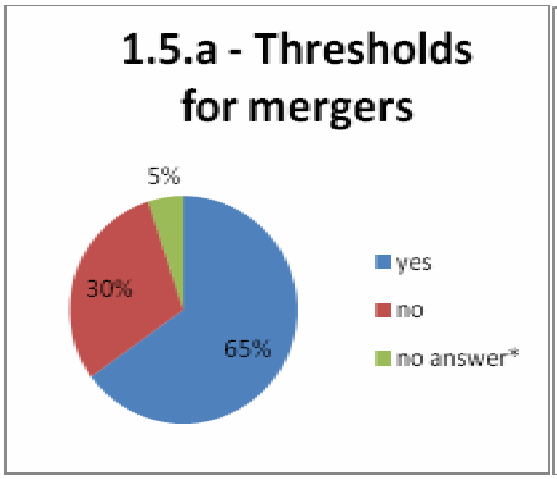
1.3.c - Planning Experience

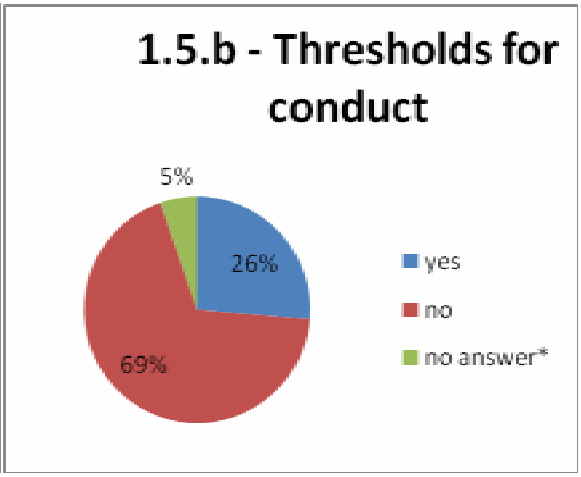



1.4 - Accountability / Issuing a Report
answers
12
10
8
6
4
2
0
11
7
5
3
2
Série 1
public/issue a Report
other governmental offices
congress / parliament (budget)
no answer / not applicable
no accoutability


1.4.a - Accountability / Issuing a Report
answers
14
12
10
8
6
4
2
0
3
1
8
1
1
5
1
4
2
1
1
1
Public/Issue a Report
Other governmental offices
Congress / Parliament (budget)
No Answer / Not Applicable
No Accontability
Developing
Transition
Developed

