



# COMPETITION ADVOCACY IN REGULATED SECTORS: EXAMPLES OF SUCCESS\*

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APRIL 2004

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\* This report is the result of the work done by sub-group 4 of the Capacity Building & Competition Policy Implementation - CBCPI - Working Group. The leading agencies of the sub-group 4 are the Secretariat for Economic Monitoring - Brazil and the Competition Bureau - Canada. The sub-group 4 thanks all of the member countries that helped in the construction of this report by answering the questionnaire submitted in December of 2003.

## 1. INTRODUCTION

Subgroup 4 of Capacity Building & Competition Policy Implementation (CBCPI) was formed to continue the work of the Advocacy Working Group of the International Competition Network (ICN). At the last annual conference in Merida, the Advocacy Working Group found that “*the experiences and opinions reported by the [fifty participating competition authorities] reveal a need for systematically organized information about relevant aspects that may impact the effectiveness of advocacy.*”<sup>1</sup> Building on the work of this Group, Subgroup 4 (hereafter “Subgroup”) examined advocacy efforts of more than 30 members, with a particular emphasis on regulated sectors in developing and transition economies. The objective was to compile a compendium of successful case studies and to discern common patterns or strategies. These case studies and accompanying analyses are presented in this report. The Subgroup presents this report as a starting point in assessing the effectiveness of previous advocacy initiatives and to improve future initiatives by highlighting successful experiences and strategies that competition officials can look to for guidance, much in the same way many agencies use the enforcement cases of other agencies to guide their own case analysis and decision-making.

*What is competition advocacy?*

As defined by the ICN’s Advocacy Working Group, competition advocacy “*refers to those activities conducted by a competition authority related to the promotion of a competitive economic environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.*”<sup>2</sup> In this capacity, competition authorities perform reviews of

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<sup>1</sup> Advocacy Working Group of the International Competition Network, “Future Plans of the Working Group” at <http://www.internationalcompetitionnetwork.org/Future%20plans.pdf> (last visited March 24, 2002), 1.

<sup>2</sup> International Competition Network (2002), “Advocacy and Competition Policy: Report Prepared by the Advocacy Working Group”, unpublished paper (“ICN 2002 Advocacy Study”), <http://www.internationalcompetitionnetwork.org/Advocacyfinal.pdf> (last visited March 24, 2004) at i.

existing and proposed laws and regulations, acting as a competition goalkeeper by providing suggestions and advice on government policies and measures that promote anti-competitive practices or inefficiencies. Activities often include the review of possible sources of public restraints on competition (e.g., sectoral regulation, trade policies, investment policies). Other efforts include outreach activities to educate the public at large about the benefits of competition, for example, consumer awareness seminars, outreach newsletters, etc.

*Why is competition advocacy important?*

As the ICN 2002 Advocacy Study explained, the rationale for prioritizing competition advocacy over competition law enforcement is threefold.<sup>3</sup> First, in developing and transition countries, the spread of market reform has given rise to an intensive rule making process. Dialogue between the competition authority and other rule makers at an early stage may ensure that competition provides the foundation for legislation. Second, liberalization has also heightened the activity of interest groups as they lobby for lost privileges. Competition authorities are considered to be less prone to regulatory capture by interest groups than, for example, sector-specific regulators and through advocacy competition authorities can instill competitive values in sector-specific regulation, reducing the possibility of regulatory capture. Third, law enforcement requires sophisticated adjudication of competition cases which young competition authorities and judicial systems often find challenging.

The first rationale for prioritizing advocacy is particularly important in regulated sectors. As countries move from state-owned monopolies towards a more competitive market structure, temporary regulation is often introduced to facilitate the transition, with the intention that the regulation be

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<sup>3</sup> ICN 2002 Advocacy Study at iii-iv. See also William Kovacic (1997), “Getting Started: Creating New Competition Policy Institutions in Transition Economies”, 23 *Brooklyn J. of Int. Law* 403: 441-442.

removed as markets mature. Often, however, the regulation that was supposed to be temporary becomes permanent and artificial market conditions hinder the competitive process. In this sense, competition advocacy is of utmost importance since advocacy can help regulators, legislators and the general public understand that competitive market forces are the most effective at enhancing the quality of services at the lowest price.

*How is competition advocacy evaluated?*

The difficulty for competition authorities, however, is to determine what types of efforts are most effective, and in which sectors. To assess the effectiveness of advocacy efforts, one needs to identify what steps, if any, a competition agency has taken to create a pro-competitive environment, and measure to what extent, if any, these efforts achieved the desired goal. While the first step may be easily assessed, the second step is often problematic, because measurable indicators of success are complex and sometimes elusive. Some efforts may lend themselves more easily to measurement, for example, when the competition authorities make recommendations about a draft law that are incorporated into the final law. In many cases, however, advocacy efforts are very hard to measure. For example, the result of an authority's efforts to educate legislators or regulators is often intangible. Even when competition awareness appears enhanced for a particular legislator or regulator, this awareness may be specific to that individual and never transferred institutionally. Also, even when awareness is improved institutionally, it often becomes visible only long after the advocacy work was performed. The lack of immediate information makes it difficult to attribute pro-competitive effects to the advocacy initiatives. Yet another difficulty arises when a variety of actors engage in simultaneous advocacy efforts, since it becomes harder to attribute success to a particular actor, i.e. the competition authority. These difficulties make evaluation problematic for competition authorities.

Even though these difficulties could lead one to think that it is impossible to measure or evaluate the effectiveness of advocacy initiatives, this is not

necessarily true. Sometimes the effectiveness of competition advocacy is easier to measure. In the process of drafting legislation, for example, where the competition agency has the opportunity to make recommendations, it is easier to relate the advocacy role played by the agency to its effects. In such a case it is easy to assess to what extent competition concerns were taken into account when the final product (the law or regulation) is issued.

The particular nature of regulated sectors, where the degree to which an industry is open to competition fluctuates enormously within the sector, means that the competition authority's approach to advocacy will vary as well, thereby increasing the likelihood that a change can be identified with and attributed to a particular activity.

Given the difficulty of evaluating advocacy and identifying concrete indicators of success, the Subgroup decided that the best contribution would be to evaluate and identify successful initiatives in narrow, specific sub-sectors of regulated sectors. The evaluations would account, to the extent possible, for the particular circumstances surrounding the initiative, such as competition enforcement capacity, level of privatization and competition in that specific sector.

### *Examining Regulated Sectors: Subgroup Methodology*

Sub-group 4 submitted a questionnaire directed at advocacy in specific sectors to all ICN members.<sup>4</sup> The questionnaire was divided into two different parts: competition and advocacy. Six sectors were selected: electricity, gas, telecommunications, railways, air services and maritime transport.<sup>5</sup> The first part of the questionnaire addressed the level of

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<sup>4</sup> Despite being focused on transition economies the sub-group sent the questionnaire to all ICN members. The idea on doing so was to know in what extent differences from developed and transitioning economies were relevant in terms of advocacy initiatives.

