

ICN Advocacy Working Group  
***Competition Culture Project Report***

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## Background<sup>1</sup>

The mission of the Advocacy Working Group (AWG) is to undertake projects, to develop practical tools and guidance, and to facilitate experience sharing among ICN member agencies, in order to improve their effectiveness and promote the development of competition culture within society.

In 2002, the AWG published a study on ICN members' advocacy activities.<sup>2</sup> The report adopted the following definition of competition advocacy:

*Competition advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.*

It identified the establishment of competition culture as one of the key aims of competition advocacy, defining it as, 'the awareness of economic agents and the public at large about competition rules'.<sup>3</sup> This included the business community, other governmental agencies, academia and society as a whole.<sup>4</sup>

The study found that competition culture was perceived as weaker within developing and transition economies, especially where: competition regulation had only been very recently adopted; where courts were inexperienced with competition matters; where there was a lack of acceptance of competition principles by authorities and economic agents; and where there were strong interventionist policies. It was stronger where: competition agencies had participated in regulatory reform and the privatisation process; there was an experienced competition agency; cases attracted significant media coverage; where there were specialist

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<sup>1</sup> This report has been prepared by Prof. Andreas Stephan (University of East Anglia, UK) and a drafting team with contributions from Rajeev Hasnah (Competition Commission of Mauritius), Vladimir Kachalin (Russian Federal Antimonopoly Service), Bert Foer (American Antitrust Institute), Alden Abbott (The Heritage Foundation, Washington), Paolo Palmigiano (Sumitomo Electric Industries, Ltd) and Shanker Singham (Babson Global). Survey results were processed at the ESRC Centre for Competition Policy, University of East Anglia (UK). Helpful comments were also received by members of the Advocacy Working Group (AWG), both competition agencies and non-governmental advisors (NGAs). The AWG would like to thank all ICN member agencies who participated in the survey for the Competition Culture Report.

<sup>2</sup> International Competition Network, *Advocacy and Competition Policy*. A Report Prepared by the Advocacy Working Group. Presented at the ICN Annual Conference, Naples, Italy, 2002. Available: <http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf>

<sup>3</sup> Ibid at iii

<sup>4</sup> Ibid at p77

competition tribunals; interaction with universities; publication of decisions and case studies; and strong leadership by the head of the agency.<sup>5</sup>

Competition agencies were asked to estimate the level of competition culture within their countries. Of the 48 participating authorities, 15 felt they had a high degree of competition culture, six felt they had an intermediate level and 27 felt they had a low level. Of the developing economies in the study, 80 per cent placed themselves in the low category (in contrast to 20 per cent of developed economies).<sup>6</sup> A direct link was suggested between the level of perceived competition culture and age of competition legislation and experience of the agency. Participants in the study suggested a variety of means for promoting competition culture: official media (annual reports, Official Gazette, guidelines); mass media (websites, press releases, radio and tv); selective media (seminars and workshops, business meetings, overviews, speeches, articles in journals); and studies in general (newsletters, discussion, surveys, study groups).<sup>7</sup>

In 2011, the AWG published a two part Advocacy Toolkit, aimed at providing an overview of the competition advocacy process and the range of tools available, in order to share and disseminate alternative approaches to advocacy across competition agencies and provide a useful, practical guide to competition agencies looking to amend or refresh their current approach.<sup>8</sup> The toolkit identified the following stakeholders as relevant to competition advocacy and therefore relevant to the strengthening of competition culture: Government departments, regulators and public bodies at national, regional or local levels; Business people, businesses and trade bodies involved in the affected markets, including producers of inputs, substitutes and complements; Consumers, consumer advocates and consumer groups; Professional organisations and trade unions; Chambers of trade, commerce or industry, and chambers of agriculture; Legal and industry experts in the area studied; Academics with a specialism in the sector; and the Media.

In 2012 the AWG also published an interim report on the *Explaining the Benefits of Competition* Project.<sup>9</sup> The Benefits project collated the experiences of ICN members to build a practical guidance document that will serve as a tool for competition agencies in raising awareness of the benefits of competition, and helping to promote competition culture. The study engaged 23 competition agencies and found it was difficult to recommend a one-size-

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<sup>5</sup> Ibid at x and p79

<sup>6</sup> Ibid at p 77

<sup>7</sup> Ibid at x-xi

<sup>8</sup> International Competition Network, Advocacy Toolkit Part I: Advocacy process and tools (available: <http://www.internationalcompetitionnetwork.org/uploads/library/doc745.pdf>) and Part II: Effective Communication of a Competition Advocacy Message (available: <http://www.internationalcompetitionnetwork.org/uploads/2011-2012/competition%20advocacy%20toolkit%20part%202%20draft.pdf>) Prepared by the ICN Advocacy Working Group.

<sup>9</sup> ICN Advocacy Working Group, Interim Report on the *Explaining the Benefits of Competition* Project. (April 2012). Available: ([http://www.internationalcompetitionnetwork.org/uploads/2011-2012/interim\\_benefits%20project%20report%20-%20final.pdf](http://www.internationalcompetitionnetwork.org/uploads/2011-2012/interim_benefits%20project%20report%20-%20final.pdf))

fits-all policy for explaining the benefits of competition and that it is important to adapt the message and means of communication depending on the identity of the target stakeholder. While government and legislators were rated marginally more important than other stakeholders, all were considered important by the participating authorities. The study concluded that competition agencies found it more challenging to communicate with consumer groups and the general public, than with legislators or the business community.

## The Competition Culture Project

The Competition Culture project was launched during the AWG Workshop in Paris in October 2012. It seeks to build on the 2002 AWG report and the Advocacy Toolkit by providing a more detailed definition and learning how ICN members interact with - and the role played by – each constituent part of *Competition Culture*.<sup>10</sup> The project's working objectives are to:

1. Establish a framework within which to promote Competition Culture using a set of specific methods and techniques gathered from the experiences of ICN members; and
2. Provide guidance to members on how to approach each constituency.

It is notable that in the 2002 AWG study, increasing competition culture was identified as among the most important tools for successful competition advocacy, alongside legal reforms and additional resources.<sup>11</sup> Indeed successful attempts to strengthen competition culture through greater popular understanding and support for competition law, also serves to lend support to these other important tools.

## The Competition Culture Survey

Apart from the ICN studies summarised in the preceding sections, published information on competition culture is sparse when compared to substantive competition rules and procedures. There are a wide range of factors relevant to competition culture, making it difficult to measure how developed a jurisdiction's competition culture is, or to make comparisons between ICN members. Following a series of ICN webinars on competition culture, it was felt that a survey sent out to all ICN members would be the most effective way of achieving the project's stated objectives. In particular, it would allow the AWG to compare levels of competition culture among jurisdictions and collate their experiences for the benefit of all ICN members.

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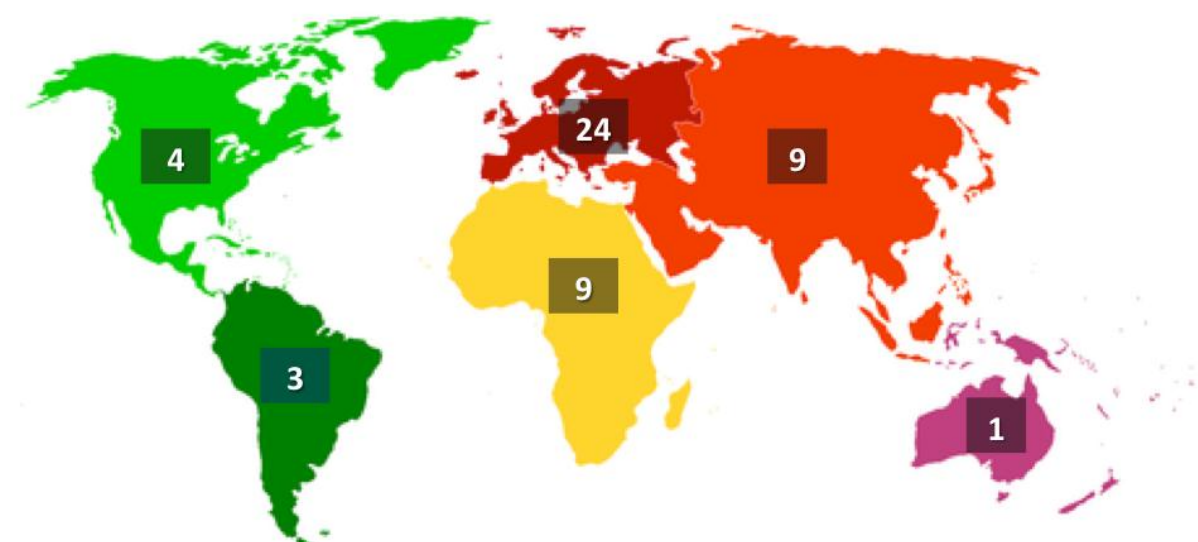
<sup>10</sup> ICN Advocacy Working Group Long-Term Strategic Plan 2011 – 2016. Available: <http://www.internationalcompetitionnetwork.org/uploads/library/doc763.pdf>

<sup>11</sup> ICN AWG 2002 Report (n 2) at 90; Chart 24

A Competition Culture Survey was conducted among ICN Members in 2013/2014. The survey questions<sup>12</sup> (set out in full in Appendix 1 with the aggregate results) covered a variety of factors: defining competition culture; competition culture among legislators, government officials, journalists, lawyers, the judiciary, large businesses, small and medium enterprises (or SMEs), and members of the general public; reporting in the media; the existence of consumer associations; and the presence of academic centres.