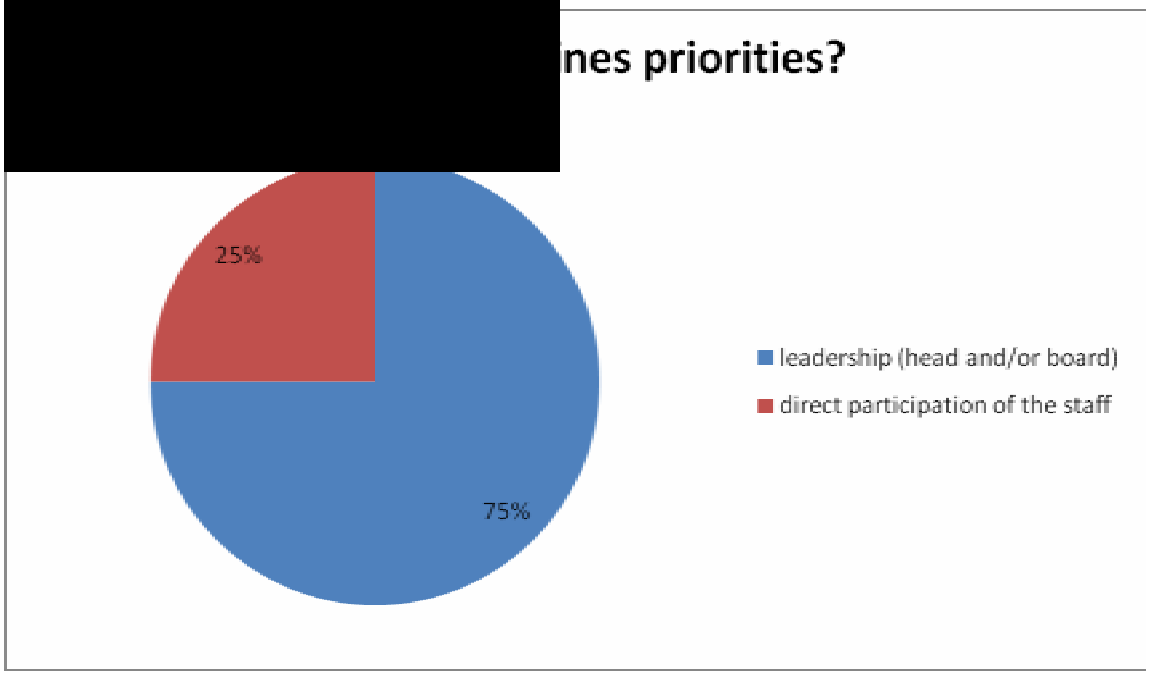

1.5 -Thresholds
5%
30%
65%
yes
no
no answer*


1.5.a - Thresholds for mergers
5%
30%
65%
yes
no
no answer*


1.5.b - Thresholds for conduct
5%
26%
69%
yes
no
no answer*

* France (DGCCRF)

[redacted]



