

**International Competition Network  
Competition Policy Implementation Working Group  
Subgroup 2 on Experiences of Younger Agencies**

*An Assessment of Institutional Machinery:  
Methods Used in Competition Agencies and What Worked for Them*

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**1. Introduction**

Discussions about the implementation of competition policy tend to focus more heavily upon the question of *what* competition authorities should do than on the question of *how* they should do it. The issues of substantive doctrine and policy that so often command our attention take shape amid institutional arrangements that determine how competition authorities can exercise their powers. These institutions are the infrastructure over which policy measures must travel. The design of a jurisdiction's administrative infrastructure can have a decisive influence on the type and quality of policy outcomes that a competition system achieves. Both older and newer competition systems have come to realize that a body of competition laws is only as good as the institutions entrusted with their implementation.

The establishment of new competition systems and the refinement of older regimes have created a remarkable opportunity to consider the institutional prerequisites for the effective implementation of competition laws. The emergence of competition systems with varied mechanisms for the execution of substantive commands has generated an extensive and growing base of experience from which we can study the institutional foundations for effective competition systems. In this respect, the growth in the number of competition laws and the diversity among systems are not crises to be managed but instead present opportunities to use comparative study to achieve important improvements in a key area of economic policy making.

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<sup>1</sup>The views of Commissioner Kovacic are his alone, and are not necessarily the views of the United States Federal Trade Commission or of any other Commissioner.

A chief aim of CPI Subgroup 2 is to examine modern experience with the design of the institutional machinery of competition policy to derive insights about superior techniques for implementation. In the past year, the Subgroup has attempted to set the foundation for a continuing exploration of the approaches to organizational design and operational arrangements that serve to promote the attainment of good policy results. Means to this end have included a review of the literature on administrative design and operations, a survey of approximately one-quarter of the ICN's member organizations, and numerous conversations with competition authorities and nongovernment advisors. Drawing upon these resources, this paper offers preliminary views about principal institutional issues that confront competition systems and presents initial suggestions about how to address them.

Two general themes emerge from the Subgroup's work in the past year. The first is the strong interest within the competition policy community – especially among competition bodies – in matters of organization and operations. There is an evident sense that the attention devoted in many forums to questions of substantive doctrine tends to overshadow the operational issues whose resolution is fundamental to the implementation of policy. One need only consider the frequency with which conversations among competition agency officials gravitate toward basic questions such as how priorities are set, how evidence is collected and studied, and how specific tasks are allocated throughout the organization. A greater emphasis on operational matters could serve as a useful complement to the important initiatives the ICN has undertaken and will pursue on matters involving substantive standards. The Subgroup's survey, interviews, and discussions also revealed an extraordinary degree of institutional experimentation and reform that individual jurisdictions can study to determine how best to improve their own systems. This suggests the value of continuing efforts by ICN and other networks to devote significant attention to questions of organization and operations.

The second general theme is that good competition systems engage in unrelenting, deliberate efforts to evaluate and improve their institutional arrangements. No competition system, old or new, can ever presume that it has gotten things exactly and finally right. The real question for a competition system is perhaps not where it begins but how it evolves. Owing to continuing changes in commercial phenomena, political conditions, and the state of knowledge about economics and law, all competition systems are, in a fundamental respect, always in transition. A regular process of reassessment has great potential to identify institutional upgrades that help ensure that a competition system is equal to the challenges it faces.

## **2. The Institutional Machinery: Institutional Challenges and Possible Responses**

The Subgroup's work over the past year identified a number of matters of institutional design and operations that competition authorities, commentators, and nongovernment advisors regarded to be vital to the effectiveness of the competition system. This section reviews the most important administrative challenges and discusses approaches that various jurisdictions have used to improve the institutional machinery for implementation.

## **2.1. Regular Stocktaking of the Competition Agency's Powers and Activities**

The responses to the Subgroup's survey and related interviews have underscored the importance for a competition agency of engaging in a periodic examination of the competition system's existing foundation of statutes and implementing regulations. Among other factors, the continuing process of change in commercial practice, technology, collateral regulatory systems, and the political environment require competition agencies to evaluate the adequacy of the statutory platform for the competition system. Critical matters for recurring reassessment include the wisdom of existing substantive commands, the adequacy of information gathering powers, the quality of remedies for infringements of the law, the suitability of the mechanism specified for adjudicating disputes, exemptions, and the distribution of policymaking authority among competition bodies and sectoral regulators in the same jurisdiction.