The questionnaire was emailed to ICN members in December 2013, with reminders sent in January 2014. Fifty completed questionnaires were received from forty-nine jurisdictions.<sup>13</sup> This is a fairly high response rate for an ICN survey study and included responses from every region of the world:

**Figure 1: Responses by Region**



Two limitations of the survey study should be noted. The first is that the responses only came from competition agencies, not from the “stakeholders” that are discussed within the survey. Responses involving elements of judgement or estimation (e.g. competition awareness among members of the public) reflect the perceptions of the competition agencies that answered the survey. The second limitation is that we were not able to

<sup>12</sup> The survey questions were designed by: Alden Abbott; Beth Farmer; Alan Fells; Rajeev Hasnah; Vladimir Kachalin; Mirta Kapural; Rajinder Kumar; Trudi Makhaya; Sahil Mehra; Paolo Palmigiano; Shanker A. Singham; and Andreas Stephan. The final questionnaire was drafted by Andreas Stephan, following piloting within the UK’s ESRC Centre for Competition Policy.

<sup>13</sup> Algeria; Belgium; Brazil; Bulgaria; Chile; Colombia; Croatia; Cyprus; Czech Republic; Denmark; European Commission; Finland; France; Gambia; Germany; Greece; Hungary; Iceland; India; Ireland; Israel; Italy; Jamaica; Japan; Jersey; Kenya; Lithuania; Mauritius; Mexico; Moldova; Namibia; Netherlands; Pakistan; Papua New Guinea; Poland; Russia; Serbia; Singapore; South Africa; Spain; Sweden; Switzerland; Taiwan; Tajikistan; Tanzania; Tunisia; Turkey; USA (DoJ); USA (FTC); and Zambia. Responses from the US DoJ and FTC were not double counted where the same.

control for the identity of individual respondents within each participating competition agency. While we encouraged competition agencies to draw on multiple individuals with knowledge of each relevant area, it is possible that many questionnaires were completed by a single individual. The seniority and experience of these individuals will inevitably have varied between completed questionnaires and responses will to some extent have been influenced by personal opinions and experiences.

Despite these limitations, the responses allow us to build a snapshot of views on competition culture around the world and share experiences of competition advocacy initiatives. Specific responses are treated as confidential and the results are only reported in aggregate. While this means the responses of individual competition agencies are not identified in this report, the promise of anonymity encouraged respondents to answer the survey questions as frankly as possible; in particular encouraging them to discuss both successful and unsuccessful competition advocacy experiences.

This report sets out a definition of competition culture, then presents the competition culture survey results around seven key constituencies:

1. The Government
2. The Judiciary
3. The Legal Community
4. The Business Community
5. Members of the Public
6. The Media
7. Academia

## Defining Competition Culture

Competition culture comprises a diverse set of factors that determine individual and/or group behaviour in the sphere of market competition and competition enforcement. These include knowledge, experience and perception. In defining competition culture, it is worth reflecting on the instrumental goals that make competition desirable. These include freedoms inherent in a competitive free market economy that allow individuals and firms to harness their creativity, passions and ambitions in pursuit of bettering their welfare and the welfare of others.

Competition agencies define and promote competition culture in various ways. First, and perhaps most obviously, they give active content to competition law legislation through enforcement. Second, they often promote awareness of the benefits of competition and the adoption of competition-friendly policies within other government bodies through their role in competition advocacy. Third, they undertake a variety of advocacy activities to make economic agents and consumers aware of the advantages of market competition. Fourth, they promote legal procedures and administrative and judicial adjudication that provides the public good of competition culture to others beyond the immediate litigants. Finally, they interact with and educate specialists, including lawyers, economists and academics, who generate wider awareness of competition culture as non-governmental actors.

Although the survey was not designed to get at the substantive definition of competition culture, many of the questions were quite relevant to understanding the process by which the various respondents help to generate competition culture in their respective jurisdictions. In particular, the need for competition agencies to be active in promoting competition culture was apparent from the response to the first question: Two-fifths (40 per cent) of respondents report that their jurisdiction's competition regime has been in place for less than a generation (20 years).<sup>14</sup> In other words, a substantial proportion of the population in these jurisdictions attained adulthood and entered the economy as participants during a time in which formal competition enforcement may have been weak or nonexistent. As will be discussed below, the respondents have undertaken a variety of activities aimed at promoting competition culture among different target groups, with varying levels of success.

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<sup>14</sup> Appendix 1, Question 1



## Conclusions: Competition Culture Definition

Our working definition of competition culture for the purposes of this report is:

***A set of institutions that determine individual and/or group behaviour and attitudes in the sphere of market competition. These are influenced by wider social institutions and public policy choices and include customs impacting the degree of business competition and cooperation within a jurisdiction.***

Collectively these institutions determine the extent to which the behaviour and attitudes of relevant public and private stakeholders are consistent with the promotion of competition, efficiency and consumer welfare.

This definition recognises that each jurisdiction is situated differently with respect to public policies that promote market competition or cooperation. For example, transition economies and small island economies may be characterised by a more regulatory approach, in which there is greater state involvement in the running of markets and where markets are highly concentrated. It is also important to recognise that the objectives of promoting competition principles of efficiency and consumer welfare can be superseded by other public policy considerations, including social policy, public interest and national security. What may be considered a 'strong competition culture' in one jurisdiction may not be feasible or appropriate in another.

A strong competition culture should include a good understanding of why certain behaviours distort competition to the detriment of consumers and the wider economy, even if it is unrealistic to expect all members of the constituent groups to have a detailed understanding of the intricacies of competition law and its enforcement. Regardless of larger public policy contexts, the mission shared by competition agencies is to pursue enforcement based on sound legal and economic principles, to determine whether specific business conduct harms competition. This task is an anchor for effective competition advocacy and the foundation for building a strong competition culture.

## The Government

One of the most important measures of competition culture relates to awareness among government departments and officials. The danger here is that the enforcement and deterrent effect of antitrust is undermined where industries are encouraged to behave anti-competitively by a government department. It is important that when government departments act in a manner that is inconsistent with the competition regime in pursuit of some regulatory or public interest goal, they do so knowingly and in a way that least distorts the market. The AWG's Recommended Practices on Competition Assessment notes,

*Recognizing that legislation, regulations, and policies (“policy” or “policies”) may restrict competition, including inadvertently, competition agencies can help policymakers as they evaluate the impact of a policy. For example, a proposed law seeking to address a specific policy goal such as consumer protection or environmental concerns may have unnecessary, disproportionate, or unanticipated adverse effects on competition. The adverse impact is more likely where policies impose specific limits on price, quantity, or quality, limit market entry or exit, or interfere with innovation. Competition agencies can help identify the costs to competition of a particular proposal and make specific recommendations to help mitigate these costs that the policymaker can take into account when assessing the overall goals of the policies under review.*<sup>15</sup>

A competition agency's ability to successfully help policymakers undertake this exercise depends to some extent on their understanding and perceptions of the benefits of competition and purpose of competition law. Weak competition culture among government officials makes it less likely they will recognise where competition concerns need to be taken into account and makes them less receptive to suggestions from the competition agency.

The survey reveals that just under a third of respondents feel confident their government officials understand the social benefits of competition and respects competition principles in its work.. While fairly encouraging, this result highlights the need for continued advocacy aimed at government officials and also good cooperation and communication between the competition agency and other government departments.

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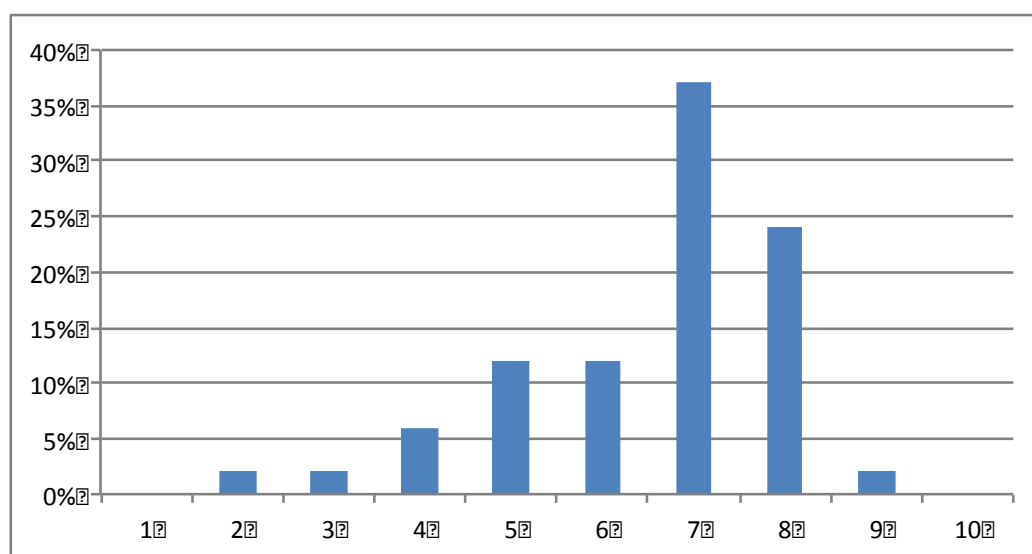
<sup>15</sup> ICN Advocacy Working Group, *Recommended Practices on Competition Assessment* (2014) Available: [http://www.icnmarrakech2014.ma/pdf/RPs\\_circulation\\_SG\\_2014-04-10.pdf](http://www.icnmarrakech2014.ma/pdf/RPs_circulation_SG_2014-04-10.pdf)