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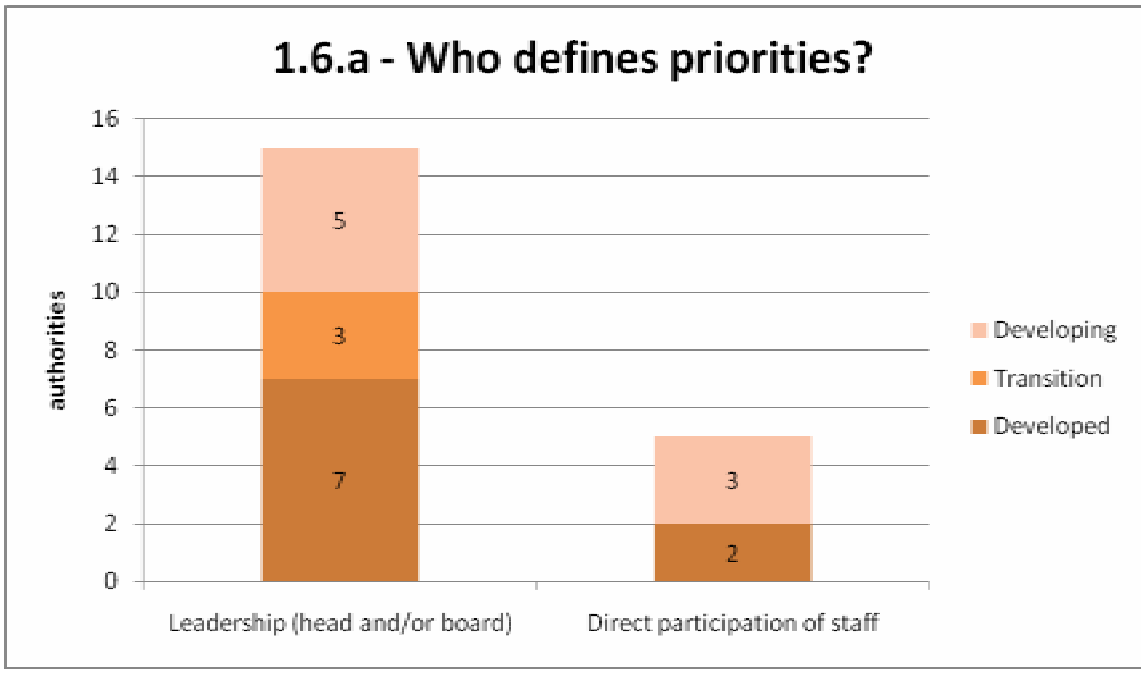
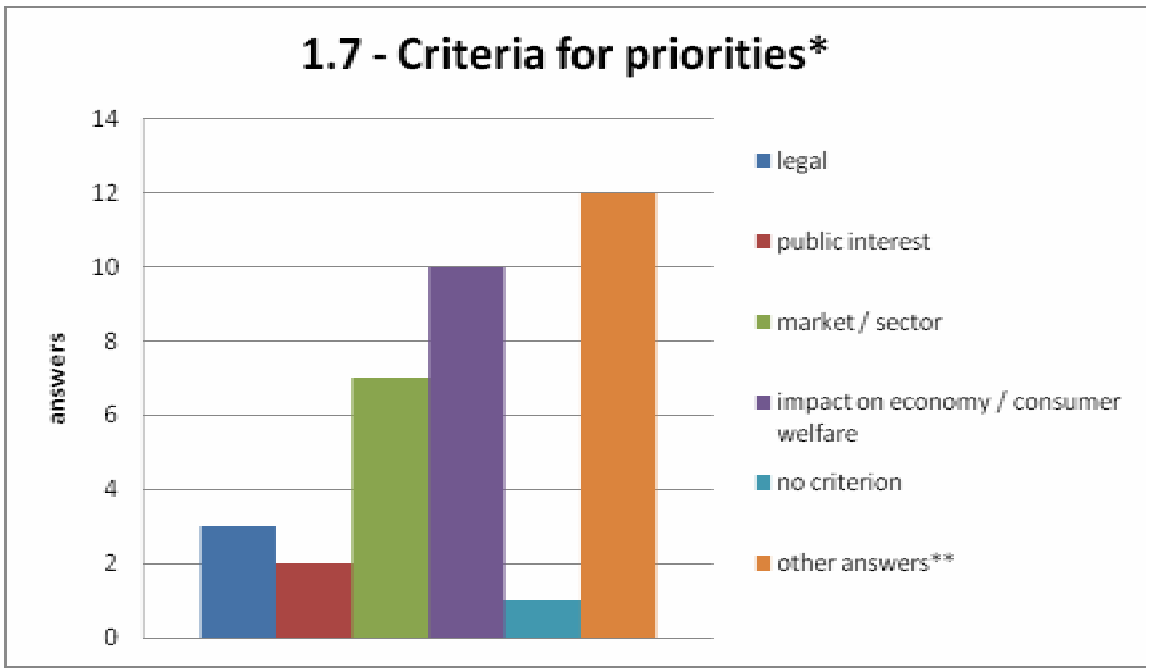