<sup>5</sup> The sectors were vertically divided in their specific sub-sectors based on the division proposed in the OECD article "Structural Separation in Regulated Industries" (DAFFE/CLP(2001)11), page 4.

competition in different regulated sectors and asked members to quantify the level of influence the competition agency has over regulation. This section used different variables to understand the relationship between antitrust and regulatory enforcement and the level of competition achieved by different industries. The main variables concerned were: the level of privatization (question A), the level of competition (question B), and the ability of competition agencies to influence regulatory body decisions (questions C and D). The second part of the questionnaire contained open-ended questions that allowed members to describe previous advocacy activities in the regulated sectors, as well as to evaluate their results. A total of 32 jurisdiction responded to the questionnaire.

### *Presenting the Results*

The report proceeds as follows. In the next section the responses on the competitive environment, the level of privatization, of the regulated sectors are presented. In the third and fourth sections, the responses for the level of influence competition authorities have over the regulated sectors and the competition authorities' perception of other agencies' awareness of the benefits of competition are examined. Against this background, section five presents respondents' general experiences with advocacy and selected quotes from the questionnaire responses. Suggestions to improve advocacy initiatives are identified in section six. The final section provides detailed case studies of successful initiatives. Throughout the report, differences between sectors and differences between developing and developed countries will be noted as appropriate.

## **2. THE LEVEL OF PRIVATIZATION**

Question A of the survey asked respondents to identify the ownership structure of the selected sectors: electricity, gas, telecommunications, railways, air services and maritime transport. For every sub-sector the respondent was asked to indicate whether that market was supplied by state-

owned enterprises, private companies or both.

Table 2.1 presents the percentages of both developing and developed countries that have state-owned enterprises and/or private companies acting in the various regulated sectors. The numbers on the table represents the percentage of answers “no” and “yes” to the following questions:

*I. Is the market supplied by state-owned enterprise?*

*II. Is the market supplied by private companies?*

It should be noted that the answers to these questions are not mutually exclusive, i.e. that frequently both public and private companies operate on the markets in question. For example, the first 4 cells for electricity generation (item 1.1) in the developed countries’ table show that among those countries, 40% do not have at all state-owned enterprises generating electricity while 60% do. It also shows that 10% of these countries do not have private companies generating electricity for the market whilst 90% have.<sup>6</sup>

Table 2.1 indicates that the state plays a larger role in these industries in the developing countries that answered the survey than in the developed countries that answered the survey. As these results are merely illustrative, the subgroup is considering more in-depth analysis as part of its future work to explore advocacy implications of the presence of state owned enterprises and common perceptions that the presence of state-owned enterprises in the economy demands more intensive advocacy efforts to achieve a more competitive environment.

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<sup>6</sup> The differences between percentages from the first and the third column or from the second and the forth give us the percentage of countries which have both private and public companies acting in the sub-sector. For the electricity generation sector for example, this number is 30%.

**Table 2.1 - State x Private enterprises**

DEVELOPED COUNTRIES		Is the market supplied by.			
SECTOR		State enterprise? (No=0/Yes=1)		Private Companies? (No=0/Yes=1)	
<b>1</b>	<b>Electricity</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
1.1	Generation	40%	60%	10%	90%
1.2	Hinh voltage distribution	50%	50%	40%	60%
1.3	Local distribution	40%	60%	40%	60%
1.4	Retailing and marketing activities	40%	60%	20%	80%
1.5	Market trading activities	40%	60%	20%	80%
<b>2</b>	<b>Gas</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
2.1	Production	80%	20%	30%	70%
2.2	Storage	70%	30%	30%	70%
2.3	High pressure transmission	60%	40%	30%	70%
2.4	Local distribution	60%	40%	30%	70%
2.5	Retailing and marketing activities	60%	40%	10%	90%
<b>3</b>	<b>Telecommunications</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
3.1	Long distance services	60%	40%	10%	90%
3.2	Mobile services	60%	40%	0%	100%
3.3	Local loop services to high-volume bussiness customers	60%	40%	10%	90%
3.4	Local loop services in areas servea by broadband networks(e.g, cable TV)	70%	30%	0%	100%
3.5	Local residential telephony in rural areas	60%	40%	10%	90%
3.6	Provision of a ubiquitous network	60%	40%	20%	80%
3.7	Value-added services	60%	40%	0%	100%
<b>4</b>	<b>Railways</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
4.1	Track and signaling infrastructure	30%	70%	70%	30%
4.2	Operations of trains	30%	70%	40%	60%
4.3	Maintenance facilities	20%	80%	50%	50%
<b>5</b>	<b>Air Services</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
5.1	Aircraft operations	40%	60%	10%	90%
5.2	Maintenance facilities	60%	40%	0%	100%
5.3	Catering services	60%	40%	0%	100%
5.4	Airport services(slots)	60%	40%	70%	30%
<b>6</b>	<b>Maritime transport</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
6.1	Port facilities	40%	60%	40%	60%
6.2	Pilot services	40%	60%	60%	40%
6.3	Port services	50%	50%	20%	80%

DEVELOPED COUNTRIES		Is the market supplied by.			
SECTOR		State enterprise? (No=0/Yes=1)		Private Companies? (No=0/Yes=1)	
<b>1</b>	<b>Electricity</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
1.1	Generation	7.6%	92.3%	30.7%	69.2%
1.2	Hinh voltage distribution	7.6%	92.3%	84.6%	15.3%
1.3	Local distribution	23.1%	76.9%	46.1%	53.8%
1.4	Retailing and marketing activities	23.1%	76.9%	53.8%	46.1%
1.5	Market trading activities	15.3%	84.6%	53.8%	46.1%
<b>2</b>	<b>Gas</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
2.1	Production	53.8%	46.1%	61.5%	38.4%
2.2	Storage	53.8%	46.1%	69.3%	30.7%
2.3	High pressure transmission	53.8%	46.1%	69.3%	30.7%
2.4	Local distribution	69.3%	30.7%	46.1%	53.8%
2.5	Retailing and marketing activities	76.9%	23.1%	38.4%	61.5%
<b>3</b>	<b>Telecommunications</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
3.1	Long distance services	46.1%	53.8%	23.1%	76.9%
3.2	Mobile services	61.5%	38.4%	0%	100%
3.3	Local loop services to high-volume bussiness customers	53.8%	46.1%	23.1%	76.9%
3.4	Local loop services in areas servea by broadband networks(e.g, cable TV)	76.9%	23.1%	23.1%	76.9%
3.5	Local residential telephony in rural areas	53.8%	46.1%	15.3%	84.6%
3.6	Provision of a ubiquitous network	61.5%	38.4%	38.4%	61.5%
3.7	Value-added services	53.8%	46.1%	7.6%	92.3%
<b>4</b>	<b>Railways</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1 / talez=2</b>
4.1	Track and signaling infrastructure	30.7%	69.2%	76.9%	15.3% / 7.6%
4.2	Operations of trains	23.1%	76.9%	69.2%	30.7%
4.3	Maintenance facilities	30.7%	69.2%	69.2%	30.7%
<b>5</b>	<b>Air Services</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
5.1	Aircraft operations	38.4%	61.53%	84.6%	15.3%
5.2	Maintenance facilities	53.8%	46.1%	38.4%	61.5%
5.3	Catering services	76.9%	23.1%	0%	100%
5.4	Airport services(slots)	38.4%	61.53%	53.8%	46.1%
<b>6</b>	<b>Maritime transport</b>	<b>No=0</b>	<b>Yes=1</b>	<b>No=0</b>	<b>Yes=1</b>
6.1	Port facilities	30.7%	69.2%	53.8%	46.1%
6.2	Pilot services	46.1%	46.1%	69.2%	30.7%
6.3	Port services	46.1%	46.1%	23.1%	76.9%