The process of stocktaking requires the competition agency to develop and maintain a data base that tracks past activity. To develop recommendations for adjustments in the competition statutes, the agency must build an accurate profile of its own activities, including data on cases initiated, advocacy measures undertaken, reports issued, and results obtained. The data set should be assembled in a manner that permits comparisons over time. For example, many of the responses to the Subgroup's survey (e.g., Chile, Czech Republic, France, Greece) indicated that jurisdictions are keeping close track of trends in prosecuting various categories of cases and in their experience in obtaining remedies. These responses suggest the usefulness of assembling cross-jurisdictional comparisons that trace the types and results of agency activity over time.

One strand of literature on competition policy has tended to suggest that legislative adjustments to the original scheme of a competition system were infrequent and extremely difficult to obtain. Modern experience reveals that it is common for competition agencies to identify weaknesses in the existing framework of laws and to elicit legislative reforms. The model of successful institutional design is one of continuing regeneration. This model features experimentation with an initial design, the evaluation of results achieved, and the proposal of refinements.

The Subgroup's survey of ICN members and related interviews indicated that most jurisdictions either have adopted legislative reforms within the past five years or have assembled proposed reforms that are now awaiting consideration before legislative authorities. It is the rare jurisdiction that has undertaken no changes to the original design or is not in the process of considering such adjustments. Some jurisdictions, such as Mexico, have adopted far-reaching alterations that cover many areas of the competition system. Some nations (e.g., Estonia) have adopted new laws that increase fines or other sanctions. Another group, including Austria, enacted changes governing the organization and procedure of the competition authorities. Others have attained important additions to the competition agency's responsibilities, such as Russia's recent decision to give the Federal Antimonopoly Service broad powers to protect competition in the public procurement. Still others, such as Japan, have gained legislation that authorizes the use of leniency mechanisms to improve the detection of illegal conduct. Some jurisdictions with multiple competition policy bodies, such as Brazil, are considering a redistribution of authority that seeks to

streamline operations. Other jurisdictions, including Argentina, are considering legislative proposals that would amend the process by the competition agency's leaders are selected. Armenia is one of a number of jurisdictions that has drafted legislative amendments that would alter reporting obligations of economic entities and define more clearly the duties of enterprises to provide evidence to the competition commission.

As noted in Section 3 below, this pattern of activity suggests the benefits to a competition system of engaging in a periodic process of reassessment. As a rough rule of thumb, a competition agency might ask every five years whether its existing complement of powers is appropriate. A periodic review of this type would indicate areas in which statutory powers ought to be increased and would help identify requirements or commands that ought to be abandoned.

## **2.2. Assessment of Internal Organization and Management**

In a number of instances, a competition authority can and should carry out reforms to its existing internal organization. As suggested above, a key starting point for the evaluation of organizational design is a conscious assessment of past experience. The competition agency can undertake the analysis of past experience with its own resources exclusively or can supplement its own review with peer review exercises or with public consultations that solicit the views of external observers, including representatives of non-government organizations. For example, Portugal has participated in an initiative designed by the Organization for Economic Cooperation and Development that involved an extensive assessment by outsiders of its internal operations.

The Subgroup's survey and interviews identified several ongoing areas of organizational reform. One of the most important has involved the role of the competition agency's economists. Particularly significant in this respect is the effort by the Competition Directorate of the European Union in this decade to establish the office of the chief economist and to give the chief economist a direct reporting line to the directorate's top leadership. A central aim of this measure was to enhance the role of DG Comp's economists generally and to increase their capacity to act as a quality control mechanism. As born out in the experience of other jurisdictions (such as the United States), there can be a major difference in institutional decision making and in operational results when the agency creates a separate unit of economists and gives them direct access to the agency's leaders rather than simply including economists with attorneys or other specialists in fungible teams of case handlers.

A second example involves the examination of the relationship of seemingly distinct elements of an agency's portfolio of responsibilities. Many competition agencies have duties other than competition policy. Over thirty competition agencies (e.g., Australia, Canada, Hungary, United Kingdom, US Federal Trade Commission) have some responsibility for consumer protection matters such as the regulation of advertising or the control of deceptive sales practices. A question of longstanding interest has been whether an authority with a combination of competition and consumer protection duties might realize synergies between these areas. The Office of Fair Trading of the United Kingdom recently has undertaken a fundamental internal organizational reform to develop a unified approach to the application of its competition policy and consumer protection

responsibilities. The OFT's experience promises to provide an informative basis for other agencies having a similar combination of duties to consider in structuring their operations in the future.