**Table 1: Competition Awareness Among Government Officials<sup>16</sup>**

Thinking about the COMPETITION AWARENESS with GOVERNMENT OFFICIALS in your jurisdiction, please tick the box that is most appropriate. [PLEASE SELECT ONE]	
<b>High awareness</b> – government officials understand the social benefits of competition and respect competition principles in their work. It is very unlikely that a government department will encourage an industry to behave anti-competitively.	<b>29% (14)</b>
<b>Medium awareness</b> – beyond the competition authority, government officials have heard about competition principles but do not consider them as very important in their work. It is possible that some government departments may advise an industry to behave anti-competitively.	<b>61% (30)</b>
<b>Low awareness</b> – government officials beyond the competition authority have limited understanding of competition principles and do not consider them in their work. It is likely that a government department may advise an industry to behave anti-competitively.	<b>10% (5)</b>

Respondents were then asked to rate their effectiveness at influencing other organs of government, where 1 means competition considerations are NEVER taken into account in policymaking and in governmental administration, and where 10 means they are ALWAYS taken into account. The results suggest a high level of confidence among competition agencies that they have the capacity to successfully influence organs of government. This is an encouraging result and may reflect competition authorities' increasing standing and influence within their jurisdictions.

**Figure 2: Effectiveness at influencing other organs of government.**



<sup>16</sup> It was felt that 'Government Officials' was the most widely understood term to mean those acting on behalf of the state. However, there may have been some ambiguity in respondents' understanding of this term, for example within jurisdictions with both federal and regional government institutions.

Competition agencies were then asked to list which advocacy activities and/or initiatives had proven MOST and LEAST successful in raising awareness of competition policy among government departments or officials. Taking the successful initiatives first, workshops, training and face-to-face meetings appear to have the best track record (16 jurisdictions), followed by Inter-institutional networking and Memorandums of Understanding between departments (14 jurisdictions). Enquiries, reports, competition impact assessments, consulting on draft legislation, inter-departmental guidance and opinions were all identified as being effective tools.

The initiatives that were perceived by respondents to be unsuccessful in raising awareness of competition policy among government departments and officials were more varied. A number of respondents identified ex-post protests and attempts to repeal or amend anti-competitive legislation already enacted, as less valuable exercises. Attempts to counter strong lobbying for anti-competitive policies have also been unsuccessful. Other respondents reported that written material (e.g. brochures and pamphlets) had limited effect, especially where they used technical language not easily accessible to non-competition officials. This part of the questionnaire also highlighted a mixed experience among a minority of jurisdictions in relation to workshops. An internal study for one competition agency suggested that the (anti-competitive) attitudes of government officials were unchanged following their participation in a competition awareness event.

## **Conclusions: Government**

- **Identify policy and legislation that may adversely affect the competition law regime early on. If feasible, Competition authorities should aim to engage with the legislature or regulators as laws and regulations are being drafted and before they are finalised or voted into law.**
- **Consider a variety of tools to create and maintain lines of communication and cooperation with government departments.**
- **Take care to ensure appropriate language and content is employed in written material and in the design of workshops aimed at non-competition officials.**
- **Attention should also be paid to the following ICN documents: *Recommended Practices on Competition Assessment* (2014); *Advocacy and Competition Policy* (2002) at 3.1-3.4; the case studies contained within the *ICN Advocacy Toolkit*; and the *Interim report on the Explaining the Benefits of Competition Project* (2012) focusing on 2.1 and 3.3.**

## The Judiciary

The competence of judges in understanding, applying and articulating competition law will have an impact on enforcement and therefore wider competition culture and awareness. The issue concerns both adversarial competition law regimes (where wrongdoing is argued before a court or tribunal) and administrative enforcement regimes (where wrongdoing is decided in the first instance by the competition agency and then appealed to a court or tribunal).

Judges with little understanding of competition law pose two particular risks: (i) that poor decisions are made which lead to wrongful punishment or outcomes that are inconsistent with the objectives of the jurisdiction's competition laws; and (ii) their lack of confidence manifests itself in a reluctance to find guilt or dismiss appeals – especially where firms deliberately employ complicated economic evidence.

In 2006-2007 the ICN's Competition Policy Implementation Working Group (CPIWG) published two documents on *Competition and the Judiciary*. The first was a report on a survey on the relationship between competition authorities and the judiciary.<sup>17</sup> This Report found that some ICN members faced similar challenges of judges overturning decisions or reducing fines in conduct cases, regardless of whether the jurisdictions were of the civil or common law traditions. A lack of familiarity of judges with the concepts of competition law was identified as a key problem, as well as some procedural shortcomings and issues surrounding the standard of proof. The second CPIWG document was a collection of case studies focused on the training of judges within a sample of ICN jurisdictions.<sup>18</sup> These case studies found that the judiciary played an important role in competition law and can prompt improvements in agency decision-making. The need for training of judges was identified, but experience suggested this could only be effective where the judges themselves recognise the need for training in competition law and economics. The CPIWG work also underscored the key role competition agencies have in relation to the judiciary, with the quality of an agency's legal and economic presentation and analysis often being directly linked to the quality of a judge's analysis and decision making.

In the present survey, competition agencies were asked to answer questions relating to the competence of the judiciary within their jurisdictions. The first question asked competition agencies to estimate competition awareness among judges, where 1 meant they had little or no knowledge, and 10 meant they had an exemplary understanding and could

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<sup>17</sup> ICN Competition Policy Implementation Working Group, *Competition and the Judiciary: A report on a survey on the relationship between Competition Authorities and the Judiciary* (April 2006) Available:

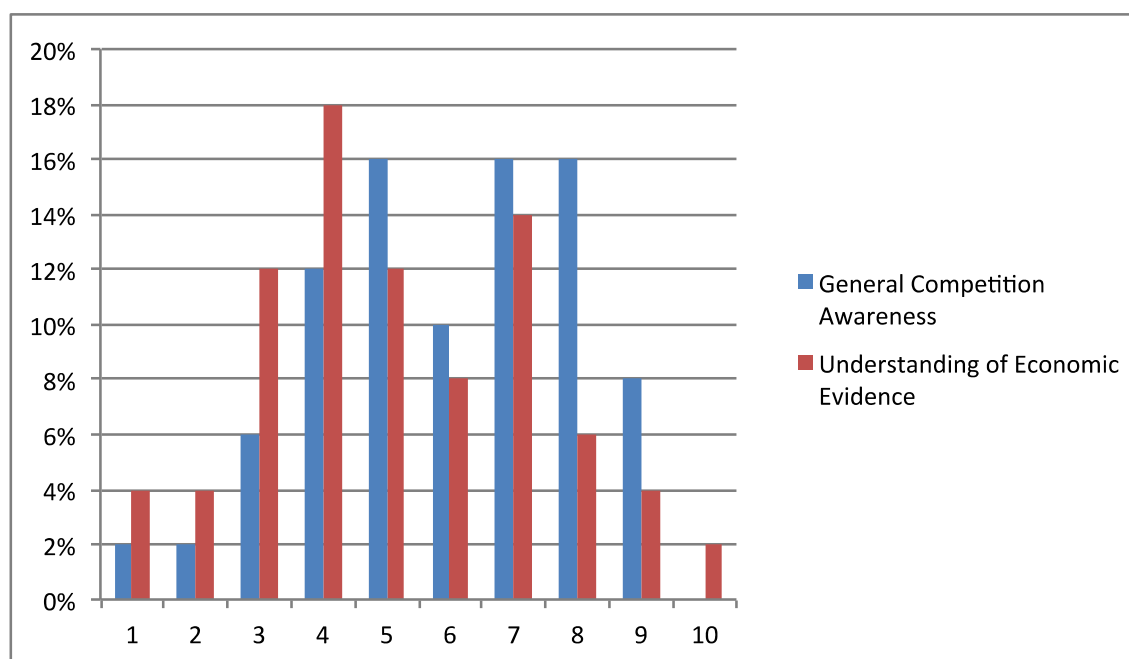
<http://www.internationalcompetitionnetwork.org/uploads/library/doc594.pdf>

<sup>18</sup> ICN Competition Policy Implementation Working Group, *Competition and the Judiciary* (2007) Available:

<http://www.internationalcompetitionnetwork.org/uploads/library/doc372.pdf>

competently engage with competition policy issues. Competition agencies were also asked to estimate how well they felt judges could (generally speaking) understand and interpret economic evidence relating to competition, where 1 meant they had no understanding, and where 10 meant they could accurately interpret economic evidence without the aid of expert witnesses.

**Figure 3: Competition Awareness among Judges**



The results provide a mixed picture, with only a minority of respondents confident their judges have both a high awareness of competition and are able to understand and interpret economic evidence. It appears that more work needs to be done to improve the interaction between competition authorities and judges and encourage members of the judiciary to undergo training. The survey asked competition authorities to identify which activities had proven most successful in raising awareness of competition policy among judges. Almost two thirds of agencies identified a successful track record of using conferences, seminars, workshops and training programmes targeted at judges. This supports the recommendations of the CPIWG's work on Competition and the Judiciary.

