



ADVOCACY WORKING GROUP

Report on

ICN Members' Recent Experiences (2015-2018) in
Conducting Competition Advocacy in Digital Markets

Introduction

Digital markets¹ have grown significantly in recent years. The rapid growth of digital markets has significantly transformed markets' characteristics and their competitive dynamics. Digital markets often involve complicated competition issues involving multi-sided markets, platform-based models and network effects. This has resulted in many competition authorities looking deeper into how they assess competition and whether the available assessment tools are suitable and sufficient to cope with the changing competitive landscape. Related to this change is the need for competition authorities to continue to review and revise their advocacy strategies, and to understand the new technologies and business practices to ensure that competition policy objectives can be met.

In view of this, the ICN Advocacy Working Group (AWG) embarked on a project to gather information on competition authorities' advocacy efforts in digital markets, and to identify any changes to the advocacy efforts made by competition authorities to address the digital markets, as compared to their advocacy efforts in non-digital markets. The aim of this project is to encourage experience sharing and discussion among ICN Members on their experiences in conducting competition advocacy in digital markets.

A short survey was sent to ICN members to collect information on their recent experiences with advocacy efforts in digital markets². ICN members were asked to provide information on the objectives and reasons for their advocacy efforts in digital markets, the advocacy strategies/tools used, the differences between the advocacy strategies and approaches used for digital markets as compared to other advocacy efforts, and the methods used to monitor and assess their advocacy efforts in digital markets. A total of 22 experiences were received from competition authorities from 16 jurisdictions³.

Findings

I. Objectives / Reasons for Conducting the Advocacy Effort

¹ For this project, digital markets include a variety of goods and services made available by means of a digital connection. This includes online platforms, platforms as a service, and software systems, some of which are used by consumers and suppliers, including governments, to acquire and/or supply products, services, or content.

² The survey was conducted between Nov 2018 and Jan 2019 and collated agencies experiences for the period of 2015 to 2018.

³ The experiences received are from Argentina, Australia, Brazil, Croatia, Finland, Germany, Italy, Kenya, Mexico, Panama, Russia, Singapore, Spain, Sweden, Turkey and the United States of America (FTC).

Based on the experiences received, a number of objectives/reasons for conducting advocacy efforts in digital markets can be identified. The objectives/reasons can be broadly categorised into the following [from the most to least number of times mentioned in the experiences shared]:

- 1) To provide advice, expert opinions or recommendations to the government, law makers or judiciary on competition issues in digital markets;
- 2) To find out and better understand the competition related issues in digital markets;
- 3) To inform stakeholders of competition related issues in the digital economy and spur discussion; and
- 4) To address a competition issue/problem identified in a digital market.

	(a) To provide advice	(b) To find out and better understand issues	(c) To inform stakeholders	(d) To address issue / problem
Argentina (electronic payment)	✓			✓
Australia (digital platforms in media & advertising)	✓	✓	✓	✓
Brazil (ride sharing)		✓	✓	
Croatia (ride sharing)	✓			
Finland (platform economy)	✓			
Finland (sharing economy)	✓	✓		
Germany (knowledge generation & sharing)			✓	
Italy (ride sharing)	✓			
Italy (tourist accommodation services)	✓			
Italy (big data)		✓		
Kenya (digital financial products)	✓			✓
Mexico (knowledge generation & sharing)	✓ (for fintech)	✓	✓	✓
Panama (ride sharing)		✓		
Russia (e-database against bid rigging)	✓			✓

	(a) To provide advice	(b) To find out and better understand issues	(c) To inform stakeholders	(d) To address issue / problem
Singapore (big data)		✓	✓	
Singapore (federated lockers)	✓		✓	
Spain (fintech)	✓			
Spain (online ticketing)	✓			
Spain (sharing economy)	✓			
Sweden (sharing economy & e-commerce)	✓	✓	✓	
Turkey (big data)		✓	✓	
USFTC (public hearings on new business practices / technologies)		✓	✓	

II. Sectors / Industry Targeted

In general, the advocacy efforts targetted a wide variety of sectors/industries. 6 submissions were focused on digital markets / sharing economy in general, 4 submissions focused on transport / ride sharing, 4 focused on the financial / fintech sector, 3 focused on big data and the remaining looked at areas such as media & advertising market, tourist accommodation services, public procurement, last mile delivery for e-commerce, and online retail trade of event tickets.

	Sectors / Industry Targeted
Argentina (electronic payment)	Financial
Australia (digital platforms in media & advertising) (media & advertising)	Media & Advertising
Brazil (ride sharing)	Transport / Ride Sharing
Croatia (ride sharing)	Transport / Ride Sharing
Finland (platform economy)	General
Finland (sharing economy)	General
Germany (knowledge generation & sharing)	General
Italy (ride sharing)	Transport / Ride Sharing
Italy (tourist accommodation services)	Tourist Accommodation Services
Italy (big data)	Big Data

	Sectors / Industry Targeted
Kenya (digital financial products)	Financial
Mexico (knowledge generation & sharing)	General / Fintech
Panama (ride sharing)	Transport / Ride Sharing
Russia (e-database against bid rigging)	Public Procurement
Singapore (big data)	Big Data
Singapore (federated lockers)	Last Mile Delivery for E-commerce
Spain (fintech)	Fintech
Spain (online ticketing)	Online Retail Trade of Event Tickets
Spain (sharing economy)	General
Sweden (sharing economy & e-commerce)	General
Turkey (big data)	Big Data
USFTC (public hearings on new business practices / technologies)	Multiple (including platforms, nascent competitors, big data, algorithms)

III. Targeted Audience

Government was identified as the most frequently targetted stakeholder, followed by Businesses and the General Public. The majority of the advocacy efforts (14 out of 21, about 64%) targetted more than 1 stakeholder group.

	Government	Businesses	General Public	Others
Argentina (electronic payment)	✓	✓		
Australia (digital platforms in media & advertising)	✓	✓	✓	For agency
Brazil (ride sharing)	✓		✓	
Croatia (ride sharing)	✓			
Finland (platform economy)	✓	✓	✓	
Finland (sharing economy)	✓			

	Government	Businesses	General Public	Others
Germany (knowledge generation & sharing)	✓	✓	✓	
Italy (mobility services)	✓			Parliament, Court
Italy (tourist accommodation services)	✓			Parliament, Court
Italy (big data)				For agency
Kenya (digital financial products)		✓		
Mexico (knowledge generation & sharing)	✓	✓	✓	Other competition authorities
Panama (ride sharing)	✓	✓	✓	
Russia (e-database against bid rigging)	✓	✓		
Singapore (big data)	✓	✓		
Singapore (federated lockers)	✓			
Spain (fintech)	✓			
Spain (online ticketing)	✓			
Spain (sharing economy)	✓	✓		
Sweden (sharing economy & e-commerce)	✓			
Turkey (big data)		✓	✓	
USFTC (public hearings on new business practices / technologies)	✓	✓	✓	Attorneys, Academics, Economists, Media

IV. Non-Competition Related Considerations

Many authorities reported that their advocacy initiative(s) considered other issues in addition to competition. This is in part because some competition authorities have multiple mandates, and are responsible for enforcing other areas of law, such as consumer protection. Amongst the non-competition related considerations raised, consumer related considerations were the most often cited with 12 (55%) of the experiences having a consumer related consideration (indicated in *italics* and **green** below).