Many survey responses and related interviews reviewed the framework of decision making within the competition authority. A promising area for additional study would be to examine how specific patterns in enforcement, and in the quality of outcomes, might be related to specific decision making approaches and to determine, among other questions, how the addition of different decision makers to the process affects the quality of policy making.

### **2.3. Strategic Planning to Set Priorities**

Good competition agencies, new and old, set goals and plan steps to accomplish them. To do otherwise is to be captive to external demands, whether in the form of complaints from consumers or business operators, or requests for action by public bodies such as legislatures or government ministries. Even the most humble, least funded competition agency must develop a strategic plan that defines what it will seek to achieve in the coming year or series of years. At a minimum, the process of preparing an annual budget should be a stimulus for the agency to define what it means to accomplish in the year ahead.

The year-by-year assessment of priorities as part of the budgeting process is a necessary starting point. The Subgroup's survey and related interviews demonstrated that a number of ICN members are devoting increased attention to the question of how to set priorities for the longer term in a manner that looks beyond the year ahead. South Africa's Competition Commission, for example, recently embarked on a process to develop a long-range plan to guide its allocation of resources. Some jurisdictions, such as the United Kingdom's Office of Fair Trading, had adopted the practice of publishing their strategic guidelines and have requested that external parties who propose initiatives link their requests to the attainment of the OFT's stated priorities.

As indicated in the Subgroup's survey and related interviews, the formulation of a strategy might include the following elements.

#### **2.3.2. Employ a Portfolio of Policy Instruments**

The term "competition policy" sometimes is equated with the enforcement of prohibitions against restrictive business practices. As the work of the ICN has underscored, competition policy encompasses a larger collection of policy instruments by which a country can promote business rivalry. A competition policy program need not invariably place the enforcement of antitrust commands atop its agenda. Many jurisdictions (e.g., Croatia) which participated in the Subgroup survey and related interviews use a variety of techniques to increase competition. In the full set of possible policy tools, law enforcement might not be the exclusive instrument. Jurisdictions can tailor competition policy systems to suit their unique needs and capabilities through their initial choice of tools (e.g., advocacy, education, research, and law enforcement) for promoting market rivalry, through the relative emphasis that a competition agency gives to these tools as it gains experience and reflects upon results achieved, and through adjustments to the agency's powers over

time to alter the initial collection of policy tools. There is considerable room to account for the specific circumstances and changing capabilities of each jurisdiction through the initial definition of responsibilities and creation of policymaking instruments, the sequencing of activities, and the adjustment of powers over time.

***Advocacy.*** One of the most important contributions of a competition policy system is to serve as an advocate within the government and the country at large for reliance on market processes and business rivalry to organize economy activity. Government regulations that restrict entry, pricing, and trade often curb new business development and distort the competitive process. The competition agency can discourage recourse to competition-suppressing measures by unmasking their social costs and pressing public officials to justify the restriction of business rivalry. A competition policy agency can supply a valuable, pro-competition policy by participating in the development of privatization programs, commenting on draft legislation, and advising sectoral regulators. By custom or legal mandate, competition agencies in many jurisdictions involved in the Subgroup's survey (e.g., France) provide guidance on competition policy to the parliament and other government bodies at the national level and in political subdivisions.

***Education.*** Competition agencies must devote resources to educating business officials, consumers, and government policymakers about the merits of market processes. Authorities in many jurisdictions (e.g., Lithuania) emphasized how a strong education program can benefit the competition authority in several ways. Creating awareness of the agency's activities can help stimulate suggestions about possible cases (e.g., Iceland). The competition authority can be a catalyst for debate about the appropriate role of government intervention in the economy and the correct choice of strategies for promoting growth. Performing the education function can help the competition agency can build a political constituency for market-oriented policies. To have positive long-lived effects, reforms ultimately must command public support. Extending participation in and support for the reform process to the larger public, especially to citizens who live in extreme poverty, requires conscious efforts to increase public awareness of the rationales for competition policy and the encouragement of public participation in the design and implementation of specific measures.