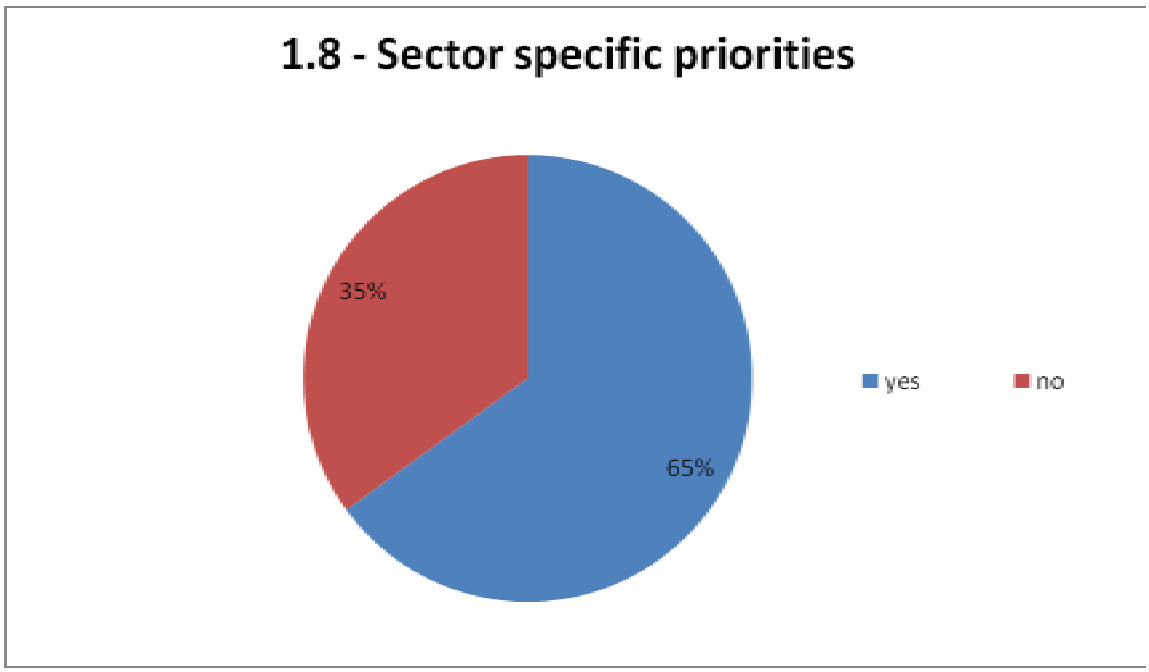
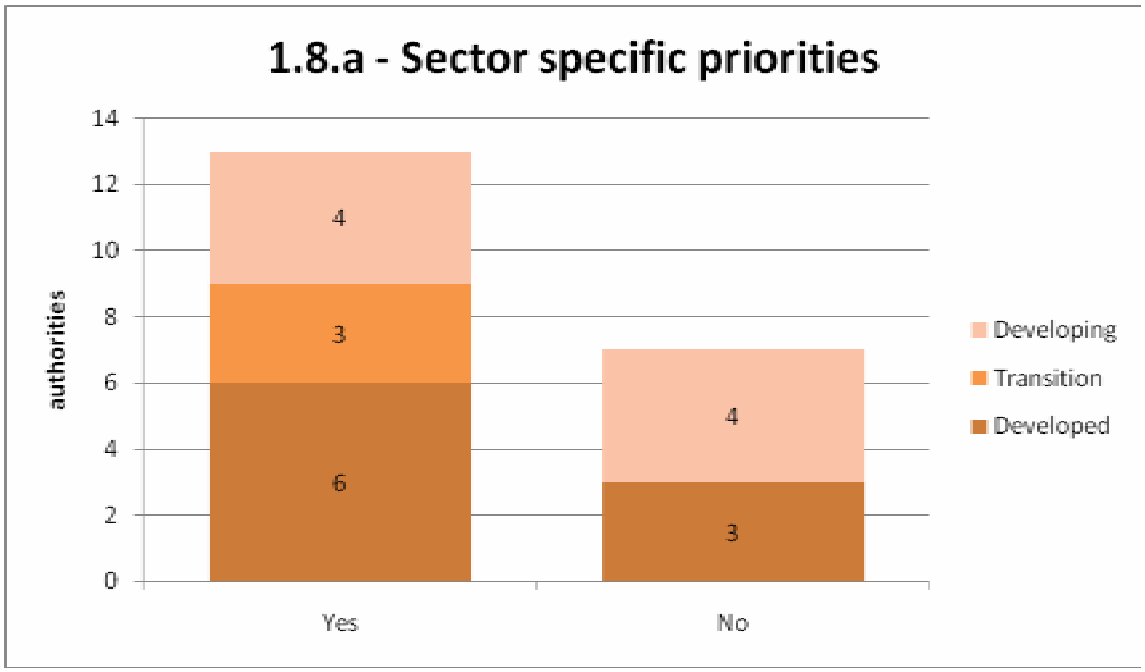