	Non-Competition Related Considerations
Argentina (electronic payment)	-
Australia (digital platforms in media & advertising)	Role, responsibility & accountability of global digital platforms play in the supply of news and journalism. <i>Consumer protection and consumer related issues.</i> <i>Privacy and data protection.</i>
Brazil (ride sharing)	Externalities of ride sharing apps in terms of decreasing traffic congestion and emissions of CO2 due to less private cars in the streets. Income maintenance for part of the population during a recession.
Croatia (ride sharing)	-
Finland (platform economy)	<i>Consumer related issues.</i>
Finland (sharing economy)	<i>Consumer related issues.</i>
Germany (knowledge generation & sharing)	-
Italy (ride sharing)	<i>Road safety and passenger security.</i>
Italy (tourist accommodation services)	Public health. Environmental protection. <i>Safety of guests.</i> Fiscal public interest by thwarting tax avoidance.
Italy (big data)	<i>Consumer welfare.</i>
Kenya (digital financial products)	<i>Financial inclusion.</i>
Mexico (knowledge generation & sharing)	<i>Information privacy and data protection.</i>
Panama (ride sharing)	-
Russia (e-database against bid rigging)	Reduction in public procurement cost.
Singapore (big data)	<i>Personal data protection</i>

	Non-Competition Related Considerations
	Intellectual property
Singapore (federated lockers)	Security
Spain (fintech)	Macrofinancial stability. <i>Consumer protection.</i> Integrity
Spain (online ticketing)	<i>Consumer protection.</i>
Spain (sharing economy)	Other impacts of the sharing economy and digitization (like environmental and distributional concerns).
Sweden (sharing economy & e-commerce)	Intersection between competition, digitalization and circular economy.
Turkey (big data)	-
USFTC (public hearings on new business practices / technologies)	<i>Consumer protection.</i> <i>Privacy-related issues.</i>

V. *Advocacy Tools / Strategies / Approaches Used*

A wide range of advocacy tools / strategies / approaches (including but not limited to market studies, public inquiry, press releases, research papers, surveys, opinions, advisories, stakeholder outreach/engagement, marketing communications, campaigns, etc) were used by competition authorities to conduct their advocacy efforts for digital markets. Some tools/strategies/approaches used are listed below:⁴

	Tools / Strategies / Approaches
Argentina (electronic payment)	<ul style="list-style-type: none"> • Market Study • Issued recommendations to the Central Bank (market regulator)
Australia (digital platforms in media & advertising)	<ul style="list-style-type: none"> • Inquiry consisting of <ul style="list-style-type: none"> ○ Public consultations/stakeholder engagement ○ Public reports ○ Engaging overseas regulators facing similar issues
Brazil (ride sharing)	<ul style="list-style-type: none"> • Performed study to demonstrate the positive social impact of ride sharing apps • Informed other authorities on the positive social impact
Croatia (ride sharing)	<ul style="list-style-type: none"> • Provided expert legal opinions on draft proposals for laws and other legislation
Finland (platform economy)	<ul style="list-style-type: none"> • Reports • Press releases

⁴ This is based on the experiences submitted by the competition authorities.

Tools / Strategies / Approaches	
	<ul style="list-style-type: none"> • Blogs • Newsletters
Finland (sharing economy)	<ul style="list-style-type: none"> • Collaborated with other government agencies to examine the issues • Reports • Statements
Germany (knowledge generation & sharing)	<ul style="list-style-type: none"> • Generating and actively sharing knowledge through: <ul style="list-style-type: none"> ○ Establishment of a “Think Tank” to study latest economic research and how best to apply the results to antitrust case practice ○ Joint working paper with French Competition Authority
Italy (ride sharing)	<ul style="list-style-type: none"> • Issued opinions • Expressed views in hearing before Parliament • Intervened as amicus curiae in civil proceedings
Italy (tourist accommodation services)	<ul style="list-style-type: none"> • Took legal action against general administrative provisions, regulations or measures of any public administration which unreasonably restrict competition
Italy (big data)	<ul style="list-style-type: none"> • Inquiry
Kenya (digital financial products)	<ul style="list-style-type: none"> • Initiated baseline and end-line surveys • Engaged service providers to ensure that they implement the identified mandatory requirements • Monitored the market regularly on issues regarding disclosure and transparency in the mobile payment systems
Mexico (knowledge generation & sharing)	<ul style="list-style-type: none"> • Prepared a document on Competition in Digital Economy • Carried out an event to discuss the topic • Opened an online questionnaire to get the public’s views on the topic • Printed document in Spanish and English and distributed it among businesses, as well as relevant authorities and regulators • Used public radio spaces to familiarize the general public with the issue • (Fintech) Submitted an opinion on the draft Law to regulate financial services to the Senate with recommendations, as it could limit competition.
Panama (ride sharing)	<ul style="list-style-type: none"> • Market study • Made public the study by different media
Russia (e-database against bid rigging)	<ul style="list-style-type: none"> • Discussions with other government agencies engaged in public procurement and commodity exchanges • Secured support by the Government based on reduction of procurement costs

Tools / Strategies / Approaches	
Singapore (big data)	<ul style="list-style-type: none"> • Research paper
Singapore (federated lockers)	<ul style="list-style-type: none"> • Government advocacy using a collaborative and multilateral approach
Spain (fintech)	<ul style="list-style-type: none"> • Background document on a general assessment of Fintech
Spain (online ticketing)	<ul style="list-style-type: none"> • Provided report to government
Spain (sharing economy)	<ul style="list-style-type: none"> • Public consultation to gather relevant information and opinions from stakeholders • Reports • Assessment of draft laws • Used legal powers to appeal some administrative acts and regulations before courts
Sweden (sharing economy & e-commerce)	<ul style="list-style-type: none"> • Inquiry ordered by the government
Turkey (big data)	<ul style="list-style-type: none"> • Discussion forums in partnership with business associations which is open to participation of general public to address the widest audience possible, especially business circles, and stir a discussion
USFTC (public hearings on new business practices / technologies)	<ul style="list-style-type: none"> • Public hearings [multiple days] with online archive • Question-and-answer during public hearing sessions • Speeches • Stakeholder engagement via social media • Presentations • Public comments • Press releases

Most competition authorities reported no differences between the advocacy tools / strategies / approaches used in relation to digital markets as compared to those used for other markets.

Some helpful tips particular to the specific digital market advocacy activity undertaken are:

- [Kenya (digital financial products)] Co-operation framework with sectoral regulator facilitated the implementation and enforcement of its recommendations.
- [Singapore (federated lockers)] Competition considerations should be included from the inception of the initiative, as it will be difficult to encourage competition once the regulatory frameworks and operational norms are established.

- [Singapore (federated lockers)] Competition considerations need to be multi-faceted and take into account varied objectives given the many dimensions and aspects to consider in a digital market.
- [Spain (sharing economy)] Public consultations on digital markets is especially advisable, especially where the disruption of digitization was starting to materialize.
- [Sweden (sharing economy & e-commerce)] Relied mainly on existing and current literature because of its availability and overwhelming size for the inquiry, while data was lacking.
- [Turkey (big data)] Events for discussion, which are open to participation of general public, were used to spark discussions from competitive perspective and prepare for potential cases.

VI. *Key Advocacy Messages*

The common key advocacy messages of the advocacy efforts in digital markets are:

- New entrants / participants in digital markets improve competition, consumer welfare and innovation.
- Regulation in digital markets, when necessary to further other legitimate public policy goals, must not unduly restrict competition in these markets, must not differentiate between traditional and disruptive business models, and must be done proportionately.

Key Advocacy Messages	
Croatia (ride sharing)	<ul style="list-style-type: none"> • Competition in the transport sector through new business models, both online services and sharing economies, should be encouraged as it brings greater choice for consumers.
Finland (platform economy)	<ul style="list-style-type: none"> • Platform economy has similar competition and consumer problems as in traditional operating environments. Special regulation may not be required as many of the existing rules and regulations are already applicable to the operation of platforms, and unnecessary or wrong regulation may be harmful to both consumers and competition.
Finland (sharing economy)	<ul style="list-style-type: none"> • The collaborative economy should not be over-regulated. Challenges should be solved by using alternative regulation methods, including self-regulation.
Italy (ride sharing)	<ul style="list-style-type: none"> • Eliminate the discrimination between taxi drivers and (professional) private hire vehicles drivers in light of the technological progress, and light regulation for the new platform-based services.