The Australian Competition and Consumer Commission provides a useful model for competition agencies to consider in formulating a public education program. Several elements of the ACCC's education and public communication program stand out: the development of an annual report that specifies the agency's near- and long-term objectives and reports on activities from the previous year; the preparation of highly informative brochures, in print and electronic form, that explain the operations of the agency and provide practical guidance to consumers and business operators; an infocentre that responds to email, telephone, and letter inquiries; the maintenance of a highly usable web site; and an active media relations program.

***Law Enforcement.*** The traditional focus of competition policy is to bring cases against anticompetitive practices. A number of comments in the Subgroup's survey and related interviews suggested approaches that new agencies in transition environments might consider in formulating a law enforcement strategy. One aim would be to preserve the benefits of programs to privatize state-

owned enterprises. Privatization programs often raise significant competition policy issues. Without adequate attention to competition concerns, the strategy and methods chosen to alienate assets may simply transform state-owned monopolies into durable privately held monopolies.

Competition policy oversight in the post-privatization period can help the public reap the benefits of creating private property rights. For example, where the government dissolves a monolithic public enterprise into a number of privately-owned successor firms, the successors may seek to use mergers, holding companies, or other institutional arrangements to re-establish the monopoly structure of the public ownership era. Some forms of consolidation or cooperation will increase efficiency by enabling the participants, for example, to realize scale economies or link complementary assets. Competition policy oversight of outright consolidations or cooperation by contract can help ensure that such measures are not mere efforts to create a private variant of the predecessor public monopoly. In other instances, newly privatized bodies may attempt to use the vestiges of state-owned status to entrench positions of dominance by improper means.

Collusion involving direct rivals can be a matter of serious concern, as well. Consider four scenarios involving horizontal collusion in the context of transition economies. Trade liberalization may do little to improve competition in various services and local goods markets. In many countries, service sectors feature collusive efforts by incumbent sellers to raise prices by setting fees, allocating sales opportunities, and restricting entry. Although entry into some services might seem relatively easy and capable of destroying cartel discipline, incumbent suppliers nonetheless may succeed in jointly restricting output. This is particularly true where incumbents coordinate their affairs through trade associations or other institutions that the government previously has recognized as legitimate venues for orchestrating sectoral activity. A statutory prohibition on cartels could include a clear statement forbidding output restrictions through trade associations or similar instrumentalities and withholding immunity where the government previously has acquiesced in the private ordering of output.

A second rationale for anti-cartel enforcement is to prevent the continuation of patterns of inter-firm relationships that flourished during the period of planning. Central planning, with its regime of production quotas and price controls, ingrained in the managers of individual firms an ethic of cooperation that may persist even when an emerging market has formally liberalized the economy. Even when a government enacts laws that allow enterprises to set their own production levels and choose their own prices, the cooperation ethic will not disappear instantaneously. Firms may continue privately to abide by conduct norms that the state once mandated. An anti-collusion measure in a competition law could serve a useful purpose by making clear that the government will not tolerate private efforts to recreate collective planning techniques that the jurisdiction has abandoned.

The third scenario concerns public procurement. Public purchasing authorities are common targets for collusive schemes throughout the world. Collusive tendering poses especially grave dangers in transition economies where public purchasing accounts for a substantial part of national economic activity and public projects, such as transportation infrastructure development, are vital to economic growth. An anti-cartel measure in a competition law could provide a valuable tool for

punishing and deterring efforts to rig public tenders.

The fourth possible setting for anti-cartel enforcement involves international collusive schemes. In recent years, the exposure of international price-fixing cartels demonstrated the ability of multinational enterprises to carry out global schemes to allocate territories and curb production. It is likely that the cartels in question have raised prices to consumers and industrial purchasers in transition economies. An anti-cartel mechanism would enable the transition economy to seek redress for injuries imposed by international cartels and to cooperate with foreign competition authorities in prosecuting cross-border collusive arrangements.

As the scenarios sketched above indicate, the enforcement of competition rules against horizontal collusion can play a valuable role in transition economies. Anti-cartel enforcement, however, does not necessarily exhaust the range of desirable applications of antitrust enforcement in the transition process. Scrutiny of exclusionary behavior by dominant incumbent firms may be necessary where, for example, the state previously has created or permitted monopolies to control the distribution of goods. The operation of a distribution monopoly will retard expansion of trade within the country and diminish the capacity of imported goods to press domestic producers to improve performance.