1.6.a - Who defines priorities?
authorities
16
14
12
10
8
6
4
2
0
5
3
7
3
2
Leadership (head and/or board)
Direct participation of staff
Developing
Transition
Developed

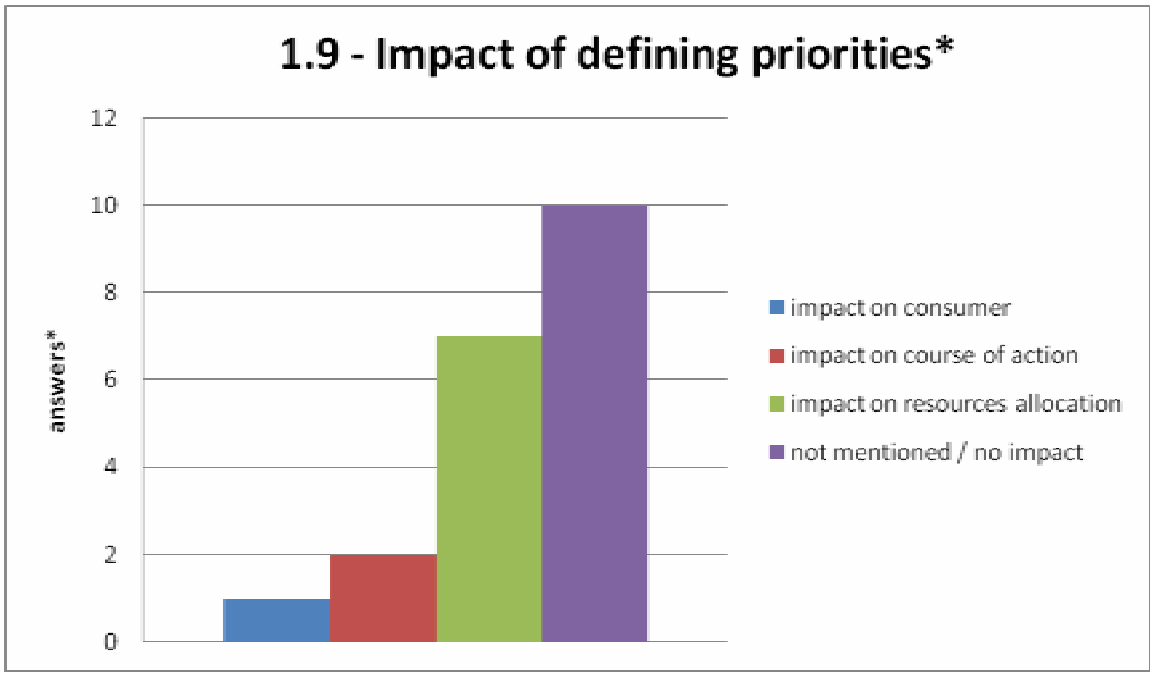


*The same authority could answer more than one criteria.

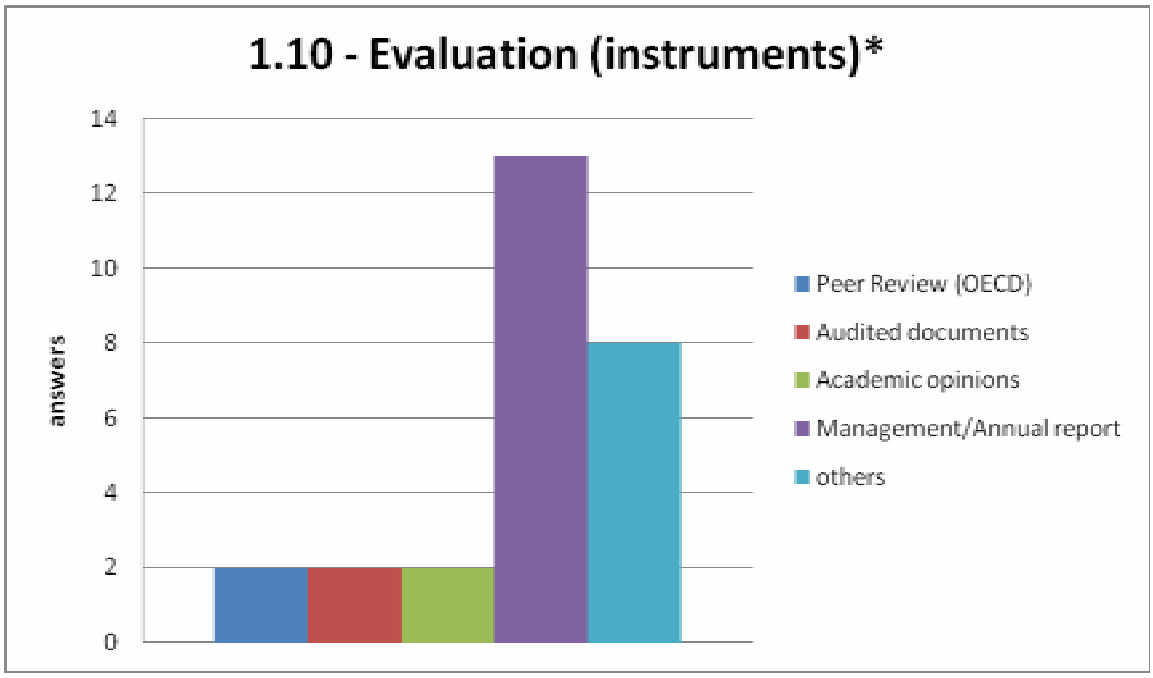
**social impact, impact in the short and longer terms, government policy, numbers of cases, perseverance, experience, seriousness, etc.