Key Advocacy Messages

Italy (tourist accommodation services)	<ul style="list-style-type: none">• Eliminate unnecessary and disproportioned restrictions envisaged by a new regulation for non-hotel accommodation services (including Airbnb services), which were not necessary for achieving the public interests pursued.
Kenya (digital financial products)	<ul style="list-style-type: none">• Promoting competition in digital financial services through increasing disclosure and transparency in the sector is essential in exerting demand side competitive pressure in the market and protecting consumers from exploitation.• Increasing disclosure and transparency in the sector promotes financial inclusion.
Mexico (knowledge generation & sharing)	<ul style="list-style-type: none">• Competition authorities should consider the different scenarios and tools available in order to ensure competition in these changing markets.• Regulation, when necessary, must not hinder competition in these markets, and should not differentiate between traditional and disruptive business models.• Competition in digital markets benefits innovation, disruption and consumer welfare.
Russia (e-database against bid rigging)	<ul style="list-style-type: none">• Benefit of the initiative is reduction of procurement costs and savings of public funds.
Singapore (big data)	<ul style="list-style-type: none">• The existing analytical framework for competition assessment remains sufficiently flexible and robust to deal with the competition issues that may arise in the context of data-driven industries.• Businesses should continue to compete on a level playing field, to innovate, stay competitive and better serve their customers.
Singapore (federated lockers)	<ul style="list-style-type: none">• The importance of undertaking a competition impact assessment to accompany the taskforce's deliberation and decision making.• A multi-operator model would not only be more competitive, but also encourages innovation and investments for an efficient and non-exclusive last-mile delivery industry.
Spain (fintech)	<ul style="list-style-type: none">• Fintech is fostering competition in finance, so this phenomenon should be embraced by regulators and undertakings, unless there are overriding reasons of general interest which advocate for a cautious response in specific cases.• Fintech is likely to address (if partially) some market failures, so the rationale of restrictive regulation should be reassessed according to principles of good regulation: necessity and proportionality.
Spain (online ticketing)	<ul style="list-style-type: none">• Out-dated regulatory framework (both, central and regional regulation) should be overhauled in accordance with the principles of better regulation, trying to minimize the regulatory dispersion among Autonomous Regions.

Key Advocacy Messages

	<ul style="list-style-type: none">• The way to sell tickets should be an unconstrained decision by the promoter of the concert or special event, taking into account that resale (or secondary markets) can improve the efficiency in the primary market (initial sale of tickets by or on behalf of the promoter).• Regulating these activities in order to protect consumers and promote culture should be done in the less harmful way for competition and business freedom.
Spain (sharing economy)	<ul style="list-style-type: none">• Digitization is driving positive dynamics for competition and is increasing general and consumer welfare (higher supply, variety, differentiation, costs and mark-ups compression, innovation...).• The regulatory response to this phenomenon must respect the principles of good regulation: mainly necessity and proportionality.• Potential risks to competition can be tackled with competition policy enforcement if needed.
Sweden (sharing economy & e-commerce)	<ul style="list-style-type: none">• Existing regulation should be adjusted to take sharing services in to account.• Existing competition law is well suited to deal with competition within the e-commerce sector, but competition problems within this sector can require new investigation tools and competences for competition authorities.
Turkey (big data)	<ul style="list-style-type: none">• TCA's agenda for future includes new generation of competition infringements.• The TCA is determined to be proactive and innovative in the face of digital challenges.
USFTC (public hearings on new business practices / technologies)	<ul style="list-style-type: none">• The series of public hearings and related advocacy activities were focused on understanding whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, and/or the FTC's enforcement priorities and policy work.

VII. Outcomes of the Competition Advocacy Initiatives

In general, the competition advocacy initiatives in digital markets were able to achieve positive outcomes based on the objectives and reasons for conducting the competition advocacy initiatives. Examples of these outcomes are:

- 1) Objective: To provide advice, expert opinions or recommendations to the government, law makers or judiciary on competition issues in digital markets

Outcome:

- [Croatia (ride sharing)] The Act on the Road Traffic Safety adopted in June 2018 was in line with competition rules.
- [Italy (ride sharing)] Court of Appeal annulled injunction by Tribunal of Rome to ban a app based transport service. Parliament delegated the government to introduce a reform of the legislative framework on non-scheduled public services
- [Italy (tourist accommodation services)] Parliament delegated the government to introduce a reform of the legislative framework on non-scheduled public services. The Tribunal upheld AGCM's suit and annulled the regional regulation but, due to partial compliance, AGCM had to issue another opinion and reiterate the legal action.
- [Panama (ride sharing)] The transport authority issued a regulation which established the rules which minimized the differences between transport operators in traditional and digital markets.
- [Singapore (federated lockers)] The taskforce accepted the recommendations on competition assessment, including adopting a multi-operator model to improve competition.

2) Objective: To find out and better understand the competition related matters in digital markets

Outcome:

- [Finland (sharing economy)] Developed recommendations for the development of the sharing regulatory environment.
- [Sweden (sharing economy & e-commerce)] The reports brought the competition perspective to the wider societal debate on the effects of digitalization, sharing economy and e-commerce and has helped us to better understand these issues.

3) Objective: To inform stakeholders on competition related matters in the digital economy and spur discussion in these matters

Outcome:

- [Brazil (ride sharing)] Informed decision-makers and the public debate on competition concerns regarding the regulation of the new digital economy platforms in the sector. The law promulgated in 2018 that regulates ride sharing services included safety standards without imposing major regulatory barriers to entry or restrictions to pricing freedom. This initiative also fostered a debate about the need to revise the outdated regulation of taxi-cabs services.
- [Germany (knowledge generation & sharing)] The legislator amended the competition law by adding important regulations specific to the digital economy in summer 2017 with the 9th amendment to the Act against Restraints of Competition.

- [Singapore (big data)] Greater awareness/understanding among businesses and government agencies of the competition, personal data protection and intellectual property law issues surrounding data.
 - [USFTC (public hearings on new business practices / technologies)] The FTC's overall hearings initiative, which included many digital-market related topics, had 14 sessions. More than 350 non-FTC participants that either gave a presentation and/or spoke on a moderated panel. At the conclusion of the hearings, the FTC had received more than 850 germane, non-duplicative public comments. It is too early to quantify the overall benefit or influence the hearing sessions may have, but the agency received positive feedback from the public regarding the usefulness of the hearings.
- 4) Objective: To deal with a competition issue/problem identified in a digital market
- Outcome:
- [Kenya (digital financial products)] Digital financial services providers complied with all the mandatory disclosure requirements by the Authority; and increased awareness by consumers.
 - [Mexico (knowledge generation & sharing)] Fintech Law in place facilitates fintech's access to users' information. This is essential for new entrants to compete under equal conditions, considering that before this law, traditional institutions were not required to share this information.
 - [Russia (e-database against bid rigging)] Five electronic public procurement platforms were established at major commodity exchanges and banks. They are operational for more than five years. The estimated savings of public procurement costs is about 20%.

Conclusion

Several themes and lessons emerge from members' digital market related experiences:

1. Competition authorities' objectives in undertaking advocacy initiatives related to digital markets fit into four main categories: to provide advice to other government decision-makers; to discover and better understand competition issues; to inform stakeholders and spur discussion; and to address a competition issue or problem already identified in a digital market.
2. Digital market related advocacy initiatives considered a variety of sectors and goods or services affected by digital means of communications and commerce.
3. Advocacy initiatives targeted a variety of audiences, including government, businesses, the general public, courts, the media, and academia.
4. Some competition authorities considered non-competition issues in their advocacy initiative, such as consumer protection, health, environment, and financial and broader economic policy.

5. Authorities used a variety of advocacy tools and advocacy messages to reach different target audiences.

The themes and lessons align with much of the ICN AWG's past work product. For example, finding that a variety of tools were used to target a variety of stakeholders/audiences and that key messages were developed are consistent with the guidance provided as part of the working group's Benefits Project,⁵ which focused on reaching three target audiences: government and legislators; businesses; and the general public, media, and academia. Similarly, the strategies used by competition authorities related to digital markets are consistent with those covered in the working group's Advocacy Strategy Project⁶ and the Competition Advocacy Toolkit, Parts I and II.⁷

In the next ICN year, the working group will continue to foster discussion among competition authorities regarding their advocacy work in digital markets, some of which is on-going. The working group will explore how members' experiences can be used to develop and/or update guidance, best practices or recommendations on advocacy in digital markets.