### 3. LEVEL OF INFLUENCE AND COMPETITION

Regulated industries are not homogeneous sets of components subject to the same degree of competition. These industries have the capacity to achieve different levels of competition depending on several factors such as industry structure before privatization, market size and dynamics, regulatory features, relationship with other industry’s components, etc. Indeed the questionnaire responses reflected some of this complexity. For example, countries with very similar economic and social features did not always have correspondingly similar levels of competition in a particular industry. The success of an advocacy activity depends on a competition



agency's ability to influence other agencies, i.e. whether consultations and recommendations made by the competition agency to other regulatory bodies are factored into rulemaking and policy. The questionnaire asked whether the competition agencies' recommendations to regulatory bodies are binding or non-binding<sup>7</sup>.

The possibility of issuing binding recommendations has been pointed out by some jurisdictions as an effective way of advocacy with regulatory agencies. In this sense, it seems justified to consider them as an advocacy activity as well.<sup>8</sup>

Table 3.1 presents the survey results where the competition authority can make binding recommendations to other regulatory bodies, listed by sector. In responding to the questionnaire, a number of countries responded that they were "sometimes" able to make binding recommendations (dependent perhaps on the particular issue or the degree to which competition is implicated). As a result, the column "sometimes" was added to reflect these responses. Of those agencies that responded to this question, the percentage of agencies from developing countries with the ability to make binding recommendations was higher than for the agencies in developed countries. Moreover, the table shows that across all respondents, relatively few competition authorities have the ability to make binding recommendations.

Ranging from the possibility of issuing binding recommendations to not having any influence at all, competition agencies ability to influence

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<sup>7</sup> There's also some situations where non-binding recommendations are, in fact, binding depending on the political strength held by the competition agency. We can consider them as binding recommendations as well.

<sup>8</sup> Binding recommendations are, in fact, understood as an enforcement activity rather than as an advocacy initiative. The concept of advocacy itself formulated by the ICN Advocacy Working Group and presented previously in this report is very clear in saying that advocacy is done "by means of non-enforcement mechanisms". In spite of that, binding recommendations have undoubtedly a strong advocacy effect and, for this reason, to consider it as an advocacy initiative also makes sense.

**Table 3.1 - Binding and non-binding recommendations**

DEVELOPED COUNTRIES		Are suggestions made by the competition agencies binding on other regulatory bodies? (No=0/Yes=1)		
SECTOR		No=0	Yes=1	Sometimes=2
<b>1</b>	<b>Electricity</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
1.1	Generation	90%	10%	0%
1.2	Hinh voltage distribution	90%	10%	0%
1.3	Local distribution	90%	10%	0%
1.4	Retailing and marketing activities	90%	10%	0%
1.5	Market trading activities	90%	10%	0%
<b>2</b>	<b>Gas</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
2.1	Production	90%	10%	0%
2.2	Storage	90%	10%	0%
2.3	High pressure transmission	90%	10%	0%
2.4	Local distribution	90%	10%	0%
2.5	Retailing and marketing activities	90%	10%	0%
<b>3</b>	<b>Telecommunications</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
3.1	Long distance services	90%	10%	0%
3.2	Mobile services	90%	10%	0%
3.3	Local loop services to high-volume bussiness customers	100%	0%	0%
3.4	Local loop services in areas servea by broadband networks(e.g. cable TV)	90%	10%	10%
3.5	Local residential telephony in rural areas	100%	0%	0%
3.6	Provision of a ubiquitous network	80%	20%	0%
3.7	Value-added services	80%	20%	0%
<b>4</b>	<b>Railways</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
4.1	Track and signaling infrastructure	90%	10%	0%
4.2	Operations of trains	80%	20%	0%
4.3	Maintenance facilities	90%	0%	10%
<b>5</b>	<b>Air Services</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
5.1	Aircraft operations	90%	0%	10%
5.2	Maintenance facilities	90%	0%	10%
5.3	Catering services	90%	0%	10%
5.4	Airport services(slots)	90%	0%	10%
<b>6</b>	<b>Maritime transport</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
6.1	Port facilities	90%	10%	0%
6.2	Pilot services	90%	10%	0%
6.3	Port services	90%	10%	0%

DEVELOPED COUNTRIES		Are suggestions made by the competition agencies binding on other regulatory bodies? (No=0/Yes=1)		
SECTOR		No=0	Yes=1	Sometimes=2
<b>1</b>	<b>Electricity</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
1.1	Generation	46.1%	23.7%	30.7%
1.2	Hinh voltage distribution	53.8%	23.7%	23.1%
1.3	Local distribution	61.5%	15.3%	23.1%
1.4	Retailing and marketing activities	61.5%	23.7%	15.3%
1.5	Market trading activities	69.2%	15.3%	15.3%
<b>2</b>	<b>Gas</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
2.1	Production	69.23%	7.6%	23.1%
2.2	Storage	61.5%	15.3%	23.1%
2.3	High pressure transmission	61.5%	15.3%	23.1%
2.4	Local distribution	53.8%	30.7%	15.3%
2.5	Retailing and marketing activities	61.5%	23.1%	15.3%
<b>3</b>	<b>Telecommunications</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
3.1	Long distance services	53.8%	30.7%	15.3%
3.2	Mobile services	53.8%	30.7%	15.3%
3.3	Local loop services to high-volume bussiness customers	53.8%	30.7%	15.3%
3.4	Local loop services in areas servea by broadband networks(e.g. cable TV)	51.5%	23.7%	15.3%
3.5	Local residential telephony in rural areas	53.8%	23.7%	27.1%
3.6	Provision of a ubiquitous network	69.2%	15.3%	15.3%
3.7	Value-added services	53.8%	30.7%	15.3%
<b>4</b>	<b>Railways</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
4.1	Track and signaling infrastructure	46.1%	38.4%	15.3%
4.2	Operations of trains	53.8%	30.7%	15.3%
4.3	Maintenance facilities	69.2%	23.1%	15.3%
<b>5</b>	<b>Air Services</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
5.1	Aircraft operations	46.1%	38.4%	15.3%
5.2	Maintenance facilities	69.2%	23.1%	15.3%
5.3	Catering services	69.2%	23.1%	15.3%
5.4	Airport services(slots)	69.2%	15.3%	23.7%
<b>6</b>	<b>Maritime transport</b>	<b>No=0</b>	<b>Yes=1</b>	<b>Sometimes=2</b>
6.1	Port facilities	69.2%	23.1%	7.6%
6.2	Pilot services	69.2%	23.1%	7.6%
6.3	Port services	61.5%	30.7%	7.6%