1.8 - Sector specific priorities
35%
65%
yes
no


1.8.a - Sector specific priorities
authorities
14
12
10
8
6
4
2
0
4
3
6
4
3
Yes
No
Developing
Transition
Developed

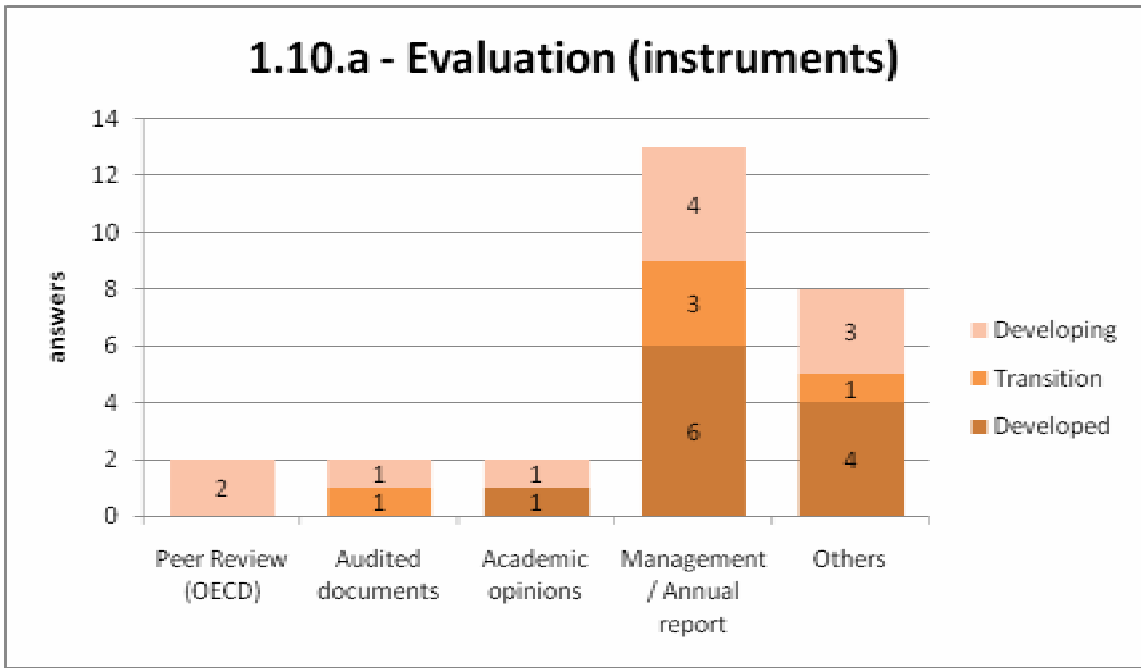


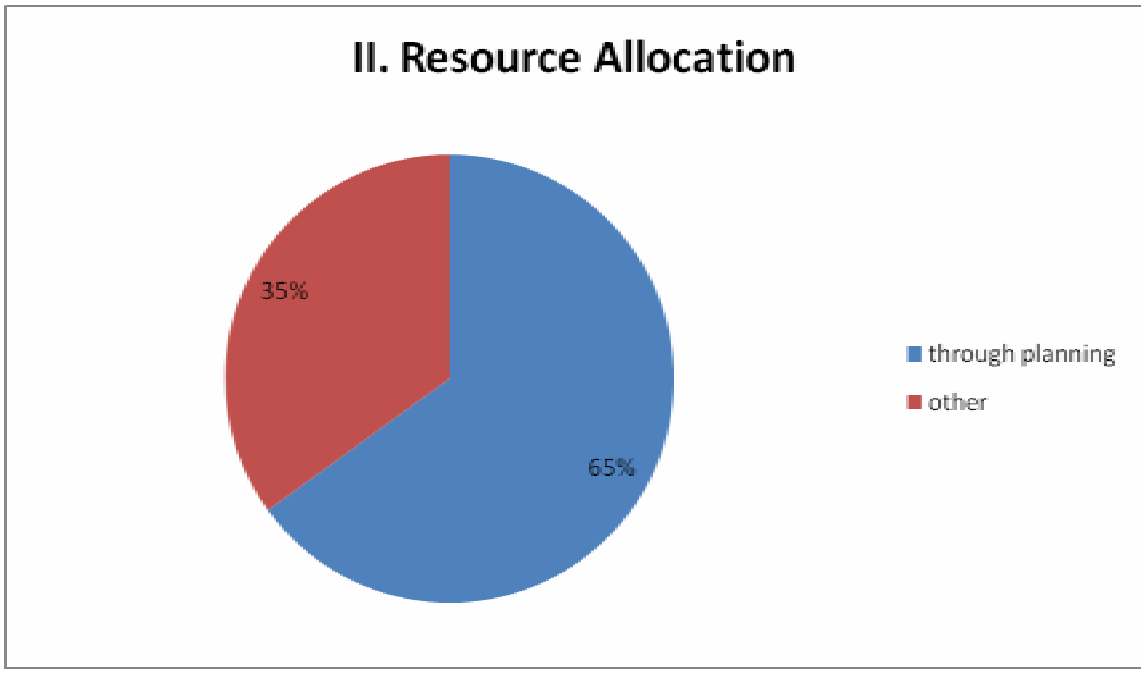
*The same authority could verify impact on more than one area.