⁵ <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/benefits-of-competition/>

⁶ <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/advocacy-strategy/>

⁷ <https://www.internationalcompetitionnetwork.org/working-groups/advocacy/other-advocacy-work/>

Argentina – Comisión Nacional de Defensa de la Competencia (CNDC)

Electronic Payment

Background of the competition advocacy initiative

On May 20, 2016, the CNDC opened a market investigation with the objective of analyzing the conditions of competition in the market for credit and debit cards and electronic means of payment. The investigation was undertaken in response to a concern shared by the CNDC and the Central Bank on a possible dominant position in the market. The target audience was the National Government (Central Bank and Secretary of Commerce) and businesses in the market.

The main objective for conducting this advocacy initiative was to provide pro-competitive recommendations that could allow for a more competitive environment, a more efficient market and a more rapid innovation in electronic payment systems.

Advocacy strategies and tools used for this competition advocacy initiative

A market study was conducted, including information requests and interviews with stakeholders. Recommendations have been issued in agreement with the Central Bank (the market regulator).

The CNDC concluded that there were high barriers to entry in the market and the configuration of the market had restrictive effects on competition. In August 2016 the CNDC issued a series of recommendations to the Central Bank and the Secretary of Commerce. In particular, these recommendations aim to reduce entry barriers, regulate interchange fee and initiate an ex-officio investigation against Visa's licensee.

The CNDC collaborated with the Central Bank due to its role as market regulator. They played several important roles. 1) They expressed their concern for potential competition problems in the market. 2) They provided information. 3) They suggested stakeholders that could be useful to interview. 4) They participated in the design of the recommendations. 5) They have already implemented many recommendations and are working on the remaining ones.

There were no differences identified between this advocacy initiative (in relation to digital markets) and those used for other markets.

Outcome of this competition advocacy initiative

The Central Bank issued rules forcing the banks to provide systems to pay through immediate transfers from their savings or current accounts, which resulted in new electronic payment systems being put in place. It also set caps on the interchange fees for credit and debit card transactions, providing incentives to entry in the market for acquiring services. Finally, the Central Bank started conversations with Visa, to favour the issuance of licenses to allow other companies to acquire the Visa brand.

The CNDC has used the ICN's recommendations to conduct market studies.

Australia – Australian Competition and Consumer Commission (ACCC)

Digital Platforms in Media and Advertising

Background of the competition advocacy initiative

The Australian Competition and Consumer Commission (ACCC) commenced an inquiry into the impact of digital search engines, social media platforms and digital content aggregators on the state of competition in media and advertising markets (the Inquiry) on 4 December 2017, following a direction given by the then Treasurer of the Australian Federal Government. It is important to note that the Inquiry is not purely an advocacy initiative. The Government directed the ACCC to investigate issues, report on our findings, and make recommendations to address any issues found.

As identified in its preliminary report, the ACCC considers that, while digital platforms provide significant benefits to consumers and businesses, there are important questions to be asked about the ability and incentive of the key digital platforms to favour their own business interests due to their market power and presence across multiple markets, the lack of transparency in their operations for advertisers, media businesses and consumers and consumers' awareness and understanding of the extensive amount of information collected about them by digital platforms.

In its preliminary report, the ACCC also identified important questions regarding the role the global digital platforms play in the supply of news and journalism in Australia, what responsibility they should hold as gateways to news, information and business, and the extent to which they should be accountable for their influence.

In addition, the ACCC has considered digital market issues in other forums outside the Inquiry. For example, on 16 November 2017, the ACCC Chair Rod Sims delivered a speech to the Australian Conference of Economists outlining both the opportunities and threats posed by the increasing use of algorithms and big data. On 15 October 2018, Rod Sims also gave a speech which considered the local and global issues in regulating the data economy. This speech examined the difficulty regulators face in determining the competition impacts when dynamic data companies merge in fast moving digital markets. Although the issues raised in these speeches have not yet formed part of a specific advocacy project, it provides useful context to the challenges that the ACCC will be facing in this area in future years.

Advocacy strategies and tools used for this competition advocacy initiative

During the course of the Inquiry, the ACCC has pro-actively engaged with overseas regulators who face similar issues in digital markets and/or have conducted their own investigations or market studies into these issues. These regulators include the Competition Markets Authority, the Federal Trade Commission, the European Commission, the Autorite de la concurrence and the Bundeskartellamt.

In addition, the ACCC has considered digital market issues in other forums outside the Inquiry. For example, on 16 November 2017, the ACCC Chair Rod Sims delivered a speech to the Australian Conference of Economists outlining both the opportunities and threats posed by the increasing use of algorithms and big data. On 15 October 2018, Rod Sims also gave a speech which considered the local and global issues in regulating the data economy. This speech examined the difficulty regulators face in determining the competition impacts when dynamic data companies merge in fast moving digital markets. Although the issues raised in these speeches have not yet formed part of a specific advocacy project, it provides useful context to the challenges that the ACCC will be facing in this area in future years.

Outcome of this competition advocacy initiative

The Inquiry is still ongoing. However, the Treasurer published the Inquiry's preliminary report on 10 December 2018, which sets out the ACCC's preliminary findings in relation to the growth of the key digital platforms and their impact on news media, advertisers and consumers, and 11 preliminary recommendations and 9 areas for further analysis. These cover the following issues:

- measures to address Google and Facebook's substantial market power
- measures to increase the transparency of the activities of digital platforms in relation to news media organisations and advertisers
- measures to address issues identified in the media sector
- measures to better inform consumers and improve their bargaining position when dealing with digital platforms (including proposed changes to Australian's privacy laws), and
- measures to support choice and quality of journalism on digital platforms.

The ACCC's final report in relation to the Inquiry is due to the Treasurer by 3 June 2019.

Brazil – Administrative Council for Economic Defense (CADE)

Ride Sharing

Background of the competition advocacy initiative

The arrival of new digital economy technologies caused a severe reaction by the incumbents (taxi drivers, co-operatives, taxi firms) in the individual passenger transport market in Brazil. Taxi drivers' associations were exasperated by the presence of these new competing technologies in the market and forced a reaction from authorities and politicians. This sector has a record of poor competition due to several reasons such as limited cab licenses, low entry of new firms, limited supply, and even complaints regarding price-fixing. With the digital economy, the advent of ride-sharing apps has sparked a new wave of competition in this segment. CADE seized this opportunity to foster competition by conducting empirical research on the theme and promoting and informing policy debate.

The goal of the competition agency was to show that while disruptive innovations, such as ride-sharing apps, might displace some economic actors, they may enhance social welfare as a whole. Empirical results presented by the Department of Economic Studies suggested that the supply of new individual transport services (ride-sharing apps) generated a new demand, composed of customers who did not usually use the cab service before. The study also indicated that competition with similar cab-hailing apps exists, also observing price reductions. With this in mind, competition increased social welfare as a whole, despite complaints of cab-driver groups.

There are also noticeable externalities in fostering ride-sharing apps in terms of less private cars in the streets, decreasing traffic congestion and emissions of CO₂. Some studies also suggest that ridesharing apps are associated with a drop in traffic accidents. A noteworthy externality, especially in Brazil, which experienced a major recession in the last two years, is the fact that apps presented a possibility for income maintenance for a considerable part of the urban population.

Advocacy strategies and tools used for this competition advocacy initiative

The main strategy adopted by the competition agency was to provide evidence that the entry of new participants in any market is likely to increase social welfare. The difference in terms of digital markets is that the positive impacts tend to be even higher due to a considerable decrease in transaction costs and in information asymmetry, once that apps share a series of crucial information with consumers, such as the upfront price and the past record of drivers. Therefore, the competition agency was eager to advocate that these new platforms should not be limited, but rather analysed in a sensible way. The studies revised and performed by the Department of Economic Studies, overall, managed to show the positive impacts in terms of price decreases caused by the new entrants.

The agency also attempted to inform other authorities, at the Public Prosecutors office, at the Judiciary, at the Mayors Offices, through seminars and public talks that these apps could trigger positive consequences for the public. Hence, the agency collaborated with several public and private partners in the last two years in academic events for instance. The main idea was to provide empirical evidence, based on academic studies and in the competition experience of other countries, that the impact of transport apps was, overall, positive.