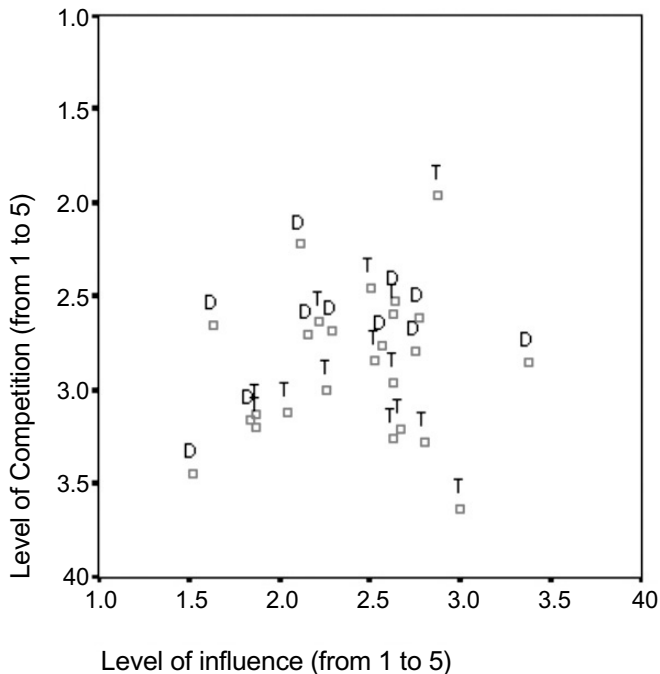
regulatory bodies may vary substantially depending on their institutional and political situation. If we assume that competition agencies use their influence to spur competition in the regulated markets, countries with more “empowered” competition authorities will have more competition in their regulated sectors. The following graph was constructed with the purpose of testing this hypothesis. Members were asked to respond, for every sub-sector, the following questions (questions B and C):

- I. Based upon your experience or upon any other objective indicator, what is the level of competition in the following sub-sectors ? (from 1 - no competition to 5 - very competitive);*
- II. Based on your experience what is the level of influence competition*

*agency has over the regulated sector decisions and policies? (from 1 - no influence to 5 - total control).*

The following graph was constructed with the responses to these two questions. The horizontal axis represents the average level of a competition agency’s perceived ability to influence the regulatory sectors examined in the questionnaire. The vertical axis represents the perceived average level of competition in all of the same sectors. Three sub-sectors that were considered to be natural monopolies were not included in the calculation: local distribution of electricity and gas, and track and signaling infrastructure. Each point represents a country.

**Graph 3.1 - Influence x Competition**



Legend: (D = developed economy and T = developing/transition economy)

The results should be read, however, with certain caveats in mind. First, the competition authorities were the respondents to the questionnaire, and thus one can expect a degree of bias with respect to their perceptions of the

general level of competition and their ability to influence regulatory policy. Second, as the cross-sectional country sample is relatively small, the relationship is not statistically significant. The results should be considered as a simplified graphic and not a comprehensive study of the relationships between competition authorities and regulatory bodies or competition advocacy and general level competition in regulated sectors.

#### 4. AWARENESS OF THE IMPORTANCE OF COMPETITION WITHIN REGULATORY AGENCIES

Question E asked whether the regulatory agency personnel were aware of the importance of competition. Sector regulators' awareness of the benefits of competition has both short and long run implications. It is common and even desirable that in the process of discussing and proposing new regulations and practices, a regulatory agency consult other government entities, including the competition agency. In the short run then, the awareness of sector regulators can be important in order to achieve specific pro-competitive regulations. Additionally, in the long run, this awareness can be even more important as an influence on regulatory decision-making in the future. In this respect, an understanding of the regulators' level of awareness seems to be a good starting point for effective advocacy work in regulated sectors.

**Table 4.1 - Awareness of competition importance**

Different kinds of answers	Number of responses			
	Developing & transition economies (17 responses)		Developed economies (11 responses)	
Yes	7	41%	6	55%
Improving	2	12%	0	0%
Yes but other objectives also exist	3	18%	2	18%
Depend on the sector	3	18%	3	27%
No	2	12%	0	0%

The responses to Question E can be classified into five categories. First,

there are countries that responded “yes” or “absolutely.” Second is the categories of countries that said that the level of awareness is improving. Third, some countries responded that objectives other than competition are considered equally or more important. Fourth, some countries made distinctions among sectors saying that for some sectors the levels of awareness were higher than in others. Finally, two respondents responded “no” to this question. The number of the different kinds of answers received from both developing and developed countries are summarized in the following table.

The results indicate that competition agencies in both the developed and developing world can improve the level of regulatory agency awareness. Also, the results differed across sectors, indicating that effective advocacy efforts should consider that different sectors may need different levels of investments in advocacy<sup>9</sup>. Interestingly, the results show some degree of relationship between economic development and level of awareness of regulatory agencies personnel, although the statistical significance is not high.

## **5. ADVOCACY INITIATIVES**

From all 33 respondent countries only 2 answered that they are not performing any advocacy work, both developing countries. More specifically, one answered that the agency is not performing any advocacy work “at the moment”, and the other explained that the agency had not engaged in advocacy work because it was created only very recently.

### **5.1 Advocacy Activities**

Most agencies reported that they have an open and active dialogue with sectoral regulators, and building consensus for competition principles is the primary focus of advocacy activities. For example, competition authorities are required or authorized to provide opinions on competition issues in

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<sup>9</sup> Most of countries that reported differences between sectors said that in the telecommunication sector the awareness is high.

proposed sectoral regulations. Similarly, one country responded that the competition authority is required to consult the sectoral regulators before publishing general advice or guidelines about application of competition law. Typically, the competition authority provides comments, opinions and suggestions on draft legislation and/or privatization projects. For example, competition authorities submit arguments during the privatization process against exemptions. Several countries also reported that they prepare the recommendations and opinions based on econometric or other studies. Another authority reported that they have a group of experts on regulation in the competition agency to prepare the recommendations.