The introduction of specialist competition law judges and/or courts may be seen as another way of boosting competition culture within the judiciary, or at least ensuring that competition cases are dealt with by judges who understand competition law and economics. The CPIWG work also underscored the key role competition agencies have in relation to the judiciary, with the quality of an agency's legal and economic presentation and analysis often being directly linked to the quality of a judge's analysis and decision making. The makeup of judges and courts dealing with competition cases within ICN

member jurisdictions appears to be mixed. Over half of responding jurisdictions have specialist judges, specialist courts or both. The other half have neither and therefore presumably deal with competition cases alongside other areas of law in generalist courts.

Table 2 below shows that 25 (or 51 per cent) of ICN respondents have some combination of specialist judges or specialist courts or both. All but one believed that specialist judges and/or courts improved the speed and quality of judicial decisions in competition cases (though no comparison point was mentioned or perhaps even available).

**Table 2: Specialist Judges and Courts**

Does your jurisdiction have specialist judges for competition cases and / or specialised courts? [PLEASE SELECT ALL THAT APPLY]	
Specialist judges sitting in specialist courts	22% (11)
Generalist judges sitting in specialist courts	22% (11)
Specialist judges sitting in generalist courts	16% (8)
Neither specialist judges or specialist courts	49% (24)
Don't know	0% (0)
If you DO HAVE SPECIALIST COURTS OR JUDGES, generally speaking, do you consider that this improves the speed and/or quality of judicial decisions in competition cases? [PLEASE SELECT ONE]	
Yes	49% (24)
No	8% (4)
I Don't Know	43% (21)

## Conclusions: Judiciary

- It is important that efforts continue in improving the interaction between competition authorities and judges. Competition culture among judges is perceived as mixed, with many respondents lacking confidence as to judges' competition awareness or ability to understand economic evidence.
- Tailor-made training for judges is reported as the most effective way of improving the judiciary's awareness of competition law and economics. Attention should also be paid to the following ICN documents: ICN Competition Policy Implementation Working Group, *Competition and the Judiciary* (Report and Case Studies).

## The Legal Community

Competition awareness and expertise should also extend to the wider legal community. If competition culture is to be strengthened, it is important that adequate legal advice and representation relating to competition law be available. This helps those subject to competition rules understand the purpose and function of the law, and how to comply with it. Competent competition lawyers also help inform better decision-making by competition agencies and judges.

The legal community comprises both competition law specialists and lawyers who operate in other areas of the law, such as commercial contracts, litigation, intellectual property law etc. Similarly, with in-house lawyers, some operate in a generalist capacity with general oversight of multiple legal areas, and others (and this is becoming increasingly more common) as specialist in-house competition lawyers.

The number of specialist competition lawyers within a jurisdiction can be considered as a good indicator of the importance and understanding of competition matters within a jurisdiction.

**Table 3 – Level of specialization of the legal community**

18. Which of these best describes LAWYERS specialising in competition law within your country? [PLEASE SELECT ONE]	
There are multiple law firms <i>specialising</i> in competition law.	<b>37% (18)</b>
There are multiple lawyers <i>specialising</i> in competition, but within non competition law practices (e.g. commercial law firms).	<b>39% (19)</b>
There are no lawyers <i>specialising</i> in competition law and competition cases are generally dealt with by commercial lawyers.	<b>21% (10)</b>
There is virtually no demand for competition law services.	<b>2% (1)</b>
I don't know	<b>0% (0)</b>
Other (please explain...)	<b>2% (1)</b>

Of the competition agencies surveyed, 76 per cent reported the presence of either law firms specialising in competition law or lawyers specialising in competition law, but within non-competition law practices (e.g. firms mainly working in commercial law). Twenty one per cent of respondents said there were no firms or lawyers specialising in competition law and general commercial lawyers dealt with competition law cases. These ten respondents are largely young competition agencies with limited enforcement experience. With the demand for legal services likely to be limited, the absence of specialist competition lawyers is



perhaps unsurprising. However, there are also a number of agencies with limited enforcement experience that reported the existence of specialist lawyers. We can only speculate as to whether their presence is in anticipation of increased work in the future or (for example) due to demand for compliance work.

Competition agencies were also asked what initiatives they had taken to raise awareness and understanding of competition law within the legal community (Table 4). Apart from enforcement (which in itself raises awareness), the most common activities are events organised by the competition agency, training or seminars targeted at competition law specialists (86 per cent) or non-competition law specialists (65 per cent). Attending or speaking at conferences organised by third parties is also important (82 per cent for those targeted at competition law specialists and 73 per cent for non specialists). In addition other activities are significant, such as press and TV campaigns (63 per cent), engaging in informal dialogue with lawyers (63 per cent), and the publication of a basic overview of competition law for use by non-competition law specialists (69 per cent).

The list of activities above is not exhaustive. For example, many jurisdictions also publish reports or decisions, guidelines, articles in journals or newsletters and in some cases also do road shows. The survey shows that competition agencies use a mixture of tools to increase awareness. However, as many respondents pointed out, some are more successful than others.

**Table 4 – Awareness within the legal community**

21. How does your competition authority seek to raise awareness and understanding of competition law within the legal community, outside its enforcement activities? [PLEASE SELECT ALL THAT APPLY]	
Organising events, training or seminars targeted at competition law specialists.	<b>86% (42)</b>
Organising “non-technical” events, training or seminars targeted at non-competition law specialists.	<b>65% (32)</b>
Attending and/or speaking at events, training or seminars organised by third parties targeted at competition law specialists.	<b>82% (40)</b>
Attending and/or speaking at events, training or seminars organised by third parties targeted at non-competition law specialists.	<b>73% (36)</b>
Publishing a basic overview of competition law for use by non-competition law specialists.	<b>69% (34)</b>
Engaging in informal dialogue with lawyers.	<b>63% (31)</b>
Media campaigns.	<b>63% (31)</b>

## **Conclusions: The Legal Community**

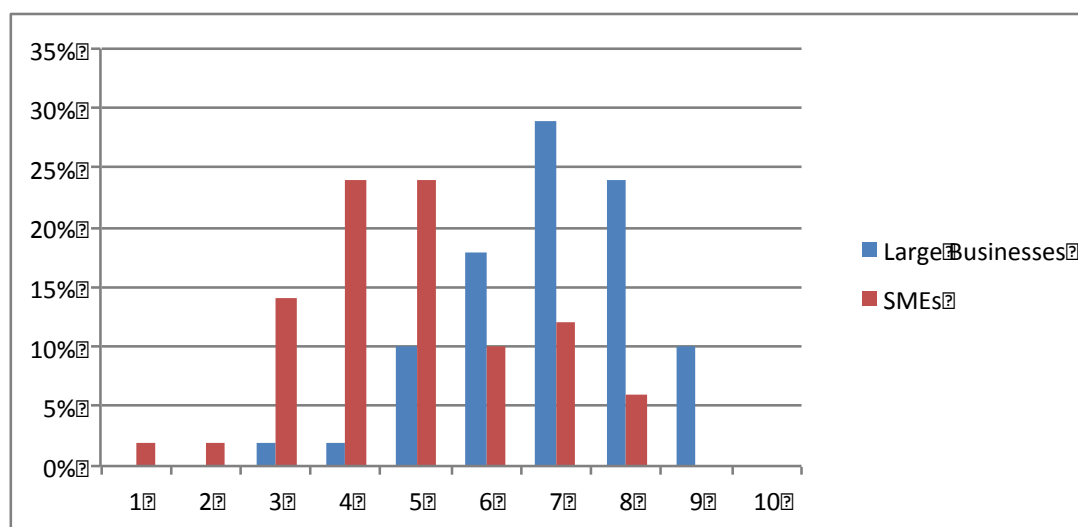
- Where there is a limited number of specialist competition lawyers present in a jurisdiction or a perceived lack of awareness of competition law among the legal community, the competition agency may wish to consider complementing training initiatives aimed at judges, with those aimed at engaging members of the wider legal community;
- Continue the various initiatives taken to raise awareness and understanding of competition law within the legal community;
- Whenever appropriate, engage in formal and informal dialogue with the legal community during consultations or significant changes to the legal enforcement framework. Specialist in-house lawyers and private practitioners represent a valuable resource for competition agencies. They can be used as a sounding board during consultations, for example, and their involvement is useful to identifying issues for consideration.

## The Business Community

Competition culture within the business community is important to ensuring anti-competitive conduct and associated harm is avoided in the first place. An understanding of competition law, its basic principles and the available sanctions help to exclude anticompetitive behaviour from the acceptable business strategies available to undertakings throughout the economy. This is particularly significant during times of economic crisis, when the danger of cartel and other anti-competitive practices may become more pronounced.

Competition agencies were asked to rate competition awareness among large businesses and SMEs within their jurisdictions, where 1 meant most businesses considered anti-competitive conduct to be an acceptable business practice that they were VERY LIKELY to engage in, and where 10 meant all firms had a good understanding of competition law and were VERY UNLIKELY to commit deliberate infringements.

**Figure 4: Competition awareness among businesses**



This question combined two issues: whether businesses consider anti-competitive conduct to be an acceptable practice and how likely they are to engage in it. The question assumed a direct link between a good understanding of competition law and a reduced likelihood of deliberate infringements. Predictably, large businesses are thought to have a higher level of awareness and be less likely to commit a deliberate infringement than SMEs. Yet in relation to both, there is recognition of a gap in competition awareness. Over time, enforcement of competition law will serve to strengthen this awareness, but competition agencies could engage with companies and business groups (such as trade associations), to ensure competition law infringements are not committed out of ignorance and to help detect deliberate infringements in good time.