Outcome of this competition advocacy initiative

The main outcome was to inform decision-makers and the public debate on competition concerns regarding the regulation of the new digital economy platforms in the sector. In this regard, the Federal Law 13.640, promulgated in 2018, that regulates ridesharing services, was parsimonious. The law included safety standards without imposing major regulatory barriers to entry or restrictions to pricing freedom. The complementary aspect is that this initiative also fostered a debate about the need to revise the outdated regulation of taxi-cabs services.

Croatia – Croatian Competition Agency (CCA)

Ride Sharing

Background of the competition advocacy initiative

The Croatian Competition Agency (CCA) was consulted in the process of drafting new legislation in the area of transport (Act on the Road Traffic Safety). The advocacy initiative was related to operation of transport services by Uber. The aim of the advocacy initiative was to establish conformity of draft legal proposal with competition rules.

Advocacy strategies and tools used for this competition advocacy initiative

Main advocacy tool use is expert legal opinion which is an important tool and can be also used for addressing and promoting digital market issues. This is a powerful tool frequently used by the competition agency and it allows the competition agency to strengthen their influence on respecting of competition rules and on development of competition culture. The CCA issues expert opinions at the request of the Croatian Parliament, the Government of the Republic of Croatia, central administration authorities, public authorities and local and regional self-government units, regarding whether draft proposals for laws and other legislation comply with the Competition Act. The central administration authorities or other state authorities may be requested to provide the CCA with draft proposals of laws and other legislation for assessment on whether these proposals comply with the Competition Act. The CCA may issue expert opinions if the CCA finds that the draft proposals may raise competition concerns. Moreover, there is a direct reference to promoting competition culture by issuing expert opinions in the Competition Act which states that the CCA shall issue expert opinions assessing the compliance of the existing laws and other legal acts with Competition Act, opinions promoting competition culture and enhancing advocacy and raising awareness of competition law and policy and give opinions and statements relating to the development of the comparative practice and case law in the area of competition law and policy to the authorities.

The advocacy tool used for this initiative was similar to the opinions issued by CCA on draft laws concerning other markets. The key message of this advocacy initiative was the encouragement of competition in the transport sector through new business models, such as online apps and sharing economies, will result in greater choice for consumers.

Outcome of this competition advocacy initiative

The Act on the Road Traffic Safety adopted in June 2018 was in line with competition rules.

Finland – Finnish Competition and Consumer Authority (FCCA)

Platform Economy Initiative

Background of the competition advocacy initiative

The FCCA has followed the development of platforms and their impact on the functioning of the markets and prepared the work product: “Review of platforms from the viewpoint of the perspective of competition and consumer legislation”, FCCA reports 4/2017 (in Finnish) (hereinafter “**platform economy initiative**”) ([FCCA’s press release](#) (in English)). The regulation of platforms has also been discussed in the blog dealing with topical views on competition (in Finnish) and in the [Consumer Ombudsman’s newsletter](#) (in English).

In addition, the FCCA has provided various statements, such as the statements (in Finnish) on the Commission’s mid-term review of the implementation of the Digital Single Market strategy ([FCCA’s yearbook of 2017 \(in English\)](#)), on the draft action programme for accessible digital transport and communication services, data security strategy, automation and robotics as well as big data. ([FCCA’s yearbook of 2017](#); [FCCA’s yearbook of 2016](#), pp. 73-76, in English). The platforms were discussed in the FCCA seminar held in November 2016.

The target audience of the **platform economy** initiatives is the Government (i.e. recommendations for changes in the law or up-to-dateness of existing regulation). In addition, the platform economy initiative proposes an administration platform (incl. guidelines) which would also be targeted at businesses and general public.

The objective of the **platform economy initiative** was to review competition and consumer legislation issues related to platform economies. Consumer related considerations were also taken into account.

Advocacy strategies and tools used for this competition advocacy initiative

For the **platform economy initiative**, FCCA used reports, press releases, blogs and newsletters. The advocacy strategies, tools and/or approaches used for these initiatives in relation to digital markets are similar to those used for other markets.

Advocacy strategy of the FCCA 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 objectives of the FCCA are defined in the performance agreement between the Ministry and the FCCA. The agreement can be complemented in the FCCA’s internal process taking account, among other things, topical issues in the political agenda. Digitalisation, experimentation and deregulation are among the strategic priorities in the Government Programme with objectives, for example, of creating a favourable operating

environment for digital services and new business models and enabling regulation, promoting deregulation and reducing the administrative burden.

The FCCA's aims to review competition and consumer legislation issues related to platform economies with recommendations for and monitoring of the development to address the above-mentioned strategies and objectives.

The **platform economy initiative** states that similar competition and consumer problems may occur on platforms as in traditional operating environments making the market entry of competitors more difficult and operators becoming dependent on services provided by other actors. Problems related to platforms have raised the question whether specific legislation should be prepared for platforms. The FCCA has a critical view of special regulation since many of the existing rules and regulations are already applicable to the operation of platforms. Unnecessary or wrong regulation may be harmful to both consumers and competition.

Outcome of this competition advocacy initiative

The **platform economy initiative** emphasizes the up-to-dateness of existing regulation, commodity and technology neutrality, enforcement, and efficiency of monitoring and the monitoring of the development of platforms to remain up to data on the impacts of platforms on the functioning of the market.

With regard to how to measure the outcome, the FCCA continually monitors and assesses to which the initiatives and opinions of the FCCA are taken into account in the legislative process and in competition-related working groups. The outcome of the advocacy initiatives also forms a part of the assessment of the FCCA's performance (i.e. the implementation of the performance agreement).

Finland – Finnish Competition and Consumer Authority (FCCA)

Sharing Economy Initiative

Background of the competition advocacy initiative

In 2017, the FCCA participated in the collaborative economy network of the Ministry of Economic Affairs and Employment with the purpose of examining the challenges and developmental needs facing the sharing economy regulatory environment in different fields of law. The network consisted of experts from various ministries and agencies (such as the Ministry of Transport and Communications, Ministry of Justice, Ministry of Finance, Prime Minister's Office, FCCA) and prepared the work product: "Sharing economy regulatory environment - Challenges and developmental needs", Publications of the Ministry of Economic Affairs and Employment, [TEM reports 44/2017](#) (in Finnish with an English summary in p. 6 "Description sheet") (hereinafter "**sharing economy initiative**"). The FCCA also issued a statement (in Finnish) on the draft report on the initiative.

In addition, the FCCA has provided various statements, such as the statements (in Finnish) on the Commission's mid-term review of the implementation of the Digital Single Market strategy ([FCCA's yearbook of 2017 \(in English\)](#)), on the draft action programme for accessible digital transport and communication services, data security strategy, automation and robotics as well as big data. ([FCCA's yearbook of 2017](#); [FCCA's yearbook of 2016](#), pp. 73-76, in English). The platforms were discussed in the FCCA seminar held in November 2016.

The target audience of the **sharing economy** initiative is the Government (i.e. recommendations for changes in the law or up-to-dateness of existing regulation).

The objective of the **sharing economy initiative** was to examine the challenges and developmental needs facing the sharing economy regulatory environment in different fields of law. Consumer related considerations were also taken into account.

Advocacy strategies and tools used for this competition advocacy initiative

The advocacy strategy for the **sharing economy initiative** is to collaborate with other government agencies to examine the challenges and developmental needs facing the sharing economy regulatory environment in different fields of law. Tools used include reports and statements.

Advocacy strategy of the FCCA 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 objectives of the FCCA are defined in the performance agreement between the Ministry and the FCCA. The agreement can be complemented in the FCCA's internal process taking account, among other things, topical issues in the political agenda. Digitalisation,

experimentation and deregulation are among the strategic priorities in the Government Programme with objectives, for example, of creating a favourable operating environment for digital services and new business models and enabling regulation, promoting deregulation and reducing the administrative burden.

The FCCA's initiatives aims to examine the challenges and developmental needs facing the sharing economy regulatory environment.