In a few countries the competition authorities reported oversight capabilities, where the competition authorities have the right to issue permits or authorize participation in public bidding. Some competition authorities also responded that they recommend to local governments and private participants in the privatization process, in addition to aiming their advocacy efforts at the national regulator. As an example of the latter, some competition authorities participate in meetings between an incumbent enterprise and the regulatory agency to promote competition values.

One country explained that government policies are generally subject to a formal interdepartmental drafting procedure where the competition agency provides a binding recommendation on draft legislation or regulation. The competition agency also provides comments, opinions and suggestions on draft legislation or regulation. If the drafters of the legislation do not want to incorporate the advice of the competition authorities, the drafters must inform the authorities of this, and provide an explanation of why they did not.

One important role many competition authorities reported that they fulfill is to advise regulators on market definition, or engage in discussions with the business community to determine market definition. Other advocacy activities that they engage in include participating in public hearings, holding regular (bi-monthly, for example) meetings with regulators or having staff exchanges, publishing case analysis or articles in the mass media, holding

workshops with regulatory and competition authorities (in some cases prior to liberalization), making speeches, preparing annual reports, and participating in symposiums organized by sectoral regulators.

## 5.2 Success of the Advocacy Efforts

Question H asked agencies to explain to what extent their advocacy was successful. In most of the cases the answers were affirmative. In some cases, the respondents said that the advocacy was partially successful depending on the type of activity or on the sector (The questionnaire only addressed the success of the advocacy effort in general.) In some cases it was possible to know which types of activities were more successful than others. Responses from both developing and developed countries allowed the qualitative assessment presented below.

On sectoral differences, one developing country reported, for example, that advocacy was successful in the telecommunications sector, moderately successful in the railway and air services, but unsuccessful in the energy sector. One developed country explained that they had considerable success for certain aspects of the telecommunications sector, but less in others aspects, success in the transportation sector, but limited success in the energy sector. Another developed country reported that politics affected advocacy in telecommunications. That same country reported that they had no success for railways nor air service.

On activities, a developing country explained that direct influence on laws is immediately effective, while seminars and mass media publication are important but the results take longer to emerge.

One country described its success,

- participation in commissions - sometimes yes, but sometimes other policy objectives are stronger;
- issuing opinions on legislation - yes;
- authorization of participants in bidding - very successful;
- opinions on conditions of effective competition - sometimes challenged by private parties delaying the impositions of pro competitive conditions

Countries reported two obstacles to success. First, the regulators' analysis is *ex ante*, while competition authority analysis is *ex post* (with the exception of mergers). Second, in offering advice, different conceptual approaches may frustrate advocacy activities. One country reported that the regulator used the concept of significant market power while the competition authority used the concept of dominant position to analyze cases.

### 5.3 Learning from Experience

Countries were asked to offer examples from their own experience that they believed could inform other competition authorities.

The majority of respondents focused on the important role of **dialogue** and **coordination** among the competition authorities and the sectoral regulators. One respondent stated the importance of “developing dialogue with key decision makers participating in regulatory proceedings through informal contacts and *organizing round tables* on regulatory reform and competition-related problems.” Another suggested that a competition authority “try to have a *continuous policy of encounters* between the agency of competition and the different sector regulators.” While another response indicated that “it is considered necessary that the competition authority *participate in high level committees* and commissions that discuss and decide on measures and policies that can have an impact on competition in regulated sectors. Another respondent stressed *obligatory collaborative and consultative drafting process* with the possibility of binding recommendations.

Many countries emphasized the role of **formal procedures** in shaping the success of advocacy activities. The following are ways that competition authorities have engaged in advocacy on a more formal basis: developing formal *memoranda on co-operation* between the competition agency and sector regulators laying down clear rules for mutual co-operation and providing a good basis for a more in-depth consultations; submitting *formal proposals* to regulatory bodies on particular issues; implementation of sector *regulation* that provides the competition agency with *decision-making power* on competition issues; granting formal powers to the competition agency to authorize participants in biddings to prevent concentration in regulated sectors.



The **media** played an important role in determining the success of advocacy activities. An active *co-operation with different kinds of media* that enables the competition agency to explain its views and arguments within the framework of advocacy activities to the wider public. This has been done by: publishing cases in the media; conducting *media training*; *minimizing the media coverage* of the issues until the they are *resolved*; *publicizing* advocacy advice; and *identifying and publishing* medium-term policy objectives.

**Technical expertise** greatly improved advocacy activities. The following items were stressed in this area: *high quality of information* shared by regulators and the competition authority; sound economic analysis and *technical know-how* inside the competition agency to improve impact and quality of advocacy; *developing indicators of success*; and *sound analytical work* showing the competition agency's *results* as a powerful advocacy tool.

Many developing countries stressed the usefulness of looking to **other jurisdictions for guidance**. For example, one respondent did a careful *study* of legislation in force for the relevant regulated sector and then *compared* the cases with similar ones in the EU Member States and other member countries of OECD.

Being **forward looking** was considered useful, particularly in transitional economies where economic reforms are ongoing process, a wise strategy is to *anticipate and address* future problems for competition rather than dealing ex post with the negative consequences.

With regard to **prioritizing resources by sector** the competition agencies used the following criteria: (a) the economic importance of the sector, (b) indications of the level of competition in the sector, (c) the extent of regulation / barriers to entry in the sector and (d) the existence of public interest.

## 6. SUGGESTIONS TO IMPROVE ADVOCACY

The following list offers the suggestions provided by the questionnaire

respondents made in order to improve the advocacy efforts.

Many respondents from both developed and developing countries valued a **legalistic** approach. Suggestions included the following: the introduction of *formal rules governing the relationship* between the competition agency and the sector regulators, *e.g.* provisions (*de jure*) in the law to ensure that the recommendations and opinions made by the competition agency are provided at the early stages of regulated sector reform; establishment of a *code of conduct* with regulatory bodies to improve the adversarial relationship among some players in the regulated sectors; the authority to examine and render opinion over licenses before they are issued; provisions that increase *transparency* by requiring the competition agency to publish its opinions; and a requirement that policy-makers publicly state their reasons against incorporating the competition agency's opinion; and provisions regarding the exchange of confidential information.

A few countries suggested that agencies engage in **outreach**. **In particular, they** suggested *educating stakeholders* about the distinction between unfair practices and anticompetitive conduct; and finding qualitative and quantitative resources to *prepare convincing arguments* for pro-competitive solutions. Many noted resource constraints and in human capital through **training and consultations**. They suggested simultaneous training of the staff of the competition authority and regulatory bodies on competition and regulated sectors and; consulting the international organizations or engaging external experts to scrutinize specific cases. Also, a number of jurisdictions emphasized the need to include a wide audience, to bring the consumers into the picture via publicity.