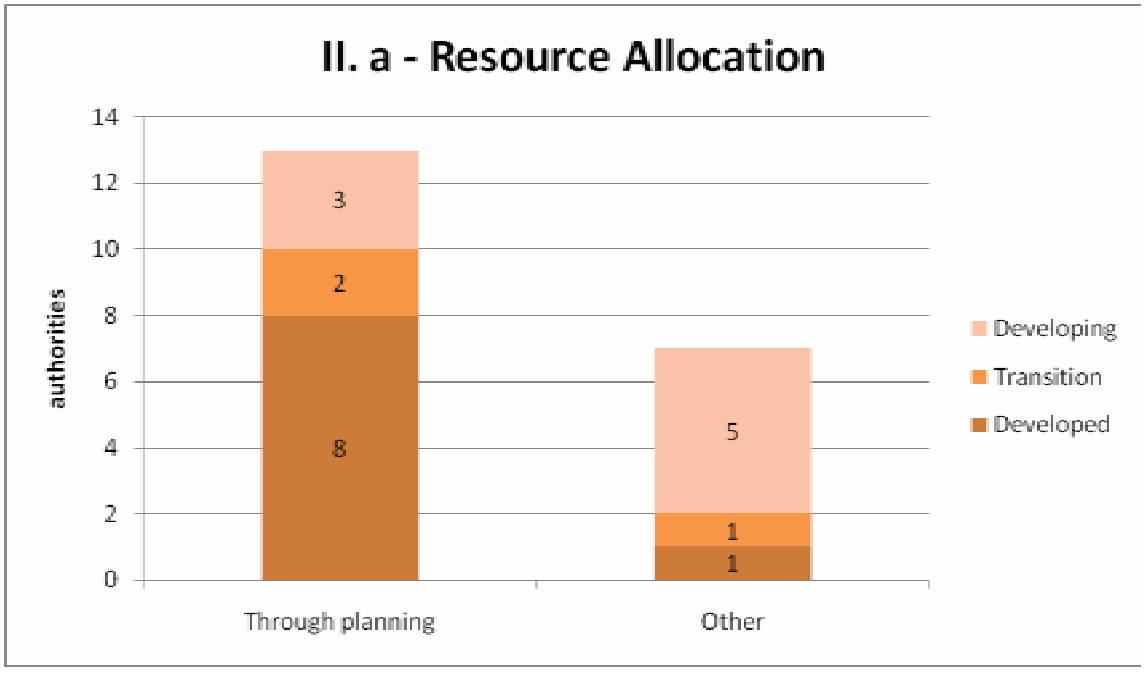


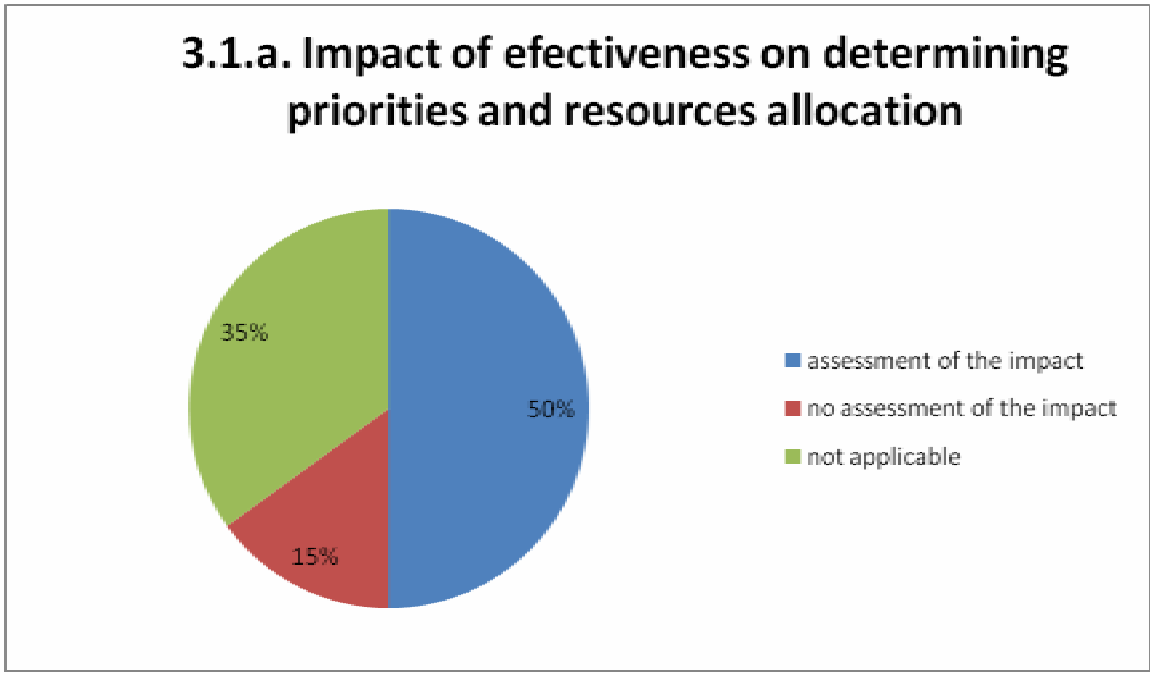
* The agencies were able to indicate more than one evaluation instrument to assess the achievement of the objectives.

** Such as Global Competition Review, AMCHAM Report, Internal Merger Assessment process, periodical meetings with the Board and Staff, opinions by the Appeal Court and Yearly Conferences, budget request, etc.




II. Resource Allocation
35%
65%
through planning
other


II. a - Resource Allocation
authorities
14
12
10
8
6
4
2
0
3
2
8
5
1
1
Through planning
Other
Developing
Transition
Developed


3.1.a. Impact of efectiveness on determining priorities and resources allocation
35%
50%
15%
assessment of the impact
no assessment of the impact
not applicable