The **sharing economy initiative** states that the sharing economy is generally considered to offer a wide variety of opportunities to consumers, entrepreneurs and companies. However, new sharing economy models challenge requirements for gaining entry to the market, taxation, employment, liability regimes, consumer protection and competition in relation to the existing regulatory environment. Some challenges are the same as those associated with, for example, the platform economy or the transformation of work. Conversely, certain challenges, such as drawing a clear distinction between professional and non-professional activities, are unique to the sharing economy.

In its statement on the draft report on the **sharing economy initiative**, the FCCA states that the collaborative economy should not be over-regulated but that challenges should be solved by using alternative regulation methods, including self-regulation. Potential future regulation should be sustainable general regulation based on the principles of goods and technology neutrality.

Outcome of this competition advocacy initiative

The **sharing economy initiative** resulted in a number of procedural recommendations for development of the sharing regulatory environment. Due to some uncertainty regarding applicable regulations with regard to new sharing economy models, the initiative proposes to establish a joint publication of administration website providing information on the sharing economy. The proposed website would contain guidelines issued by different government agencies regarding the sharing economy. In addition, the initiative proposes finding ways to make the transition between entrepreneurship and wage labour flexible.

The initiative stated also the need for further information on what types of measures could be taken to prevent the formation of a grey economy, how to resolve challenges posed by taxation and how to include the sharing economy in official statistics. Furthermore, alternatives must be explored in order to draw a clear distinction between professional and non-professional accommodation platforms

With regard to how to measure the outcome, the FCCA continually monitors and assesses to which the initiatives and opinions of the FCCA are taken into account in the legislative process and in competition-related working groups. The outcome of the

advocacy initiatives also forms a part of the assessment of the FCCA's performance (i.e. the implementation of the performance agreement).

Germany – Bundeskartellamt

Knowledge Generation and Sharing

Background of the competition advocacy initiative

The digital economy gives rise to new issues for politicians, economic actors, consumers, and authorities alike. And competition law is no exception. The Bundeskartellamt is among those which have responded to new developments at a comparatively early stage. The Bundeskartellamt has carried out the necessary groundwork, developed know-how and intensively exchanged information on an international level. A large number of “digital cases” have already been concluded, and the Bundeskartellamt is concluding further proceedings.

Advocacy strategies and tools used for this competition advocacy initiative

The advocacy strategy used is by generating and actively sharing knowledge. The Bundeskartellamt dedicated resources to tackle the issues raised by the digital economy. Among other measures, the Bundeskartellamt set up a "Think Tank" in early 2015 in which legal experts and economists study the latest economic research on platforms and networks and discuss how best to apply the results to antitrust case practice. In June 2016, the Bundeskartellamt published a working paper titled "[Market Power of Platforms and Networks](#)" which deals with the economic specifics of digital platforms and networks and their effects on market definition and the criteria used to assess market power. In another project, which it conducted jointly with the French competition authority Autorité de la concurrence, the Bundeskartellamt examined the consequences and challenges which the collection and use of data in the digital economy and other industrial sectors pose for competition authorities. The results have been published in a joint working paper "[Competition Law and Data](#)". The examination concepts are constantly reviewed and refined, based on experience made in case practice and information shared by internal and external expert groups.

The approach of actively sharing and explaining the Bundeskartellamt’s findings and views is an important element of its successful advocacy strategy:

- Upon the Bundeskartellamt’s initiative and building on the Bundeskartellamt’s groundwork, the legislator amended the competition law by adding important regulations specific to the digital economy in summer 2017 with the 9th amendment to the Act against Restraints of Competition. The Bundeskartellamt accompanied the amendments e.g. by publishing a guidance together with the Austrian Competition Authority, taking a closer look at the new provisions introduced in Germany and Austria that complement merger control particularly in technology and innovative-driven markets with the aim to prevent any possible market foreclosure effects and barriers to entry and to protect the potential for innovation.
- Since October 2017 the Bundeskartellamt has been publishing a new series of papers under the title “Competition and Consumer Protection in the Digital

Economy” which contains articles on current issues of competition policy in the digital world. The aim is to give new impetus to the debate about the interfaces between digitalisation, competition and consumer protection and to further the public debate. So far, topics have included big data and competition, the roles of innovation and its challenges for competition law practice, online advertising and competition restraints in online sales. All articles are available on the Bundeskartellamt’s website.

- Furthermore, the Bundeskartellamt publishes and contributes to several additional papers, e.g. [Competition Law and Big Data: The enforcers’ view](#) (Bruno Lasserre/Andreas Mundt); [Digitalization Revolutionizes the Economy – and the Work of Competition Authorities](#); [Market definition in multi-sided markets – paper prepared for OECD Hearing on Re-thinking the use of traditional antitrust enforcement tools in multi-sided markets](#); Multi-Sided Market Economics in Competition Law Enforcement (Journal of European Competition Law & Practice, Volume 8, Issue 4, 1 April 2017).
- Explaining its decisions to stakeholders and the public is also part of the Bundeskartellamt’s advocacy strategy in the digital sector. Press releases, case summaries, speeches and interviews offer welcome opportunities to illustrate the benefits of competition. An area of particular interest in the recent past were options for business co-operation to keep pace with future technologies and even to push them forward. The Bundeskartellamt generally supports co-operations, which are likely to increase efficiencies and aim to improve and reduce the cost of products. Provided that plans for the co-operation are sufficiently substantiated, the Bundeskartellamt is also willing to assist business partners with criteria to design their project in a way that it does not infringe antitrust law.

One example of cooperation in future technologies is the acquisition of several minority shareholdings cleared by the Bundeskartellamt in 2017 in a company that provides digital mapping databases and wants to develop mapping databases for the future autonomous driving market. Other examples are the launch of an electronic trading platform for steel products or cooperation between a substantial number of banks in Germany in the area of mobile payment systems.

Italy – Italian Competition Authority (AGCM)

Ride Sharing

Background of the competition advocacy initiative

Since 2015, Uber and its services have attracted the protests of taxi drivers who filed lawsuits, in particular in Milan and Rome. In May 2015, the Tribunal of Milan issued an interim measure banning UberPop services arguing that UberPop drivers were holders of neither a taxi license nor an authorization for driving private hire cars⁸. Similarly, in 2017, the Tribunal of Rome issued interim measures and banned UberBlack services (offered by professional drivers), holding that they did not comply with the existing regulations⁹.

Advocacy strategies and tools used for this competition advocacy initiative

In its 2015 opinion¹⁰, the Authority renovated the call for the elimination of the discrimination between taxi drivers and (professional) private hire vehicles drivers in light of the technological progress which rendered the territorial restriction and the obligation to return to the garage anachronistic thanks to the emergence of app-based taxi booking services such as UberBlack services. With regard to the UberPop services, the Authority advocated for a minimal regulation to balance the different interests at stake (competition, road safety and passenger security), which would include the set-up of a register for the platforms and the identification of a set of requirements and obligations for the non-professional drivers.

In October 2015, in a hearing before the Parliament, the AGCM Chairman reaffirmed the views expressed in the 2015 opinion¹¹, urging for the introduction of a light regulation for these new platform-based services, potentially counterbalanced by explicit and transparent forms of compensation for public service obligations.

In a subsequent proposal for a reform of the sector in 2017¹², the Authority urged for the adoption of a new framework, based on three key elements (elimination of the discrimination between taxi drivers and professional private hire drivers, removal of any barriers to entry, introduction of a compensation scheme) in which traditional taxi

⁸ The injunction was confirmed by the Milan Court on July 2, 2015 (*Taxiblu and other taxi driver associations vs. UberPop*).

⁹ Providing restrictions such as: the obligation to return to their garage before offering a new ride to customers; the restriction to operate only in the area of the Municipality granting the permission; and the imposition of checks points at the entrance of congestion charge areas.

¹⁰ See AGCM Opinion N. AS1222 – LEGGE QUADRO PER IL TRASPORTO DI PERSONE MEDIANTE AUTOSERVIZI PUBBLICI NON DI LINEA, September 2015, available at: <http://www.agcm.it/component/joomdoc/allegati-news/AS1222.pdf/download.html>.