A competition law enforcement program also can help discourage corruption. A number of competition laws directly limit the ability of government agencies to diminish competition. Some measures forbid government bodies to restrict entry by, for example, imposing licensing requirements, unless the national legislation expressly grants such authority. Other provisions bar public officials from granting exclusive franchise rights or otherwise discriminating improperly against entrepreneurs that seek access to the market. Such measures can impede the formation and execution of corrupt agreements between public officials and private individuals. The competition policy mechanism essentially prevents the public official (the seller) from fulfilling her promise to the payer of the bribe (the buyer) to provide an illicit economic privilege. The competition law does not directly sanction the payer or recipient of the bribe by subjecting them to civil or criminal punishment. Rather, it diminishes the gains from improper bargains by impeding the execution of the promises that form the core of any single corrupt agreement and diminishes the maintenance of stable buyer-seller relationships that characterize corruption in many settings. By raising the costs of conceiving and executing corrupt arrangements, the competition policy system can help prevent their creation.

### **2.3.3. Match Commitments to Capabilities**

There is considerable room for variation in determining which commands a jurisdiction should adopt and in deciding the sequence of efforts to apply them. In the case of antitrust enforcement, for example, a country reasonably could choose a strategy that begins with enacting basic prohibitions on hard core horizontal restraints, such as collusive tendering, and gradually adds a fuller collection of prohibitions. Alternatively, a jurisdiction could adopt a more elaborate set of antitrust measures and expand its operations to apply more conceptually complex and resource-intensive commands over time as the institution's capability grows. A decision to undertake some



enforcement does not mean that a nation must attempt everything. An alternative to the all-or-nothing choice is to vary the initial design of a competition policy system according to the host country's existing capabilities and resources and the strength of commitments by foreign advisors to provide implementation assistance.

A country with weak initial resources might choose to begin with a more austere competition policy system that emphasized advocacy and education and forbade a narrow range of behavior, such as supplier cartel agreements. As capabilities and implementation resources increase, the jurisdiction could augment its law. An alternative is to enact a relatively elaborate law but expressly phase in the implementation of certain operative provisions over time as the country's capabilities grow.

Older and newer agencies should be wary of legal commands that impose massive administrative burdens. An example involves the design of merger control. One element of forming a merger control regime is to determine the thresholds of activity that will trigger the obligation of merging firms to report their transactions to the competition authority. The wisdom of a specific threshold for any single competition agency depends heavily on the agency's resources. Merger analysis has proven to be the most resource-intensive activity for new competition agencies. Agencies that set reporting thresholds too low will find themselves swamped with reviewable transactions, including a substantial number of mergers with no conceivable competitive significance. Establishing comparatively high thresholds may be the only means that impoverished agencies can use to focus scarce resources on matters of the highest importance.

#### **2.4. Building and Sustaining a Knowledge Base**

A competition agency can establish a research capability that permits it to analyze impediments to competition. By investing in "competition policy research and development," a competition agency creates a foundation for its advocacy activities and its selection of possible subjects for law enforcement. The publication of studies also can help educate government agencies and the public generally about the sources of poor economic performance.

One important means to this end is to engage in sector studies. Industry-specific research can yield important insights into the obstacles to competition. Jurisdictions that have assigned a high priority to sector studies as competition policymaking tools include Canada, the European Union, the United Kingdom (the Competition Commission and the OFT), and the United States (the Federal Trade Commission). The Subgroup survey and related interviews indicated that individual jurisdictions might benefit from greater cross-border cooperation in discussing study methodologies and study results. There is considerable opportunity for jurisdictions that are contemplating the development of their own studies to take advantage of these experiences.

#### **2.5. Enhancements to Administrative Infrastructure**

A major priority for older and newer competition authorities is to adopt a sound administrative infrastructure. Efforts toward this end have taken several forms.

### **2.5.1. Transparency Devices**

One ingredient is a commitment to promote transparency, such as a requirement that policy adjustments be promptly and widely publicized and subject to comment and debate before their enactment. Several jurisdictions, such as Armenia, which participated in the Subgroup's survey or interviews, have taken recent measures to increase the ability of external observers to monitor the formulation of policy. Procedures for ensuring the confidentiality of business records or preserving the integrity of settlements of disputes also were identified as vital to building confidence in the competition agency. Many survey responses (e.g., Iceland) and related interviews indicate that competition authorities regard strict compliance with administrative procedures to be essential elements of good practice and necessary foundations for obtain a reputation for impartiality.