The survey went on to look at the issue of corporate compliance. This refers to the policies, strategies and initiatives adopted by a business to enable it to minimise the risk of involvement in competition law infringements (and their resulting penalties). These may involve a published compliance statement, the training of employees, and the auditing of their activities (e.g. through ‘mock dawn raids’). They can help a business identify potential liability early on, reducing its exposure and – in the context of cartel infringements – give them an opportunity to seek leniency. Legal counsel is very important in that respect. The survey found that 51 per cent of respondents considered that large businesses tend to avail of both in-house and external counsel while 37 per cent of respondents stated that they might only rely on external counsel. Another possibility to minimise the risk of competition law infringements considered in the questionnaire was for business associations to seek informal advice from competition authorities: according to the majority of respondents (57 per cent) this happens only rarely compared to the 22§§ per cent of respondents stating that this activity happens on a regular basis. Information on how frequently businesses themselves asked for such informal advice by competition authorities was not asked in this survey, but this may also be a way for companies to reduce exposure.

Respondents’ estimations of the proportion of large businesses with a competition law compliance program were quite conservative, suggesting that many firms are still not investing in the sorts of activities and initiatives that raise awareness of competition internally and make it less likely that an infringement will be committed within the firm.

**Table 5: Prevalence of Competition Law Compliance Programs.**

What proportion of LARGE businesses in your jurisdiction do you estimate have a COMPETITION LAW COMPLIANCE PROGRAM?	
≥90%	<b>4% (2)</b>
70%	<b>18% (9)</b>
50%	<b>12% (6)</b>
30%	<b>12% (6)</b>
≤10%	<b>27% (13)</b>
I Don’t Know	<b>27% (13)</b>

The survey results reflect a divergence in policy when it comes to rewarding corporate compliance as a mitigating factor when determining corporate sanctions. Table 8 shows that 65 per cent (32) of the respondents reported that their competition agencies provide no such concession. Just over a quarter of competition agencies grant discounts in fines where firms involved in an infringement either had an effective compliance program ex ante, or adopted an effective compliance program following the opening of an investigation.

**Table 6: Rewards for Effective Compliance.**

Does the competition authority reward infringing firms who have made efforts to introduce effective competition compliance programs? [PLEASE SELECT ALL THAT APPLY]	
Fines are reduced where firm had an effective compliance program, even though it did not prevent the infringement.	<b>16% (8)</b>
Fines are reduced where firm introduced an effective compliance program AFTER the investigation was opened.	<b>10% (5)</b>
No concessions are granted for compliance program.	<b>65% (32)</b>

It is not for this report to recommend the merits of a particular approach in this area. Around 43 per cent of competition agencies in the study indicated they had not published a model competition compliance program or equivalent guidance for use by the business community within their jurisdiction<sup>19</sup> Competition agencies with such published guidance indicated these were effective at raising awareness of competition policy among businesses and business associations (including SMEs).<sup>20</sup> They may therefore be a way of helping businesses and their employees to make infringements of competition law less likely. Other tools to raise awareness identified in the study were media reporting, business events or conferences and enforcement action. These initiatives were effective at reducing the level of anti-competitive behaviour and increasing the perceived legitimacy of competition enforcement.

<sup>19</sup> "Equivalent guidance" was not defined in the questionnaire and may have been understood differently by different respondents.

<sup>20</sup> Examples of such guidance include: Autorité de la Concurrence (France), *Antitrust compliance and compliance programmes: Corporate tools for competing safely in the marketplace*. Available: [http://www.autoritedelaconcurrence.fr/doc/brochure\\_conformite\\_uk.pdf](http://www.autoritedelaconcurrence.fr/doc/brochure_conformite_uk.pdf); and Competition and Markets Authority (UK), *How your business can achieve compliance with competition law* (June 2011). Available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284402/oft1341.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284402/oft1341.pdf); European Commission, *Compliance Matters: What companies can do better to respect EU competition rules* (2012). Available: <http://bookshop.europa.eu/en/compliance-matters-pbKD3211985/?CatalogCategoryID=8BYKABstR7sAAAEjupAY4e5L>. Such guidance is also provided by business groups – for example: International Chamber of Commerce, *ICC Antitrust Compliance Toolkit*. Available: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Competition/ICC-Antitrust-Compliance-Toolkit/> and *Fostering a culture of compliance*. Available: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Competition/Fostering-a-culture-of-compliance/>; Business Europe, *Business Compliance with Competition Rules* (2011) Available: [http://ec.europa.eu/competition/antitrust/compliance/businesseurope\\_compliance\\_en.pdf](http://ec.europa.eu/competition/antitrust/compliance/businesseurope_compliance_en.pdf); OECD, *Promoting Compliance with Competition Law* (2011). Available: <http://www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf>

## Conclusions: The Business Community

- Competition culture may be weaker among SMEs (as compared to larger firms) that may not be familiar with competition laws or have the resources to consult competition law specialists.
- Media reporting, business events or conferences and enforcement actions are effective tools for raising awareness of competition policy among businesses and business associations.
- Competition agencies may also consider providing guidance and engaging with business associations so as to raise awareness and promote compliance with competition law.
- Agencies may also find it helpful to consult materials in the ICN's compilation of cartel awareness and outreach materials, the ICN's Anti-Cartel Enforcement Manual Chapter on Cartel Awareness, Outreach & Compliance, and materials published by the International Chamber of Commerce and other bodies.<sup>21</sup>

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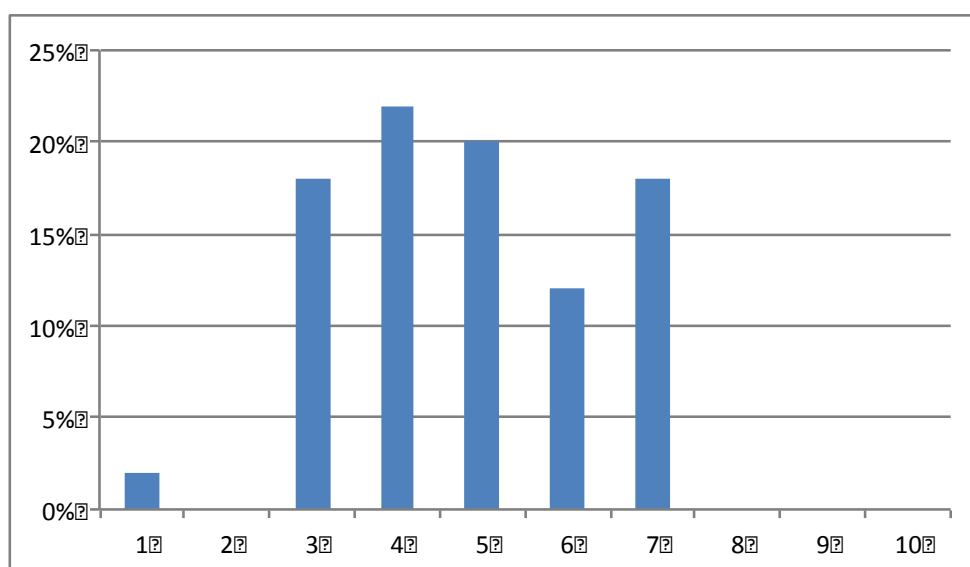
<sup>21</sup> International Chamber of Commerce, *ICC Antitrust Compliance Toolkit*. Available: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Competition/ICC-Antitrust-Compliance-Toolkit/> and *Fostering a culture of compliance*. Available: <http://www.iccwbo.org/Advocacy-Codes-and-Rules/Areas-of-work/Competition/Fostering-a-culture-of-compliance/> ; Business Europe, *Business Compliance with Competition Rules* (2011) Available: [http://ec.europa.eu/competition/antitrust/compliance/businesseurope\\_compliance\\_en.pdf](http://ec.europa.eu/competition/antitrust/compliance/businesseurope_compliance_en.pdf); OECD, *Promoting Compliance with Competition Law* (2011). Available: <http://www.oecd.org/daf/competition/Promotingcompliancewithcompetitionlaw2011.pdf>

## Members of the Public

Public awareness of competition principles can help discourage anti-competitive conduct by stigmatising the behaviour and creating a pro-competitive social norm. It can also help ensure long-term political support for competition policy and the continued funding of competition agencies.

Competition agencies were asked to estimate competition awareness among members of the public, where 1 meant they had practically no knowledge of competition law and where 10 meant the vast majority of the population could explain what anti-competitive behaviour is and why it is harmful.

**Figure 5: Competition Awareness among Members of the Public**



The majority of the responses (grouped in the 3-7 range) show some limited confidence that members of the public have basic competition law awareness.

From experience, the competition agencies taking part in the study identified a number of successful advocacy activities that had raised awareness of competition law among members of the public. These were: the use of press releases and media engagement (50 per cent); public awareness campaigns (18 per cent); guidelines and reports published online (18 per cent); and increasing the level of sanctions and/or enforcement (10 per cent).

Competition agencies also identified a number of other initiatives aimed at raising public awareness that enjoyed only limited success. These included: the publication of competition law handbooks / booklets aimed at members of the public; outreach activities that were not conducted on a regular basis; a campaign aimed at raising public awareness of vertical restraints; an annual prize awarded to the journalist who authored the best competition

news article; an essay competition aimed at school pupils; a competition policy information hotline; seminars and conferences at a local level; attempts to evidence the benefits of competition; and public consultations.