¹¹ See Hearing of the Chairman Pitruzzella before the Committee X Industry, Commerce and Tourism, 28 October 2015, available at the following link: <http://www.agcm.it/component/joomdoc/audizioni-parlamentari/Audizione-20151028.pdf/download.html>.

¹² See AGCM opinion n. AS1354 - RIFORMA DEL SETTORE DELLA MOBILITÀ NON DI LINEA, March 2017, available at: <http://www.agcm.it/component/joomdoc/allegati-news/S2782Segnalazione.pdf/download.html>

services, private hire car services and new ride-sharing services would compete in the same market.

Furthermore, AGCM intervened as *amicus curiae* in the mentioned civil proceedings concerning Uber, following its appeal the injunction decision.

Outcome of this competition advocacy initiative

Consistently with the view taken by AGCM in its intervention as *amicus curiae* in the civil proceedings against Uber, the Court of Appeal annulled the injunction decision adopted by the Tribunal of Rome, holding that the restraints introduced in 2008 did not apply to the activity of private hire car drivers.

Following 2017 Uber's court decisions and AGCM's interventions, the Parliament delegated the government to introduce a reform of the legislative framework on non-scheduled public services, to be inspired by several criteria including complementarity with the scheduled public transport, inclusion of new forms of mobility related to digital platforms and promotion of competition.

Italy – Italian Competition Authority (AGCM)

Sector Inquiry on Big Data

Background of the competition advocacy initiative

AGCM opened a Sector Inquiry on “Big Data” in May 2017, to assess under what conditions Big Data might provide market power, analyse possible anti-competitive conducts stemming from Big Data and understand the competitive relevance of privacy. Recognising that these issues require a multidisciplinary approach, the Authority is carrying out the inquiry in cooperation with the Communications Authority and the Italian Data Protection Authority.

Outcome of this competition advocacy initiative

In June 2018, AGCM and the Communications Authority issued a preliminary information notices on the analysis conducted that far¹³.

AGCM conducted an online survey on a sample of more than two thousand Italian users, which showed that 60% of the users are aware that they are subject to a pervasive data collection (including geo-localisation and access to contacts, microphone and video cameras) that can be used to analyse and predict their behaviour. That said, only a tiny minority (13%) claims to entirely read the information notices, whereas most users either read only part (54%) or do not read them at all (33%). In addition, only 8% of those who thoroughly read the information provided finds it clear.

Overall, approximately 40% of users are aware of the close relationship between giving consent and the free nature of a service. Noteworthy, 23% of the interviewed users declare that they would be willing to forego free services and apps to prevent their data from being collected, processed and possibly sold on, whereas 24% would not. The remaining 53% of the sample stated that their decision would depend on the type of service and the price level. Nevertheless, only 10% of the sample stated that they would be willing to pay for currently free services or apps in order to avoid the use of their personal data for advertising purposes (41% argued that their decision would depend on the type of service and the price level).

For its part, the Italian Communications Authority (AGCOM) conducted an empirical research on a dataset with over a million applications, whereby two major trends emerged. On the one hand, the price of apps decreases with the increase in the average number of required permissions to access personal data; on the other hand, the most frequently downloaded apps are characterized by a greater presence of permissions related to individual data. At the same time, non-free apps are typically associated with a lower demand for permissions.

¹³ See press release in English on AGCM [website](https://www.agcm.it/it/2018/06/20/180620-01) (goo.gl/Z6D5ke).

Italy – Italian Competition Authority (AGCM)

Tourist accommodation services

Background of the competition advocacy initiative

A powerful advocacy tool available to AGCM is article 21-bis of the Law No. 287/90, which empowers it to take legal action against general administrative provisions, regulations or measures of any public administration which unreasonably restrict competition.

Advocacy strategies and tools used for this competition advocacy initiative

In October 2015 the Authority issued an opinion to the local government of the Lazio Region¹⁴, suggesting the elimination of unnecessary and disproportioned restrictions envisaged by a new regulation for non-hotel accommodation services (including Airbnb services), which introduced minimum operational requirements, limitations to the opening days and dimensional requirements. AGCM held that several provisions were not necessary for achieving the public interests pursued – i.e., public health, environmental protection and safety of guests – and could raise unjustified barriers to entry and expansion for potential new operators.

Since the government of Lazio Region decided not to comply with the opinion, AGCM challenged the regulation before the administrative Courts, pursuant to Art. 21-bis of Competition Act no. 287/90.

Outcome of this competition advocacy initiative

The Tribunal upheld AGCM's suit and annulled the regional regulation.

However, this case shows that even positive outcomes might not by themselves result in actual improvements and require constant monitoring. In fact, AGCM had to issue a new opinion because even the new regional legislation only partially complied with the Court ruling and still contained some restrictions¹⁵. In October 2017 the Authority decided to reiterate the legal action before the administrative Courts¹⁶.

Still in the same market, in November 2017 AGCM sent an opinion to the Parliament and the Government to advocate against some provisions introduced by a new legislation on short-term rentals' tax regime. The new rules impose on players engaged in intermediation activities, in case they collect the rent related to the short-

¹⁴ See AGCM opinion n. AS1239 - NUOVA DISCIPLINA NEL LAZIO DELLE STRUTTURE RICETTIVE EXTRA ALBERGHIERE, in Bulletin n. 47/2015, available at: <http://www.agcm.it/bollettino-settimanale/8005-bollettino-47-2015.html>

¹⁵ See AGCM opinion n. AS1380 - NUOVA DISCIPLINA NEL LAZIO DELLE STRUTTURE RICETTIVE EXTRA ALBERGHIERE, in Bulletin n. 22/2017, available at: <http://www.agcm.it/bollettino-settimanale/8791-bollettino-22-2017.html>

¹⁶ See AGCM opinion n. AS1447 – REGIONE LAZIO - NUOVA DISCIPLINA DELLE STRUTTURE RICETTIVE EXTRA ALBERGHIERE, in Bulletin n. 44/2017, available at: <http://www.agcm.it/bollettino-settimanale/9020-bollettino-44-2017.html>, page 24-28.

term lease agreements, to operate "as withholding agent", i.e. to withhold a tax rate on the amount of the rent and, in case of non-resident intermediaries in Italy, also to appoint a tax representative.

While acknowledging that the legislator's intervention is aimed at achieving a fiscal public interest by thwarting tax avoidance, AGCM opined that those obligations – which represented a *unicum* within the European landscape – were suitable to alter the competitive dynamics between different operators and did not seem proportionate to the pursuit of those aims. In particular, the tax obligation related to the role of withholding agent represents a further administrative burden that may discourage the offer of digital payment systems and alter the competitive dynamics. This would primarily affect online platforms that adopt business models based on the use of online payment instruments, which in recent years have been established in the digital economy, as they are effective in promoting and expanding the range and quality of services offered¹⁷.

¹⁷ See AGCM opinion AS1451 – LAW DECREE 50/2017 – SHORT-TERM RENTAL AND TOURIST OFFER, in Bulletin No. 45/2017 .

Kenya – Competition Authority of Kenya

Digital Financial Products

Background of the competition advocacy initiative

The objective of this advocacy initiative is to unlock the concentration in the mobile/digital financial products market in Kenya and foster competitive market structures as there is a lack of disclosures and transparency in the cost of transactions, lack of awareness on the total cost of credit and unfair terms and conditions of lending by commercial banks and digital/mobile lenders.

The conditions in the mobile/digital financial products market were:

- Users sending money via mobile services are generally not aware of the cost of the transactions.
- Consumers who were accessing **loans** via SIM card, Unstructured Supplementary Service Data (USSD) codes or mobile apps were **not informed of the applicable fees and charges of transactions, interest rates and rollover charges of the loan** on the mobile interface before being asked to accept the terms and conditions.
- Consumers who **transacted** using mobile phone platforms **were not informed of the charges or fees applicable prior to making such payments**, including both charges levied by the Mobile Network Operator (MNO) and the financial service provider for person-to-person payments, bill payments, merchant payments, and all mobile banking services.
- For most of the digital financial products, **price information was discussed only after the consumer had entered into a binding loan agreement or had already completed a payment transaction.**
- Consumers cannot easily compare the offerings of alternative providers and incentivize competition on prices.