Resource constraints means that competition authorities have to have a strong knowledge of the **experience of other countries**. Some countries suggest that competition agencies draw from within or hire experts. Others believed that the resource constraints meant that it was more important to prioritize activities. For example, one country made a suggestion that others focus advocacy efforts more on government bodies and less on regulators. Finally, it is necessary to institutionalize competition policy recommendations

to sector regulators.

At least one country stressed the importance of linking advocacy and enforcement activities. It said, “try to enforce competition in every market that can be involved in a regulated market and have a politics of transparency about it.” Likewise, one competition agency suggested that agencies engage in careful market monitoring in order to anticipate potential rent-seeking situations.

## **7. SUCCESSFUL CASE STUDIES**

The final question asked members to present in detail “cases of success” regarding competition advocacy in regulated sectors. As mentioned before, the sub-group’s main objective was to identify advocacy efforts in regulated sectors and, if possible, to relate successful efforts with the objective indicators of regulation, privatization and competition obtained from the other questions.

Effective competition advocacy in one country may not be easily replicated in another country where the institutional roles of the competition agency is different. The same is true for the degree of privatization: one effective advocacy project in a mostly privatized environment will not necessarily work in a country with a less privatized economy.

The questions were subdivided by different sectors, because advocacy efforts can be very sensitive to sectors. This seems more relevant in transition economies where the level of economic liberalization and regulatory framework may vary considerably from sector to sector. It is also possible to find sectors where the interaction between the competition and regulatory agencies is “better” than in others. The methods used in an effective advocacy effort in the telecom sector may not resonate with the energy regulatory agency in the same country. Alternatively, the methods used may vary depending on how “competition-oriented” the regulatory agency is.

The following case samples were selected from the questionnaire responses. Due to the commitment to members to keep the responses confidential, the names of the countries, competition agencies and laws were omitted.

### **Cases from Developing Countries**

**Country 1** - Reviewing privatization processes and concessions granted represents a very important advocacy activity of the (competition agency). Before the (Competition Law) entered into effect, neither of these activities was subject to the scrutiny of competition policy, which resulted in privatization processes in which the enterprises in question possessed substantial market power. The (competition agency)'s task in this respect is undertaken in three stages. During the first stage, the (competition agency) takes part in formulating public policies. For example, determining the conditions and structural scheme that will be used to privatize a state-owned enterprise or to grant a concession or permit in order for a privately-owned company to render public services. In this phase, the role of the (competition agency) is that of issuing suggestions or opinions concerning the various schemes proposed within the sphere of its powers, since the final responsibility for the privatization process lies with the head of the sector. During the second stage, the (competition agency) participates in preparing legal instruments that serve as the project basis. The latter include regulatory provisions, tender offer basis and at times even the specific contracts. The Commission's role in this phase also entails issuing opinions and suggestions. During the third stage, the (competition agency) analyzes, evaluates and issues an opinion regarding participation of specific economic agents that take part in the tender offer process or in the granting of concessions. In this instance, the Commission may issue a favorable opinion, an unfavorable opinion or a conditioned opinion. In the latter case, various conditions are set that the economic agent must satisfy in order to take part in the tender offer or in the granting of a concession. Such conditions are obviously strictly linked to the competition problems that result from a particular economic agent's being awarded the privatized entity or the concession. Of a total of 720 cases in which the (competition agency) participated, issuing opinions on tender offer processes and

concessions from 1993 to 2002, 680 involved favorable opinions, 21 conditioned opinions and 19 unfavorable opinions, in which the latter figure represents 2.6% of the cases dealt with. Privatization processes that have taken competition aspects into consideration can be illustrated in two examples: ports and railways.

In the case of ports, the (competition agency) has carried out a pressing review of each of the tender offer processes for each port terminal. In this task, the (competition agency) has been careful that phenomena of excessive concentration that go against public interest do not arise, as foreseen in the Constitutional norm. As a result, the (competition agency) has established the guiding criteria that one single company cannot hold title to more than one terminal of each type on one and the same coastline. This criterion was changed to enable having various cruise ship terminals, thus allowing completion of tourism circuits on each coastline. The control exercised by the (competition agency) in this particular case has meant that the task of granting port concessions has been undertaken under competitive criteria, and that today true competition exists between terminals and between ports.

Railway privatization represents another process in which competition policy has been successfully applied. During an initial stage the (competition agency) took part in the task of studying options and selecting the most adequate structure for the privatization process. A scheme was selected in which three trunk lines and a set of secondary rail lines were created. This is a scheme that makes competition possible among trunk lines and of the latter with road transportation. In order to strengthen the possibility of competing, certain rights of way were established, in which a concessionaire is bound to allow right of way across its lines to other concessionaires. The (competition agency) moreover took part in the preparation of bills and formulation of regulatory measures. Of course this was done for the purpose of including competition concepts in the legislation.

During the final phase, the (competition agency) evaluated the effect of the participation of each tender offer bidder, in the various tender offers, on

competition. Among other measures, the basis established that a participant in any of the tender offers could not hold more than a 5% capital interest in any other licensed railway, except if it had express authorization to the contrary. The latter measure ensured the nonexistence of cross-holdings, particularly in trunk railways. The result of adopting this mode of privatization and of establishing all preventive measures needed to foster competition, insofar as it is possible to do so in a transportation mode that has traditionally been considered a natural monopoly, has been positive in general terms. The most immediate and direct result of the process was a radical improvement in the efficiency rates of railway operations. The foregoing was accomplished by investing in movable equipment, signage and systems, with improved labor productivity achieved through voluntary retirements and better labor contracts, and finally by increasing security and protection of the merchandise being transported. At the same time, rather intense competition has arisen, even reaching the degree of rivalry basically in terms of foreign trade merchandise, particularly merchandise bound for the rest of (out of border region). That rivalry has however prevented the two major companies from agreeing on financial terms for use of their rights of way, hauling rights and interline agreements. The regulatory authorities have not been able to establish the guidelines and set the rates for such services either. Consequently a very important ingredient in the existence of rail service competition is not working as it was originally designed to work. This is simply another piece of evidence pointing to the need to issue regulations before the privatization process is carried out, otherwise the individual interests of concessionaires may prevent or challenge such regulations.

Maritime transport	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Port facilities	No	Yes	4	4	Yes*
Pilot services	No	Yes	4	4	Yes*
Port services	No	Yes	4	4	Yes*

Railways	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Track and signaling infrastructure	No	Yes	3	3	Yes*
Operations of trains	No	Yes	3	3	Yes*
Maintenance facilities	No	Yes	3	3	Yes*

\*some provisions in the sector legislation establish that the opinion of the (competition commission) is mandatory in some competition aspects. But the (competition commission) has issued many other types of opinions that are not binding for the sector regulators.