One way of empowering members of the public as stakeholders in the competitive process is to allow private actions for damages. Twenty four per cent of jurisdictions responding to the survey had seen final consumers or consumer or business associations successfully recover damages. In 12 per cent, government departments had recovered damages and in 24 per cent businesses had been successful. Private enforcement was not available in 24 per cent of responding jurisdictions.

If anti-competitive harm is widely dispersed, the availability of collective actions can also be important. These are not possible (8 per cent) or not allowed (24 per cent) in one third of the responding jurisdictions and are available through consumer or business associations in 29 per cent. Different systems of class actions are also available: an 'opt-in' system of collective actions is in place in roughly one third (29 per cent) of the responding jurisdictions while 10 per cent had a US style system of 'opt-out' class actions.

### **Conclusions: Members of the Public**

- **Media engagement, public awareness campaigns and published material appear to be the most effective way of improving competition culture among members of the public.**
- **Improving the availability of private enforcement may be one additional way of empowering members of the public and further enhancing awareness.**
- **Attention should also be paid to the following ICN documents: ICN's compilation of cartel awareness and outreach materials, *Advocacy and Competition Policy* (2002) at 3.5; the case studies contained within the *ICN Advocacy Toolkit; Interim report on the Explaining the Benefits of Competition Project* (2012) focusing on 2.4 and 3.3.**



## Media

Media reporting has the potential to highlight the benefits of competition law and enforcement, thereby helping to strengthen competition culture. News articles and commentary on competition cases both disseminate information about enforcement and educate members of the public as to the nature of anticompetitive conduct and its harmful effects.

Sixty-one per cent of the respondents taking part in the study indicated that media attention often focuses on the size of the penalty imposed on competition law violators over the harm caused by their actions. Thirty-two per cent said the media report both penalty size and likely harm equally and only four per cent said they were more likely to report the harm caused by the infringement. This may reflect the significant levels of fines imposed under competition law and probably in particular to the fact cartel cases do not generally involve an easily citable quantitative analysis of effects.<sup>22</sup> Attention on imposed sanctions can also contribute to deterrence, as potential violators have a better sense of the consequences of anti-competitive conduct. Competition agencies typically have press departments engaged with the media, working to increase awareness of the competition agency's activities. Some competition cases may naturally be more newsworthy or noteworthy than others; for example, cases involving familiar consumer goods versus cases involving upstream industries that members of the public may be unfamiliar with. Competition agencies were asked whether they take *Media impact* into account when choosing or prioritising cases. Eighteen per cent said they always took media impact into account, 45 per cent said they sometimes took it into account and only a third said they never took it into account. The extent to which this actually shapes case selection and prioritisation is unclear and cannot be gathered from the information selected in the questionnaire. It is natural that many agencies use the media as a resource for investigative leads and consider media impact in some way. Media attention and impact may be a useful proxy for the competitive impact of a specific conduct, transaction, or product under investigation: the media may be more likely to pick up on matters that involve more complaints or that impact more consumers. Eighty-eight per cent of respondents said their competition agency had opened investigations *as a response* to public concern expressed through the media or a media campaign exposing potential anticompetitive wrongdoing.

On the one hand, undue media influence on case selection may raise concerns – especially in jurisdictions where there is high media concentration (possibly reflecting a lack of opposing views) or where there is significant overlap between economic power and control of the media. It makes it more likely that competition agencies will pursue newsworthy industries that sell to final consumers over less newsworthy upstream industries. On the

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<sup>22</sup> Although an estimated overcharge is determined in some jurisdictions.

other hand, enforcement against cases that attract significant positive media coverage can help to strengthen competition culture by disseminating information about the conduct and the possible harm as well as helping the general standing of the competition agency and the awareness concerning the relevance of competition law enforcement for society.

Industries identified as being the most newsworthy in terms of enforcement included: mobile phones; energy; supermarkets; petrol; health / pharmaceuticals; transport; construction; dairy / agriculture; and banking. Based on their individual experience, respondents found that the following case areas led to less media coverage: cases concerning upstream and intermediate products (such as raw materials and chemicals); cases concerning the wholesale energy market; cases involving essential facilities and refusal to supply; regional cases; cases involving SMEs; complex merger cases; and some cases concerning financial products (it must be noted that need not necessarily apply to all jurisdictions as the importance attributed to various sectors/industry and nature of breach may vary across jurisdictions).

## **Conclusions: Media**

- **Engagement with media reporting of competition cases is a potential way of strengthening competition culture. Competition authorities should consider the extent to which information about the law and the harm caused is effectively communicated when this information is overshadowed by the size of the penalty.**
- **Media reports are a common source of information that competition agencies consider when searching for potential investigative leads, and opening and prioritizing investigations. Investigating potential infringements involving final consumers or products with widespread impact may contribute to raising public awareness and understanding of competition laws.**

## Academia and Research Centres

The level of academic activity in the field of competition policy is significant in a number of respects. It reflects the availability of non-government expertise to inform and guide policy and enforcement. The inclusion of competition components in university degree programmes demonstrates the subject's perceived legitimacy and serves to raise awareness among business professionals and legal practitioners, but also university graduates more broadly.

Seventy-six per cent of respondents taking part in the study reported the presence of academics (defined as university lecturers / professors or equivalent) in their jurisdictions who primarily researched competition law. The figure for competition economics was 65 per cent. Forty-seven per cent also indicated the presence of Academic Research Centres (defined as a group of academics jointly researching competition policy, whether within one institution or through a national network).<sup>23</sup> These represent significant concentrations of competition expertise and show how the growth of competition policy has been mostly followed by corresponding growth in academic activity. This expertise helps to inform the work of competition agencies, with 53 per cent of respondents having appointed academics to advisory roles and 51 per cent including academics in executive roles. There is also significant recognition of the influence of academic research, defined as public articles, books or other studies. Sixty-five per cent said academic research had influenced the design

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<sup>23</sup> Some examples included: Brazilian Institute for the Study of Competition, Consumer, and International Affairs (IBRAC in its Portuguese Acronym), and Center of Social and Economic Law Studies (CEDES in its Portuguese Acronym); Centro de Regulación y Competencia de la Facultad de Derecho de la Universidad de Chile (REGCOM); Centro de Libre Competencia de la Pontificia Universidad Católica de Chile; College of Europe; Breugel; Finnish Competition Law Association; Turku School of Economics Competition Institute; Association Française d'Etude de la Concurrence (AFEC); Association des Avocats Pratiquant le Droit de la Concurrence (APDC); Le Club des Juristes; Centre de Recherche sur le Droit des Affaires (CREDA), etc; Forschungsinstitut für Wirtschaftsverfassung; Institute for German and European Business; Competition and Regulatory Law at Freie Universität Berlin; Institut für Allokation und Wettbewerb; German Institute for Economic Research; Düsseldorf Institute for Competition Economics; Chair of Microeconomics; University of Hohenheim; Industrial Economics University Hamburg; Centre for European Policy; Institute of Studies in Competition Law and Policy (IMEDIPA), Competition and Regulation European Summer School (CRESSE); Competition Law Research Centre at the Pázmány Péter Catholic University; CUTS International (Consumer Unit and Trust Society); Centre for Competition Law and Policy, NLU, Jodhpur; University College Cork School of Law; University College Dublin School of Law; Economic and Social Research Institute; European University Institute in Fiesole; LUISS University in Rome; University Tor Vergata in Rome, Bocconi University in Milan; The Competition Policy Research Center (CPRC); ACLE – University of Amsterdam; TILEC – Tilburg; The Institute of Law Studies of the Polish Academy of Sciences; Department of Competition Law; ResearchCentre «Юринформ» и Центр проблемного анализа и государственно-управленческого проектирования; The NUS Centre for Law and Business ("CLB"); University of Johannesburg- Centre for Competition Regulation and Economic Development; TIPS; Trade Law Centre; Universidad CEU SAN PABLO (CENTRO DE POLÍTICA DE LA COMPETENCIA); Universidad CARLOS III, UNIVERSIDAD AUTONOMA DE BARCELONA (Graduate School of Economics); INSTITUTO ESTUDIOS BURSATILES (IEB), INSTITUTO DE EMPRESA (IE); American Antitrust Institute; Institute of Competition Law at Cornell Law School; Competition Law Center at George Washington School of Law; Institute for Consumer Antitrust Studies at Loyola University Chicago School of Law; University of Lusaka.

of competition policy, 71 per cent said it had influenced the way in which competition policy was applied and 51 per cent said it had informed how competition law is interpreted by the courts. The research responsible for this influence includes local publications, but mainly relates to outputs from the EU (especially the UK) and the US.

