



ADVOCACY WORKING GROUP 2016 STRATEGY PROJECT

PART ONE - PLANNING ADVOCACY INITIATIVES

Introduction

The mission of the Advocacy Working Group (AWG) is to undertake projects, develop practical tools and guidance and facilitate experience-sharing among International Competition Network (ICN) member agencies, in order to improve the effectiveness of ICN members in advocating the dissemination of competition principles and to promote the development of a competition culture within society.

As part of the AWG 2016-2019 Work Plan, the AWG has engaged in the Strategy Project, which aims to encourage experience sharing and discussion among ICN AWG Members and NGAs on the ways to improve the planning, content, and subsequent assessment of their advocacy strategies. The ultimate objective is to explore the possibility of elaborating guiding principles in planning and executing an effective advocacy strategy.

With regard to the planning of advocacy strategies, the Strategy Project in 2016-2017, encouraged experience sharing and discussion among ICN AWG Members and NGAs on the different approaches and steps that can be taken.

This effort was strengthened by the AWG Teleseminars that took place on 17 November 2016, titled "Planning an effective advocacy strategy", and on 16 March 2017, titled "Monitoring and assessing the results of advocacy efforts".

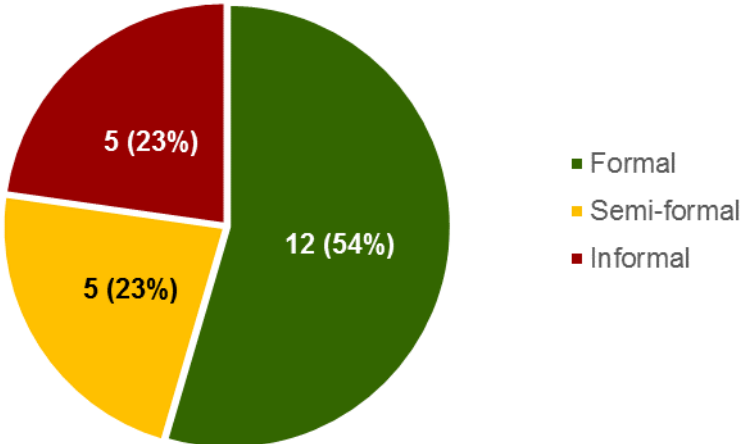
Following the first teleseminar, a short set of questions was sent to collect agencies' and NGA's views and experiences on the planning process used by competition agencies to plan and prioritize their advocacy initiatives, including the possible role of NGAs and other stakeholders. The survey was sent to some NGAs working for organizations that plan and conduct their own competition advocacy. Respondents

were asked to specify whether their agencies or organizations carry out a formal or informal advocacy strategy.

The main highlights from a qualitative analysis of the 23 inputs received¹ are summarized below².

A. The degree of formalization of the advocacy strategy

Distribution of Agencies by Degree of Formalization of their Advocacy Strategy



- > The spectrum of ‘formal’ to ‘informal’ planning ranges from a very structured advocacy strategy which outlines both the plans and the content of advocacy activities (e.g., Japan, Mexico), through to a very ad hoc structure where advocacy activities are purely arranged reactively based on external factors (e.g., Cyprus).
- > Along this spectrum, some agencies use a mix of formal and informal planning. There are examples of somewhat formalized structures whereby

¹ The inputs received are from Argentina, Australia, Bulgaria, Brazil, Colombia, Cyprus, El Salvador, Finland, Greece, Italy, Japan, Mexico, Poland, Russia, Singapore, South Africa, Spain Sweden, Taiwan, Turkey, United Kingdom and the United States (FTC).

² For further references on good practices for setting objectives and conducting planning, please refer to Chapter 1: “Strategic Planning and Prioritisation” of the Agency Effectiveness *Competition Agency Practice Manual*, available at: <http://www.internationalcompetitionnetwork.org/uploads/library/doc744.pdf>

there is an operative or strategic plan in place that identifies a broad framework, but where specific actions or advocacy related to specific sectors might be decided on a case by case basis in light of different criteria (e.g., El Salvador, Bulgaria, Italy, Sweden, US (FTC)).