**Country 2** - The competition agency in a developing country has carried out a successful competition advocacy during the privatization process of a savings bank, which was the only state-owned bank with a dominant position in the banking market. The competition law, however, prohibited a dominant position and required that dominant firms be split up. These prohibitions did not provide many incentives for potential investors, so the Finance Ministry submitted a draft normative act, proposing the exemption of the savings bank from the application of the competition law for a defined period after the signing of the savings bank sale agreement. In making the argument, the Ministry noted that the competition law already exempted other sectors like electricity, water, gas, telecommunications, etc., all of which operated as legal monopolies. The Ministry's proposal faced strong opposition by the competition agency, the country's World Trade Organization representative, and the central bank authorities. They argued that this draft normative act would legalize a monopoly in the banking sector without justification. The competition agency lobbied actively to refuse to grant the exemption request, but they did not view splitting up the bank as a proper solution either. Instead, the competition agency recommended that privatization take place after the bank's restructuring (i.e. divestiture of some secondary activities, change of portfolio, etc). Heated discussions in the parliamentary commissions took place. During these sessions, the competition agency,

together with the central bank, offered the solution of exempting the savings bank from the provisions dealing with the prohibition of dominant position, but keeping the savings bank subject to all of the other provisions of the competition law (horizontal and vertical agreements, mergers etc.). A strong argument in favor of this proposal was the fact that the provision prohibiting the dominant position as per se was not compatible with the European competition legislation. The country's Parliament decided to approve the proposal, and added that the competition agency and the central bank should determine specific supervisory criteria to prevent the savings bank from abusing its dominant position in the market. From this experience, the competition agency reported that they have learned the importance of implementing competition policy together with privatization and liberalization reforms.

Note: No objective information is available for the bank sector because this sector was not included in the questionnaire.

**Country 3** - An important successful action of the competition agency in the regulated sector concerned a combination of competition advocacy with the application of merger control rules in the process of the restructuring of the (country) electricity industry. The (competition agency) has since 1994 in its comments, annual reports to the Government and other submissions promoted vertical separation in the electricity sector, in particular separation of transmission system operation from the dominant state-owned electricity producer (company). Within the framework of preparation of privatization of the electricity sector in 2001, an inter-departmental working group, composed of the experts of the (competition agency) and of the Ministry of Industry and Trade, has been established as a forum for finding consensus on this issue. As the privatization plan was later abandoned, the Government has in 2002 by its resolution decided to restructure the state-owned electricity sector undertakings. This restructuring as approved included the reduction of the share of (company) in the transmission system operator from 100% to 34% and acquisition by (company) of majority shares owned by state in five regional electricity distribution companies and of minority shares owned by state in the other



three regional distributors. As this transaction constituted a concentration of undertakings pursuant to the (competition law), it was subsequently assessed by the (competition agency) with regard to its effect on competition. Following a thorough assessment within the framework of the administrative proceeding, the decision of the (competition agency), approving the concentration, was made subject to conditions ensuring the maintenance of effective competition. Under these conditions, the dominant producer (company) has been obliged to divest within set time limits one of the five acquired distributors, all minority shares in the three remaining distributors and all ownership shares in the transmission system operator. The decision of the (competition agency), taken under the (competition law), has thus lead to a modification of the originally approved restructuring plan for the (country) electricity sector. The transaction in its modified form ensures appropriate conditions for effective competition, which is being introduced within the framework of liberalization of this key sector of the economy.

Electricity	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Generation	Yes	Yes	4	3	Yes-No*
High voltage distribution	Yes	No	1	2	Yes-No*
Local distribution	Yes	Yes	1	3	Yes-No*
Retailing and marketing activities	Yes	Yes	4	2	Yes-No*
Market trading activities	Yes	Yes	4	3	Yes-No*

\* the binding character depends on the nature of the “recommendations”. In general, the rules on the application of competition law in the regulated sectors, as set out by the competition agency Office, are binding on the regulators. Also the comments sent within the framework of inter-departmental drafting procedure are in principle binding, unless the Government decides otherwise. On the other hand, suggestions made during consultations with regulatory bodies are usually not of a binding character.

**Country 4** - One of the most potent examples of the (competition agency) success in the advocating the principles of the competition policy in the regulated sectors has occurred in regard to the developments in the area of telecommunications law. On (date) the new act on telecommunication law has been enacted by the (country) Parliament. The Article XX of the aforementioned Act introduces a mechanism by virtue of which, the President of (regulatory agency) may apply to the firm the status of the ‘undertaking with significant market power’, thus imposing certain constrains on its market activities (i.e. the obligation to provide universal telecomm services). However, the discussed Article stipulates that the President of the (regulatory agency) may do so only in cooperation with the President of the (competition agency). So far the discussed mechanism is one of the most formalized forms of cooperation between the (competition agency) and the sectoral regulator, as it has been embedded directly in the legal framework of one of the regulators. For the past two years the discussed procedure provided bases for very fruitful cooperation between the (regulatory agency) and the (competition agency).

Telecommunications	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Long distance services	No	Yes	3	4	n.a.
Mobile services	No	Yes	3	4	n.a.
Local loop services to high-volume bussiness customers	No	Yes	3	2	n.a.
Local loop services in areas served by broadband networks (e.g, cable TV)	No	Yes	2	4	n.a.
Local residential telephony in rural areas	No	Yes	1	2	n.a.

Telecommunications	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Provision of a ubiquitous network	No	Yes	2	3	n.a.
Value-added services	No	Yes	3	3	n.a.

**Country 5** - One country provided the example of liberalization of air fares. Following the international movement for the liberalization of air fares and after intense discussions with the (airline services regulatory agency), the (competition agency) successfully argued for the liberalization of domestic airfares practiced in (country). Initially, the Ministry of Finance deregulated air fares among the main airports in the country. A few months later, the Ministry of Finance issued an Administrative Directive allowing airlines to set their fares freely all over the country.

Air services	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Aircraft operations	No	Yes	2	2	No
Maintenance facilities	No	Yes	4	4	No
Catering services	No	Yes	4	4	No
Airport services (slots)	Yes	Yes	1	1	No

**Country 6** - In this case reported by an agency from a developing country, there were problems with contracts for electricity generators. The competition agency noticed this, and began meeting with energy regulators to promote a competitive bidding process. After several meetings, the

competition agency was able to convince the energy regulators and ultimately the distribution companies of electricity were obligated to engage in a bidding process for generator contracts.