### **Conclusions: Academia**

- **Legal and economic academic research focused on competition enforcement and academics that specialize in competition law and economics contribute to raising awareness of competition policy within their jurisdictions. They can also provide an independent voice on competition policy issues. Competition agencies frequently draw on the expertise of competition academics and competition related research to inform the design and enforcement of competition rules.**

## APPENDIX 1: Aggregated Survey Results

1. How old is your jurisdiction's competition policy regime (defined as competition laws, institutions and procedures)? [PLEASE SELECT ONE]	
More than 20 years	<b>59% (29)</b>
10-20 years	<b>18% (9)</b>
5-10 years.	<b>12% (6)</b>
Less than 5 years	<b>10% (5)</b>
Currently being adopted	<b>0% (0)</b>
My country has no competition law	<b>0% (0)</b>

2. Does your competition enforcement regime include criminal sanctions for cartel behaviour? [PLEASE SELECT ONE]	
Yes for both firms and individuals	<b>30% (15)</b>
Yes, but for individuals only.	<b>12% (6)</b>
Yes, but for firms only.	<b>2% (1)</b>
Yes, but only for bid-rigging in public procurement.	<b>12% (6)</b>
No	<b>43% (21)</b>
I don't know	<b>0% (0)</b>

3. Approximately how often do the courts in your jurisdiction (including specialist tribunals) consider the following types of competition cases? [PLEASE SELECT ONE FOR EACH CATEGORY]	
First Instance Enforcement Cases	
At least once a month	<b>27%(13)</b>
Once every 2-6 months	<b>18% (9)</b>
Once every 6-12 months	<b>6% (3)</b>
Less than once a year	<b>4% (2)</b>
No cases	<b>24% (12)</b>
I don't know / Blank	<b>20% (10)</b>
Appeals against public enforcement infringement decisions	
At least once a month	<b>18% (9)</b>
Once every 2-6 months	<b>24% (12)</b>

Once every 6-12 months	<b>22% (11)</b>
Less than once a year	<b>6% (3)</b>
No cases	<b>16% (8)</b>
I don't know / Blank	<b>12% (6)</b>
Private enforcement cases for damages / compensation	
At least once a month	<b>6% (3)</b>
Once every 2-6 months	<b>4% (2)</b>
Once every 6-12 months	<b>8% (4)</b>
Less than once a year	<b>22% (11)</b>
No cases	<b>24% (12)</b>
I don't know / Blank	<b>35% (17)</b>

4. Which of the following groups have successfully recovered antitrust damages in your jurisdiction? [PLEASE SELECT ALL THAT APPLY]	
There is no private enforcement	<b>24% (12)</b>
Government Departments	<b>12% (6)</b>
Businesses buying from suppliers.	<b>24% (12)</b>
Final Consumers	<b>12% (6)</b>
Consumer and Business Associations	<b>12% (6)</b>
I don't know / Blank	<b>14% (7)</b>

5. If the victims of antitrust violations (e.g. mass end consumers) are dispersed and not able to protect themselves independently, are there any means for collective action? [PLEASE SELECT ALL THAT APPLY]	
Consumer or business association can recover damages on their behalf	<b>29% (14)</b>
There is a mechanism similar to US class actions enabling someone to sue on behalf of a 'class' of consumers affected by the same violation. This system is 'opt out', meaning consumers can be represented in the action without explicit consent.	<b>10% (5)</b>
A system for collective actions does exist but it is 'opt in', meaning that each consumer must give explicit consent to be part of the class action.	<b>29% (14)</b>
Collective actions are not allowed	<b>24% (12)</b>

While theoretically allowed, collective actions are not possible in practice

**8% (4)**

6. Thinking about the COMPETITION AWARENESS with GOVERNMENT OFFICIALS in your jurisdiction, please tick the box that is most appropriate. [PLEASE SELECT ONE]

**High awareness** – government officials understand the social benefits of competition and respects competition principles in its work. It is very unlikely that a government department will encourage an industry to behave anti-competitively.

**29% (14)**

**Medium awareness** – beyond the competition authority, government officials have heard about competition principles but do not consider them as very important in their work. It is possible that some government departments may advise an industry to behave anti-competitively.

**61% (30)**

**Low awareness** – government officials beyond the competition authority have limited understanding of competition principles and do not consider them in their work. It is likely that a government department may advise an industry to behave anti-competitively.

**10% (5)**

7. Please estimate how effective you feel your competition authority is in influencing other organs of government, where 1 means competition considerations are NEVER taken into account in policymaking and in governmental administration, and where 10 means they are ALWAYS taken into account. [PLEASE SELECT ONE]

10 **0% (0)**

9 **2% (1)**

8 **24% (12)**

7 **37% (18)**

6 **12% (6)**

5 **12% (6)**

4 **6% (3)**

3 **2% (1)**

2 **2% (1)**

1 **0% (0)**

Blank	<b>2% (1)</b>
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8. Is the competition authority empowered to take LEGAL action against: [PLEASE SELECT ALL THAT APPLY]	
A state owned enterprise acting anti-competitively	
Yes	<b>91% (45)</b>
No	<b>4% (2)</b>
I Don't Know / Blank	<b>4% (2)</b>
A decision by an organ of government facilitating anticompetitive behaviour	
Yes	<b>59% (29)</b>
No	<b>38% (19)</b>
I Don't Know	<b>2% (1)</b>

9. From your agency's experience, what advocacy activities and/or initiatives have proven MOST successful in raising awareness of competition policy among government departments/officials and WHY?	
10. From your agency's experience, what advocacy activities have proven LEAST successful in raising awareness of competition policy among government departments/officials and WHY?	

11. What are the MEDIA in your jurisdiction (Newspapers, Television, Radio....) more likely to report on, in relation to public enforcement of competition law? [PLEASE SELECT ONE]	
<u>Successful</u> competition law cases.	<b>38% (19)</b>
<u>Unsuccessful</u> competition law cases.	<b>6% (3)</b>
<u>Both</u> equally.	<b>55% (27)</b>
I don't know	<b>0% (0)</b>
...and in relation to sanctions?: [PLEASE SELECT ONE]	
The <u>size of the penalty</u> imposed on the infringement.	<b>61% (30)</b>
The <u>likely harm</u> caused by the infringement.	<b>4% (2)</b>
<u>Both</u> equally.	<b>32% (16)</b>



I don't know	<b>2% (1)</b>
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12. How good would you rate MEDIA in your jurisdiction at reporting the following aspects of competition law enforcement? [PLEASE SELECT ONE FOR EACH CATEGORY]		
(i)	The purpose and aims of competition policy	
	Very Good	<b>2% (1)</b>
	Good	<b>35% (17)</b>
	Neutral	<b>37% (18)</b>
	Poor	<b>16% (8)</b>
	Very Poor	<b>8% (4)</b>
	Don't Know / Blank	<b>2% (1)</b>
(ii)	The harm caused by anti-competitive conduct	
	Very Good	<b>14% (7)</b>
	Good	<b>33% (16)</b>
	Neutral	<b>22% (11)</b>
	Poor	<b>24% (12)</b>
	Very Poor	<b>4% (2)</b>
	Don't Know	<b>2% (1)</b>

13. Does your competition authority take MEDIA IMPACT into account when choosing or prioritising antitrust cases (i.e. cartels and dominance)? [PLEASE SELECT ONE]		
	Always	<b>18% (9)</b>
	Sometimes	<b>45% (22)</b>
	Never	<b>32% (16)</b>
	Don't Know	<b>4% (2)</b>

14. Which competition law case has proven MOST newsworthy and WHY? (please indicate the product or industry)		
..and which competition law case has proven LEAST newsworthy and WHY? (please indicate the product or industry)		

15. Please estimate COMPETITION AWARENESS among MEMBERS OF THE PUBLIC in your country, where 1 means they have practically no knowledge of competition law and where 10 means the vast majority of the population would be able to explain what anti-competitive behaviour is and why it is harmful. [PLEASE SELECT ONE]		
	10	<b>0% (0)</b>
	9	<b>0% (0)</b>
	8	<b>0% (0)</b>
	7	<b>18% (9)</b>
	6	<b>12% (6)</b>
	5	<b>20% (10)</b>
	4	<b>22% (11)</b>
	3	<b>18% (9)</b>
	2	<b>0% (0)</b>
	1	<b>2% (1)</b>

16. From your agency's experience, what advocacy activities and/or initiatives have proven MOST successful in raising awareness of competition policy among members of the public and WHY?	
...and what advocacy activities have proven LEAST successful in raising awareness of competition policy among members of the public and WHY?	

17. Has an investigation ever been launched as a RESPONSE to public concern expressed through the media or a media campaign to expose wrongdoing? [PLEASE SELECT ONE]		
	Yes	<b>88% (43)</b>
	No	<b>10% (5)</b>
	I Don't Know	<b>2% (1)</b>
If Yes, how many investigations?		
AND if Yes, has such an investigation ever resulted in an infringement decision?		
	Yes	<b>65% (32)</b>
	No	<b>20% (10)</b>
	I Don't Know / Blank	<b>14% (7)</b>

18. Which of these best describes LAWYERS specialising in competition law within your country? [PLEASE SELECT ONE]	
There are multiple law firms <i>specialising</i> in competition law.	<b>37% (18)</b>
There are multiple lawyers <i>specialising</i> in competition, but within non competition law practices (e.g. commercial law firms).	<b>39% (19)</b>
There are no lawyers <i>specialising</i> in competition law and competition cases are generally dealt with by commercial lawyers.	<b>20% (10)</b>
There is virtually no demand for competition law services.	<b>2% (1)</b>
I don't know	<b>0% (0)</b>
Other (please explain...)	<b>2% (1)</b>

19. Has the competition authority published a MODEL COMPETITION COMPLIANCE PROGRAM or equivalent GUIDANCE for use by undertakings? [PLEASE SELECT ONE]	
Yes	<b>57% (28)</b>
No	<b>43% (21)</b>
I Don't Know	<b>0% (0)</b>