- > In most cases, the distinction made by agencies about whether their structure of planning is 'formal' or 'informal' may depend on a question of definition.
- > In agencies where there is a semi-formalized structure, there may be a determination of overall strategy or priorities for the agency, of which advocacy is one part. For example, Sweden has an annual operative plan which sets the agenda of the whole agency for the coming year, which is one factor contemplated alongside a consideration of other criteria such as resources required, external demands on the advocacy department etc. The FTC (US) describes its strategic plan as the agency's "road map" for objectives and performance goals, and part of this plan includes competition advocacy. Italy describes a somewhat similar scenario, insofar as it regularly outlines the industries that require more careful monitoring, in order to define the priorities and the advocacy tools that should be used.
- > Several agencies that do not perform formal planning of advocacy initiatives appear willing to increase the degree formalization. Australia, which identifies itself as engaging in informal planning, has an annual strategic review of consumer and competition issues and is working towards building its internal framework for setting goals, planning advocacy projects and evaluating performance. Colombia and Sweden are considering making public their advocacy strategy. Argentina has designed a formal strategy for 2017 for the first time.
- > Furthermore, as observed by an NGA, the formal planning and designing of an effective advocacy strategy may also depend on how mature agencies are in their life-cycle. In some jurisdictions, substantial investments in planning of advocacy strategies may come at a later stage in the life of a competition agency which initially dedicates time and resources to the implementation of competition law and its enforcement. On the other hand, many newer agencies spend time and resources promoting awareness of the competition law and agency in their early years.

B. The Annual Plan

- > Several competition agencies that conduct a formal advocacy strategy include it in their long-term Strategic Plans. The strategy is frequently reflected in each agency's annual work plans, which are often designed at the beginning of every year (e.g., Poland). These plans are often renewed on a yearly basis, and often include a monitoring and evaluation process. Some agencies, however, update their advocacy plan every two or three years (e.g., South Africa).
- > In the UK, advocacy priorities are often included in the CMA's Annual Plan, but not in a detailed or specific way, because much of the agency's work with the government is not in the public domain and part of it is responsive to policy developments occurring in the course of the year. Some agencies publish their draft annual working plans for comments. However, after advocacy actions are completed, the majority of responding agencies publish results periodically, mainly through annual reports (e.g., Turkey).

C. The internal organization

- > Most responding agencies that conduct formal advocacy strategy planning have a separate Advocacy Unit. Advocacy strategy planning for specific advocacy actions is usually carried out within the responsible units, and often includes input from staff and leadership across the agency. Staff in the advocacy unit also participate in agency-wide strategy and priority setting that includes competition advocacy.
- > The Mexican Competition Authority (COFECE) has an internal advocacy working group which meets on a quarterly basis and is chaired by a member of the Board of Commissioners. These meetings help assure the implementation of the advocacy strategy's actions by the different divisions in the agency and to discuss any important developments or projects within it. By the same token, the advocacy plan of the Singapore Authority (CCS) is a cross-divisional effort which involves the entire organization. In Poland, a schedule of advocacy initiatives is prepared following the collection of the annual objectives of all organizational units.

- > Other agencies designate other units for planning, but give sufficient freedom to the advocacy responsible staff to prioritize, design and implement specific actions (e.g., Finland). The Finnish Competition and Consumer Authority (FCCA) also has a unique system by which the advocacy strategy is developed in an interactive process between the Ministry of the Economic Affairs and Employment, the top level management of the FCCA and the advocacy unit of the FCCA. The advocacy strategy is culminated in the performance agreement between the Ministry and the FCCA. The performance agreement sets out the operational objectives to be pursued by the FCCA within the limits of the budgets allocated by the Parliament.
- > Agencies that do not carry out a formal advocacy planning either appoint specific staff across the different divisions to be responsible for specific advocacy initiatives, or set up an advocacy working group in their agency.
- > Also some agencies that carry out informal advocacy planning have a dedicated unit or department (e.g., Sweden, FTC (US), UK), although other departments may be consulted in planning of specific advocacy initiatives. Others have a decentralized approach where area-specific expertise can be used in advocacy projects (e.g., Australia, Russia). In this case, there may be a team or unit appointed as a liaison for advocacy work, with a view to facilitating communication and sharing of ideas. For example, Australia has an Advocacy Network of staff from across the agency to facilitate communication and sharing of ideas, which answers to an advocacy sub-committee of senior managers. Somewhat similarly, in Italy, where units deal both with enforcement and advocacy, the department for the analysis of legislation monitors the legislative process, thus playing a liaison role. In Brazil, there is a bipartite system whereby CADE is responsible for competition enforcement and policy, whereas the Secretariat for Economic Monitoring is responsible for advocacy. Nevertheless, CADE engages in advocacy initiatives by publishing reports and guidelines and organizing workshops.
- > A common theme regardless of structure is that senior management, commissioners or boards often have an opportunity to provide input in the planning of both overarching plans and specific advocacy initiatives.

D. The process

- > Although significant differences can be found between the advocacy strategies' planning of the responding agencies, most of them conduct a version of the following stages.

1. Analysis of the environment to set clear advocacy objectives.

Most agencies carry out a stage of analysis of the environment. This stage is characterized by internal sessions of brainstorming with the objective of, both, evaluating the results of the actions carried out (which also embrace previous concerns raised by stakeholders) in the previous period (usually in the form of an annual evaluation), and prioritizing the objectives for the upcoming period.