Electricity	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Generation	No	Yes	3	3	No
High voltage distribution	No	Yes	2	4	Yes
Local distribution	No	Yes	1	4	Yes
Retailing and marketing activities	No	Yes	2	2	No
Market trading activities	No	Yes	3	4	Yes

### Cases from developed countries

**Country 7** - The Ministry of Economics asked the competition agency in a developed country to advise the country's government with respect to an order and decree proposal in the airport ground handling industry. On two points, the competition agency disapproved the proposal and requested amendments. First, the competition agency insisted that the possibility of restricting the number of operators on the ground handling market be strictly limited. It considered that the criteria of the proper functioning and efficient use of the airport installations was too vague. Airport authorities would have had too much leeway, which could have facilitated anticompetitive behavior. The country competition authorities therefore recommended these changes to foster competition. Moreover, the competition agency promoted an amendment of the decree so as to allow a limitation of the number of operators only in those parts of the airport where it is necessary to do so. The relevant authorities agreed to follow the competition agency's opinion, and the decree incorporated these two changes. In this case, advocacy by the

competition agency played an important role and strongly influenced the legislation applicable to the ground handling market. The implementation of these provisions has fostered competition, chiefly in airports where ground handling was previously a monopoly. As a result, managing bodies of airports have progressively transferred such activities to third companies. These companies are generally chosen according to public procurement contracts rules. This new situation has strengthened competition on this market and fare cuts have often been observed, thus promoting competition. More than 150 (country) or (region) ground handling companies are now active at airports. To the extent that there are several service providers on that market in a given airport, fares vary and transport companies may now choose their providers according to prices and service quality.

Note : No objective information is available for the communication sector because this sector was not included in the questionnaire.

Country 8 - The Ministry of the Economy requested the (competition agency) to advise the (country) government on the transposition of the Directive and to check the decree proposal with respect to competition law. On two points, the (competition agency) rejected the proposal and asked for amendments. First, the (competition agency) insisted that the possibility of restricting the number of operators on the ground handling market be strictly limited. It considered that the criteria of proper functioning and efficient use of the airport installations was too vague. Airport authorities would have had too much leeway, which could have made anticompetitive behavior easier. The (country) competition authorities therefore recommended changes in order to foster competition. Moreover, the (competition agency) promoted an amendment of the decree so as to allow a limitation of the number of operators only in those parts of the airport where it is necessary to do so. The relevant public authorities agreed to follow the competition agency's opinion, and the decree incorporated these two changes. In this case, advocacy by the competition agency played an important role and strongly influenced the legislation applicable to the ground handling market. The implementation of these provisions has fostered competition, chiefly in airports where ground handling was previously a monopoly. As a result, managing bodies of airports

have progressively transferred such activities to third companies. These companies are generally chosen according to public procurement contracts rules. This new situation has strengthened competition on this market and fare cuts have often been observed, thus promoting competition. More than 150 (country) or (region) ground handling companies are now active at airports. To the extent that there are several service providers on that market in a given airport, fares vary and transport companies may now choose their providers according to prices and service quality”.

Air services	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Aircraft operations	Yes	Yes	3	2	2
Maintenance facilities	Yes	Yes	3	2	2
Catering services	Yes	Yes	3	2	2
Airport services (slots)	n.a	n.a	n.a.	n.a.	n.a.

**Country 9** - In this country, public utility sectors, including electricity and gas, were exempt from application of the competition law. The competition agency formed a study group on governmental regulation and competition policy. This group prepared a report on electricity and gas services, and recommended the elimination of these exemptions. Through this advocacy, the competition agency was able to build consensus and convince regulatory authorities to abolish the exemptions for electricity and gas services.

Electricity	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Generation	No	Yes	n.a.	3	No

Electricity	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
High voltage distribution	No	Yes	n.a.	3	No
Local distribution	No	Yes	n.a.	3	No
Retailing and marketing activities	No	Yes	n.a.	3	No
Market trading activities	No	Yes	n.a.	3	No

Gas	State enterprise	Private enterprise	Level of Competition (from 1 to 5)	Level of influence over regulated sector (from 1 to 5)	Binding recommendations
Production	0	1	n.a.	3	No
Storage	0	1	n.a.	3	No
High pressure transmission	0	1	n.a.	3	No
Local distribution	0	1	n.a.	3	No
Retailing and marketing activities	0	1	n.a.	3	No

### Annex 1 - The questionnaire template - (1<sup>st</sup> part)

		Question A		Question B	Question C	Question D
		Is the market supplied by,		Based upon your experience or upon any other objective indicator, what is the level of competition in this market? (from 1 - no competition to 5 - very competitive)	Based on your experience what is the level of influence competition agency has over the regulated sector decisions and policies? (from 1 - no influence to 5 - total control)	Are suggestions made by the competition agencies binding on other regulatory bodies? (No=0/Yes=1)
	<b>SECTOR</b>	State enterprise? (No=0/Yes=1)	Private Companies? (No=0/Yes=1)			
<b>1</b>	<b>Electricity</b>					
1.1	Generation					
1.2	Hinh voltage distribution					
1.3	Local distribution					
1.4	Retailing and marketing activities					
1.5	Market trading activities					
General comments about this sector concerning the questions above (if needed)						
<b>2</b>	<b>Gas</b>					
2.1	Production					
2.2	Storage					
2.3	High pressure transmission					
2.4	Local distribution					
2.5	Retailing and marketing activities					
General comments about this sector concerning the questions above (if needed)						
<b>3</b>	<b>Telecommunications</b>					
3.1	Long distance services					
3.2	Mobile services					
3.3	Local loop services to high-volume business customers					
3.4	Local loop services in areas served by broadband networks(e.g, cable TV)					
3.5	Local residential telephony in rural areas					
3.6	Provision of a ubiquitous network					
3.7	Value-added services					
General comments about this sector concerning the questions above (if needed)						
<b>4</b>	<b>Railways</b>					
4.1	Track and signaling infrastructure					
4.2	Operations of trains					
4.3	Maintenance facilities					
General comments about this sector concerning the questions above (if needed)						
<b>5</b>	<b>Air Services</b>					
5.1	Aircraft operations					
5.2	Maintenance facilities					
5.3	Catering services					
5.4	Airport services(slots)					
General comments about this sector concerning the questions above (if needed)						
<b>6</b>	<b>Maritime transport</b>					
6.1	Port facilities					
6.2	Pilot services					
6.3	Port services					
General comments about this sector concerning the questions above (if needed)						



## Annex 2 - The questionnaire template - (2<sup>nd</sup> part)

Question E										
Do you believe that the regulated sector personnel in your jurisdiction are aware of the importance of competition?										

Question F										
Do/Did the competition agency perform any kind of advocacy in the regulation agencies?										

Question G										
What kind of advocacy is/was performed?										

Question H										
Has this advocacy activity been successful? If so, why? If not, why not?										

Question I										
Can you indicate any model “case of success” regarding activities of competition advocacy for regulated sectors in your jurisdiction? Please describe it including a description of the action the competition agency took that contributed to its success.										

Question J										
Can you recommend any “best practices” that your agency uses for competition advocacy or that you believe other agencies should consider when engaging in effective competition advocacy?”										

Question K										
What are your suggestions to improve the advocacy activities for each of the regulated sectors in your jurisdiction?										

Question L										
Could you indicate any academic (a “non-governmental advisor”) from your jurisdiction who commands expertise on regulated sector and/or competition who can be contacted at a later stage of this survey if necessary? (name, expertise, telephone/fax number, email adress, etc)										