20. Does the competition authority reward infringing firms who have made efforts to introduce effective competition compliance programs? [PLEASE SELECT ALL THAT APPLY]	
Fines are reduced where firm had an effective compliance program, even though it did not prevent the infringement.	<b>16% (8)</b>
Fines are reduced where firm introduced an effective compliance program AFTER the investigation was opened.	<b>10% (5)</b>
No concessions are granted for compliance program.	<b>65% (32)</b>

21. How does your competition authority seek to raise awareness and understanding of competition law within the legal community, outside its enforcement activities? [PLEASE SELECT ALL THAT APPLY]	
Organising events, training or seminars targeted at competition law specialists.	<b>86% (42)</b>
Organising “non-technical” events, training or seminars targeted at non-competition law specialists.	<b>65% (32)</b>
Attending and/or speaking at events, training or seminars organised by third parties targeted at competition law specialists.	<b>82% (40)</b>
Attending and/or speaking at events, training or seminars organised by third parties targeted at non-competition law specialists.	<b>73% (36)</b>
Publishing a basic overview of competition law for use by non-competition law specialists.	<b>69% (34)</b>
Engaging in informal dialogue with lawyers.	<b>63% (31)</b>
Media campaigns.	<b>63% (31)</b>

22. Are there any ACADEMICS (University Professors / Lecturers or equivalent) in your jurisdiction who PRIMARILY research competition policy? [PLEASE SELECT ALL THAT APPLY]	
Yes – LAW	<b>76% (37)</b>
Yes – ECONOMICS	<b>65% (32)</b>
Yes – BUSINESS	<b>24% (12)</b>
None that I know of	<b>22% (11)</b>
I Don’t Know	<b>0% (0)</b>

23. Are you aware of any Universities (or equivalent institutions) in your jurisdiction offering any of the following: [PLEASE SELECT ALL THAT APPLY]	
A competition law class / module as part of a LAW degree programme.	<b>82% (40)</b>
An Industrial Organisation (or Competition Economics) class / module as part of an ECONOMICS or BUSINESS degree programme	<b>76% (37)</b>
An LLM / Masters (or equivalent) postgraduate degree programme in competition law or policy.	<b>33% (16)</b>
I don’t know	<b>4% (2)</b>

24. Are there any Academic Research Centres (defined as a group of academics jointly researching competition policy, whether within one institution or through a national network) specialising in competition policy within your jurisdiction? [PLEASE SELECT ONE]	
Yes	<b>47% (23)</b>
No	<b>47% (23)</b>
I Don't Know	<b>6% (3)</b>

25. Is there any involvement of academics (defined as individuals who have held full time positions at Higher Education institutions) in your competition authority? [PLEASE SELECT ALL THAT APPLY]	
Yes – Advisory Role	<b>53% (26)</b>
Yes – Executive Role	<b>51% (25)</b>
No	<b>18% (9)</b>
I Don't Know	<b>0% (0)</b>

26. Has academic research (including published articles, books or other studies) contributed to or influenced any of the following: [PLEASE SELECT ALL THAT APPLY]	
The design of competition law in your jurisdiction	
Yes	<b>65% (32)</b>
No	<b>24% (12)</b>
I Don't Know	<b>10% (5)</b>
The way in which competition policy is applied by your authority	
Yes	<b>71% (35)</b>
No	<b>20% (10)</b>
I Don't Know	<b>8% (4)</b>
The way in which competition law has been interpreted by the courts.	
Yes	<b>51% (25)</b>
No	<b>27% (13)</b>
I Don't Know	<b>22% (11)</b>
If the answer to any of the above is YES, then please list the country or countries where this research originated	

27. Does your jurisdiction have specialist judges for competition cases and / or specialised courts? [PLEASE SELECT ALL THAT APPLY]	
Specialist judges sitting in specialist courts	<b>22% (11)</b>
Generalist judges sitting in specialist courts	<b>22% (11)</b>
Specialist judges sitting in generalist courts	<b>16% (8)</b>
Neither specialist judges or specialist courts	<b>49% (24)</b>
Don't know	<b>0% (0)</b>
If you DO HAVE SPECIALIST COURTS OR JUDGES, generally speaking, do you consider that this improves the speed and/or quality of judicial decisions in competition cases? [PLEASE SELECT ONE]	
Yes	<b>49% (24)</b>
No	<b>8% (4)</b>
I Don't Know / Blank	<b>43% (21)</b>

28. Please estimate COMPETITION AWARENESS among JUDGES in your jurisdiction, where 1 means they have little or no knowledge, and 10 means they have an exemplary understanding and can competently engage with competition policy issues.	
10	<b>0% (0)</b>
9	<b>8% (4)</b>
8	<b>16% (8)</b>
7	<b>16% (8)</b>
6	<b>10% (5)</b>
5	<b>16% (8)</b>
4	<b>12% (6)</b>
3	<b>6% (3)</b>
2	<b>2% (1)</b>
1	<b>2% (1)</b>
I Don't Know / Blank	<b>10% (5)</b>

29. Please estimate how well your country's JUDGES can (generally speaking) understand and interpret ECONOMIC EVIDENCE RELATING TO COMPETITION, where 1 means they have no understanding, and where 10 means they could accurately interpret economic evidence without the aid of expert witnesses.	
10	<b>2% (1)</b>
9	<b>4% (2)</b>
8	<b>6% (3)</b>

7	<b>14% (7)</b>
6	<b>8% (4)</b>
5	<b>12% (6)</b>
4	<b>18% (9)</b>
3	<b>12% (6)</b>
2	<b>4% (2)</b>
1	<b>4% (2)</b>
I Don't Know / Blank	<b>14% (7)</b>

30. Does your jurisdiction have an amicus curiae function (where third parties can submit relevant information that has not been requested)? [PLEASE SELECT ONE]	
Yes	<b>61% (30)</b>
No	<b>29% (14)</b>
I Don't Know	<b>10% (5)</b>
If yes, then how often does your competition authority submit amicus curiae? [PLEASE SELECT ONE]	
At least once a month	<b>4% (2)</b>
Once every 2-6 months	<b>14% (7)</b>
Once every 6-12 months	<b>4% (2)</b>
Less than once a year	<b>18% (9)</b>
Never	<b>22% (11)</b>
I Don't Know	<b>37% (18)</b>

31. What advocacy activities and/or initiatives have proven MOST successful in raising awareness of competition policy among judges and WHY?	
...and what advocacy activities have proven LEAST successful in raising awareness of competition policy among judges of the public and WHY?	

32. Rate COMPETITION AWARENESS among the following groups of businesses in your country, where 1 means most businesses consider anti-competitive conduct to be an acceptable business practice that they are VERY LIKELY to engage in, and where 10 means all firms have a good understanding of competition law and are VERY UNLIKELY to commit deliberate infringements:	
LARGE BUSINESSES	

	10	<b>0% (0)</b>
	9	<b>10% (5)</b>
	8	<b>24% (12)</b>
	7	<b>29% (14)</b>
	6	<b>18% (9)</b>
	5	<b>10% (5)</b>
	4	<b>2% (1)</b>
	3	<b>2% (1)</b>
	2	<b>0% (0)</b>
	1	<b>0% (0)</b>
	I Don't Know	<b>4% (2)</b>
SMALL AND MEDIUM SIZED BUSINESSES		
	10	<b>0% (0)</b>
	9	<b>0% (0)</b>
	8	<b>6% (3)</b>
	7	<b>12% (6)</b>
	6	<b>10% (5)</b>
	5	<b>24% (12)</b>
	4	<b>24% (12)</b>
	3	<b>14% (7)</b>
	2	<b>2% (1)</b>
	1	<b>2% (1)</b>
	I Don't Know	<b>4% (2)</b>

33. What proportion of LARGE businesses in your jurisdiction do you estimate have a COMPETITION LAW COMPLIANCE PROGRAM?		
	≥90%	<b>4% (2)</b>
	70%	<b>18% (9)</b>
	50%	<b>12% (6)</b>
	30%	<b>12% (6)</b>
	≤10%	<b>27% (13)</b>
	I Don't Know	<b>27% (13)</b>

34. Do LARGE businesses in your jurisdiction tend to have in-house competition lawyers, external counsel or both?		
	In-house	<b>0% (0)</b>
	External Counsel	<b>37% (18)</b>
	Both	<b>51% (25)</b>
	I Don't Know	<b>12% (6)</b>



35. Do BUSINESS (or Trade) ASSOCIATIONS seek informal opinions or advice, regarding possible prohibited actions of associations and its members (for example, recommendations or announcements of agreed prices of all members etc.)? [PLEASE SELECT ALL THAT APPLY]	
Yes, on a regular basis.	<b>22% (11)</b>
Yes, but only following the opening of an investigation or imposition of penalties in a related industry.	<b>16% (8)</b>
Yes, but only rarely.	<b>57% (28)</b>
No.	<b>10% (5)</b>

36. From your experience, what advocacy activities and/or initiatives have proven MOST successful in raising awareness of competition policy among businesses and/or business associations and WHY?	
...and what advocacy activities have proven LEAST successful in raising awareness of competition policy among businesses and/or business associations and WHY?	

37. Has your agency made any attempts to quantify the impact of advocacy activities on market competition?	
Yes	<b>27% (13)</b>
No	<b>69% (34)</b>
I Don't Know / Blank	<b>4% (2)</b>
If YES, then please give details, including which advocacy activities the studies related to and whether they showed a positive or negative result.	