In Mexico, activities are planned to address or liaise with every stakeholder group identified, such as the public and private sector, consumers, academic experts, journalists or international institutions.³ In Singapore, comments are also collected via other stakeholder engagement channels such as regular roundtable sessions with competition practitioners, input gathering from other government agencies, as well as during outreach sessions to the general public.

Within this process, it is highly important to acknowledge the opinion of other units in the agency and foster a close cooperation with the enforcement departments and even regulators to ensure that the advocacy initiatives focus on strategic sectors and are likely to have positive results.

The goal for this stage is to define clear general advocacy objectives, which might be met through specific advocacy programs and efforts.

2. Design of the set of initiatives. Once the general advocacy objectives have been set, most of the responding agencies carry out a selection of specific activities, initiatives, projects, products, messages and mechanisms that can meet the outlined goals. For this stage, agencies have found it useful to outline both qualitative and quantitative indicators that agencies can use to measure the progress and impact of the actions to be undertaken.

³ For further information on planning stakeholder engagement, specific to market studies, see ICN's Market Studies Good Practice Handbook (April 2016), <http://www.internationalcompetitionnetwork.org/uploads/library/doc1088.pdf>.

The Japanese Competition Authority (JFTC) implements advocacy activities using various tools such as public relations and public hearing activities, market studies, suggestions to government agencies and businesses (as does the US (FTC)). Additionally, unplanned advocacy activities may be carried out in response to unexpected events. Many agencies retain flexibility in their advocacy strategy plans to allow them to engage in new advocacy actions that were not previously anticipated in the advocacy plan in case “windows of opportunity” exist for those actions (e.g., Spain, Mexico).

In order to evaluate which of several potential advocacy actions may be conducted, some agencies consider the use of tools that best fit the circumstances. Commonly used tools include: letters or written comments to concerned lawmakers and regulators, as well as amicus curiae briefs, studies, reports, workshops, communication campaigns, press releases, public speeches, best practices, guidelines and past experiences.

- 3. Adjustment.** Having defined specific actions to carry out, agencies may conduct a review process in conjunction with other units and / or agencies that are involved in the implementation of actions. Some agencies seek external advice from stakeholders, such as Academia or legal or business associations. For example, the competition authority of Singapore conducts a stakeholders’ perception survey biennially. The results of the survey help to identify areas for improvement in terms of advocacy strategy planning and provide inputs to the annual work plan.
- 4. Internal approval.** Most agencies conduct a final review and approval of the overall advocacy strategy, and any specific advocacy action, by a decision-making authority or body, usually, the Head of the Agency or the Agency Board. In some instances, it is the Head of the Advocacy Unit who ultimately approves the specific tools that will be used to implement the agency’s advocacy strategy, and the final content of any individual advocacy.
- 5. Implementation.** Some agencies implement their strategic plans through a work plan-like document, containing a broad allocation of resources between the main activities of the agency and a broad advocacy mandate or definition of the outputs. For this stage, some

agencies consider mid-term evaluations, according to their indicators (e.g., Taiwan). A number of agencies also conduct an ex-post evaluation of their advocacy efforts, which is included in the advocacy strategy planning, using different tools and methods to measure their success.

- > A constraint that some competition agencies may face is the fact that they must comply with the objectives and actions formally set in their annual work plans, which might limit the scope of action. In fact, many agencies underlined that unforeseen market changes should be taken into consideration when designing the agency's advocacy strategy (e.g., Argentina, Japan and Sweden).
- > Informal planning may provide higher flexibility and more leeway to prioritize advocacy activities and sectors based on external events that arise. For example, an agency may prioritize an activity based on new legislation or regulation, or arrange a workshop when appropriate (e.g., Cyprus). Agencies that used a blend of formal and informal planning found this flexibility to be important in maximizing agency resources and increasing the impact of advocacy initiatives (e.g., US (FTC)).
- > Externally initiated activities, such as the constitutional requirement to issue responses to government consultations on new laws and regulations, or market studies that may be ordered by other parts of government, may have some bearing on the resources available for *ex officio* advocacy work (e.g., Sweden).

E. Selection criteria

- > Although the criteria vary depending on the agency, most agencies consider some of the following factors in planning their advocacy strategy, whether it be formal, informal, or a mix:
 1. Budget and staff constraints
 2. Market conditions and economic relevance of the sector(s)
 3. Actual harm to competition and to consumer welfare
 4. Political agenda
 5. Expected impact of the initiative and probability of success

6. Stakeholders' opinions (consumers, academia, journalists, public and private sector)
 7. Feasibility
 8. Measurability of the outcome(s),
 9. Overall agency priorities,
 10. Whether the competition agency brings a unique perspective or tools,
 11. Whether any other agency or institution is planning work in similar or the same sector/market, *inter alia*.
- > It has also been helpful for agencies to consider the political agenda and the international sphere (e.g., Finland). Agencies may also consider initiatives and successful advocacy initiatives by sister agencies.