In developing new competition agencies, an emerging market nation has an opportunity to establish a model for improving public administration across the public sector. In transition economies, the new competition agencies present possibilities for significant improvements over existing administrative structures. Means to this end include the promulgation of rules that insulate competition authorities from political interference, compel disclosure of the content of and rationale for agency decisions, and permit affected parties to challenge deviations from procedural rules set by statute or implementing regulation.

### **2.5.2. Investments in Information Technology**

Investments in information technology and communications networks can play an important role in building a strong administrative infrastructure. In the Netherlands, a key to the success of the NMa in challenging a nationwide network of cartels in the construction industry was the establishment of an electronic database for tracking and managing the hundreds of matters involved in this ambitious law enforcement program. Investments in information technology also facilitate training and research, as a growing array of source materials and research tools is available through the internet in electronic form.

### **2.5.3. Organizational Structure**

The responses to the Subgroup survey and related interviews reveal that competition agencies take a wide variety of approaches in organizing their operations. Important degrees of commonality appear across jurisdictions. Under various names, most competition authorities have established operational units that deal with international affairs, legislative relations, management and operations, personnel, media relations and public education. Most agencies also have a secretariat that is responsible for maintaining official records. Common practice (e.g., Germany) includes the establishment of a litigation or legal services division that provides legal advice concerning matters of administrative practice and procedure and, in many instances, represents the agency before the jurisdiction's courts. Agencies also tend to assign separate functions to distinct offices (e.g., competition and consumer protection), although some jurisdictions, as noted above, have embarked on organizational reforms to combine certain functions into single unified teams.

Authorities that treat certain offenses as crimes tend to have dedicated units that deal solely with criminal matters.

Beyond these patterns, agencies display considerable variation in how they organize operations. One major choice is whether to divide operations according to function – e.g., mergers, cartels, and dominance – or by sector. There is considerable variation across agencies. The continuing search for an optimal design is evident in the experiences of the many agencies (e.g., Estonia) that have experimented with both approaches. There also are extensive differences in the manner in which certain administrative tasks, such as the monitoring of compliance with existing decrees, are assigned to separate offices or delegated to the teams of case handlers whose matters generated the decrees. There is no systematic basis for drawing conclusions about which of these approaches yields superior results, but this is a topic worthy of further study.

Two other trends emerge from the survey responses and related interviews. The first is a noticeable trend toward establishing a separate office for the agency’s chief economist. The second is the conscious adoption of quality control methods that provide a second opinion on recommendations prepared by teams of case handlers. Both steps stem from the desire to improve quality control techniques as part of the decision to prosecute.

## **2.6. Recruiting and Retaining Skilled Professionals**

Competition agencies face no operational challenge greater than the recruitment and retention of skilled professionals. The challenge is greatest in the many jurisdictions in which private sector salaries greatly exceed public sector compensation scales. The survey responses and related interviews identified a number of ways that agencies have responded to these challenges. Some jurisdictions offer lifestyle benefits – such as telecommuting, the availability of alternative work schedules, and access to a day care center inside the competition agency – that are not readily attainable in the private sector. Others have developed training programs that anticipate a high rate of turnover and seek to bring new, entry-level recruits up to speed quickly. Still other jurisdictions have developed the habit of staying in touch with their junior “alumni” in the expectation that, with the passage of time, the intellectual appeal and public interest qualities of work in a competition agency will draw some individuals back into the public sector. Other jurisdictions – Turkey is an example – have experimented with recruiting competition experts who are not attorneys or economists but are trained to perform analytical and investigational tasks that are integral to the handling of cases.

For some needs, the responses to the Subgroup’s survey indicated that some jurisdictions contract with outside parties. For example, the ACCC generally relies on outside counsel to represent the agency in competition matters before Australia’s national courts. A still larger number of jurisdictions hire economists from universities and economic consulting firms to advise the competition agency in the evaluation of possible cases and to provide expert testimony in court.

## **2.7. Improving Access to Business Records**

The ability to obtain business records (including the use of compulsory process, search warrants, and dawn raids) and to require the testimony of individuals is vital to the success of a competition agency. The survey responses from and interviews with newer competition authorities, particularly in transition economies, identified this as one of the principal obstacles to effective performance. In some jurisdictions, the effort to obtain and apply suitable information-gathering tools must overcome resistance, embodied in long-standing customs of public administration, to the use of compulsory process to implement economic regulatory commands.

## **2.8. The Dispute Resolution Mechanism**

The responses to the Subgroup's survey and related interviews indicate that competition agencies have taken a variety of approaches to the resolution of case disputes. Some (e.g., Chile) give the competition agency the power to take initial decisions and subject these decisions to judicial review before appellate bodies of general competence. Others require all matters to be adjudicated in the first instance in courts of general competence. A third group of jurisdictions relies on specialized competition courts to review decisions of the competition agency or to serve as the forum in which cases are initially presented by competition agencies that lack power to make decisions in their own right.

There is no systematic basis for deriving conclusions about the relative efficacy of these decision making approaches. Interviews with competition authorities concerning their experiences with these various models indicate that this is a promising area for additional research. A particularly interesting area of possible work would involve the degree of deference that a competition authority receives when it appears, respectively, before a court of general competence and a specialized competition court.

## **2.9. Relations with Collateral Institutions**

Effective competition agencies depend heavily on the quality of "collateral institutions" outside the competition agency. Many jurisdictions (e.g., Bulgaria) indicated that one of the most important is the community of sectoral regulators which share responsibility for competition policy. A small number of jurisdictions – Australia most prominent among them – have integrated some traditional public regulatory tasks (involving issues of access and pricing for telecommunications) into the operations of the competition agency. Most others rely upon liaison arrangements with sectoral regulators to coordinate policy in areas of common concern.

The public prosecutor constitutes another important collateral institution in competition policy regimes that treat certain infringements as crimes. In some cases (e.g., the U.S. Department of Justice), the competition authority is part of the executive branch of government and has authority to prosecute criminal offenses. In other cases (e.g., Denmark), the competition authority refers potential criminal violations to the public prosecutor, who presents the case in court.

The effectiveness of government competition bodies also rests upon the vitality of a number of supporting institutions, both public and private, that provide resources essential to the operation of

the law. Prominent among these are universities, which contribute major inputs to the process of economic and political liberalization. Universities train specialists in business administration, economics, law, and public administration. Graduates from such programs take positions in the government agencies that carry out the new laws or work outside the government advising those whose interests are affected by the legal regime. University faculties also conduct research that informs judgments about existing public policies and the need for further adjustments. Building a self-sustaining indigenous capacity in universities and other institutions to collect data and perform policy research is a key step toward improving the quality of public policy.

Most legal regimes also rely on a variety of nongovernmental organizations to explain the content of various laws to affected groups. Professional associations provide networks through which lawyers and others who advise business operators can learn about new policy developments. Media organizations disseminate information about rights and responsibilities created by law, report on economic trends and the activities of individual business operators, and monitor the performance of government bodies responsible for enforcing legal commands. Consumer groups inform citizens about their legal rights and collect complaints about alleged violations.

## **2.10. Building Cooperative Relationships with Other Competition Agencies**

Competition agencies should exploit possibilities for multinational regional cooperation in building competition policy institutions. Regional cooperation can supply a valuable means for developing new implementation capabilities and reducing the cost of building new competition policy institutions. Broader multinational initiatives also provide opportunities for transition economies to cooperate in developing enforcement strategies, to harmonize procedures and substantive standards, and to share best practices. In some instances, regional alliances may permit transition economies to reduce the costs of implementation by consolidating certain functions, such as the investigation of region-wide trade restraints or the adjudication of cases, in the regional authority. Multinational bodies such as the ICN can provide useful conduits for transferring information and know-how. Relationships formed in the course of participating in these networks can facilitate formal and informal interaction between individual competition authorities.

A number of agencies are using international staff exchanges as means for improving cooperation and for transferring operational know-how. For example, Canada and Australia have engaged in a successful program of bilateral personnel exchanges with each other and with other competition authorities. The U.S. Federal Trade Commission is in the process of formulating an expanded program of bilateral exchanges to implement authority granted in the recently adopted US SAFEWEB Act. In these and other jurisdictions, staff exchanges also have the benefit of rewarding staff for superior performance and providing experiences that are not readily obtained in private sector employment.

## **3. Conclusion: The Role of Continuing Evaluation and Assessment**

The successful execution of competition policy programs requires a continuing commitment by competition authorities to assess the impact of efforts to design and implement the competition

policy system. Continuing assessment of implementation experience is a necessary ingredient of any competition policy program. In most countries, policy improvements tend to occur incrementally and cumulatively, rather than in a single “big bang.” Perhaps no single lesson of the Subgroup’s work in the past year stands out more clearly than how routine reviews of a competition agency’s substantive initiatives and procedural reforms facilitate periodic adjustments in the formal legal framework, agency organization, and operations.