Advocacy strategies and tools used for this competition advocacy initiative

The Authority:

- **Initiated baseline and end-line surveys on** the price awareness levels of consumers of digital financial services;
- **Identified mandatory requirements** that service providers needed to adhere to in order to increase transparency and disclosure in the mobile payment systems in Kenya;
- **Ordered that service providers should adhere to** the following mandatory requirements:
 - a) All Short Message Service (SMS) receipts for payments should include basic fee information. The receipt should contain both the principle value and any additional fee debited real-time from the account;
 - b) A provision for inflight (during the transaction) charging information should be made available to the customer where an account is debited real-time;

- c) All debits (e.g. daily/weekly/monthly fees) from a mobile-enabled account without the customer initiation should have an electronic receipt issued at the point they are debited;
 - d) It is the responsibility of the institution to ensure that before a new tariff is charged, it is updated with the aggregator;
 - e) The disclosure changes should be made on SIM Toolkit, USSD and App channels;
 - f) In future, a provider will be required to first present samples of disclosure messages before implementation of any new technology that involves charges;
 - g) It is the responsibility of MNOs to ensure that all providers they have engaged for example banks, adopt the disclosure requirements;
 - h) The disclosures should apply to all consumer segment services such as airtime purchase as well as the business segment, for example bulk pay, and betting services;
 - i) All MNOs should provide a notification of airtime balance by SMS after a USSD session for banking services where there is a USSD charge as well as a bank charge.
- **Through an advocacy program, engaged providers** consisting of mobile phone operators, banking institutions and micro-finance institutions to ensure that they implement the requirements.
 - **Further enforced the transparency and disclosure requirements by regularly monitoring the market** on issues regarding disclosure and transparency in the mobile payment systems.

The Authority's orders were implemented through the Central Bank of Kenya (CBK) and the Communications Authority of Kenya (CA). The Authority has a co-operation framework with both Authorities and this facilitated the implementation and enforcement of the recommendations on the mobile based payment systems in Kenya.

The key messages of this advocacy initiatives are:

- Promoting competition in digital financial services through increasing disclosure and transparency in the sector is **essential in exerting demand side competitive pressure in the market and protecting consumers from exploitation**. Additionally, increasing disclosure and transparency in the sector **promotes financial inclusion**.
- The Authority identified mandatory requirements that providers needed to adhere to, in order to remedy the lack of transparency and create awareness in the market and thereby, ensuring that institutions fully disclose to their consumers all applicable charges for the services/products being offered prior to the purchase. The order to disclose charges for the services being sought by consumers has **increased consumer price awareness in the digital**

financial services space and ultimately increased competition amongst the service providers.

- Financial inclusion in this context means consumers are able to have access to essential information that will allow for decision making in digital financial transactions. Ensuring that the requirements are implemented, therefore, **promotes financial inclusion, which has been identified as an enabler for seven out of the seventeen Sustainable Development Goals (SDGs).**

Outcome of this competition advocacy initiative

- 825 Kenyan Digital Financial Services (DFS) users were surveyed in November 2016, just before providers began complying with the new policy, and again in November 2017, after most providers had complied. The findings reveal that in-channel pricing transparency in DFS is important to consumers. Following the order by the Authority, all digital financial services providers complied with all the 9 mandatory disclosure requirements as earlier outlined.
- The intervention by the Authority increased consumer awareness of the cost for digital credit, improved fee disclosure and increased price awareness on other payment services. As at December 2017, out of the respondents who were interviewed in the end line survey, 93.7% checked the fees for their digital financial transactions and learnt of the fees from SMS and the transaction menus during the transaction process.
- The baseline assessment undertaken by the Authority revealed that 79% of end line survey respondents had used digital credit products, and 64% had used M-Shwari, the dominant, SIM Toolkit-driven product through a collaboration between of M-Pesa (Safaricom) wallet and Commercial Bank of Africa.
- The survey findings showed a significant increase in price awareness for borrowers who had taken an M-Shwari loan of Kshs. 200 (~\$2), Kshs. 500(~\$5) and Kshs. 1000 (~\$10) - usually the low income consumers in Kenya.
- Regarding the use of pay bill services, 80% of consumers surveyed at end line were aware that bill payment via mobile money may carry a fee. This contrasts with 60% of consumers during the baseline survey.

Mexico – Mexican Federal Economic Competition Commission (COFECE)

Knowledge Generation and Sharing

Background of the competition advocacy initiative

In the digital era, competition policy is not exempt from disruption. Ensuring competition in digital markets implies challenges for authorities in two respects:

- i) fostering a regulatory environment that promotes competition and free market access in various productive activities in which companies offer goods and services with the help of digital technology, competing among themselves and with companies that abide by “traditional” business models, and
- ii) the enforcement of competition regulatory frameworks when these new firms break the law.

The objective of this advocacy initiative is to begin to outline the questions and challenges that arise in relation to competition policy implementation (both enforcement and advocacy powers) in the context of the digital economy. Moreover, literature on the topic in Spanish is scarce. Therefore, this initiative represents a significant contribution in making the topic accessible to readers in the Spanish speaking world.

The fintech law was passed by the Mexican Congress on March 9th, 2018. COFECE considered this issue on the public agenda, as well as the timeline for the discussion and approval of said law, in order to publish and promote the document in a favourable context. Additionally, COFECE considered other sectors in which disruption and regulation initiatives have taken place, such as the lodging sector. COFECE also considered policies and regulations regarding information privacy and data protection.

During the preparation of the document, COFECE met with businesses and regulators from these ever-changing markets in order to consider and include their points of view and concerns into the document.

Advocacy strategies and tools used for this competition advocacy initiative

COFECE prepared a document on Competition in the Digital Economy and used different ways to promote the document. These include:

- Since the topic of digital economy, specifically fintech, but also digital platforms for the supply of transport and lodging services, was already in the public agenda, COFECE took this opportunity to use different media to promote the document, as well as the main messages included in it.
- As part of the preparation for the document, COFECE carried out an event in October 2017 to discuss competition in the digital economy. In preparation for this, COFECE opened an online questionnaire in its webpage to better understand the public’s views on this topic.

- COFECE printed the document, in Spanish and English versions, and distributed it among businesses in the sectors involved, as well as relevant authorities and regulators. A challenge was to deliver digital and physical copies of the document to businesses with which COFECE had no previous contact. In order to do this, COFECE built a database using public information to send out both digitally and in print form.
- COFECE also published a radio spot regarding the Fintech law and COFECE's contribution to it in public radio spaces, with the objective of familiarizing the general public with the issue and in creating an association between fintech and competition.

The strategies used in this advocacy initiative did not have any difference to those used for initiatives in other sectors. Although it is related to a very disruptive sector, COFECE's tools and approaches remain the same.

The key advocacy messages are:

- There are challenges for competition authorities in digital markets related to (i) advocating for pro-competitive regulation and (ii) enforcement of competition law.
- Competition authorities should consider the different scenarios and tools available in order to ensure competition in these changing markets.
- Regulation, when necessary, must not hinder competition in these markets, as well as differentiate between traditional and disruptive business models.
- Competition in digital markets benefits innovation, disruption and consumer welfare.

Outcome of this competition advocacy initiative

Although no formal monitoring or assessment was put in place to measure the effectiveness of this initiative, the event organized as part of the process to gather viewpoints for the document coincided closely with the time of approval of the fintech law. COFECE had previously issued an opinion (on October 2017) related to the fintech bill discussed in the legislature, related to possible obstacles to competition if the bill was passed in its original form. The event helped to place COFECE's opinion and concerns in the public eye at the right time. The legislature included important changes in the law which was ultimately passed as per COFECE's recommendations.

Additionally, after issuing the document COFECE personnel has been invited to participate in competition-related events around the world. For example, the document was presented in the ICN's annual meeting held in India and Alejandra Palacios, Chair of COFECE spoke at the "2018 Antitrust and Competition Conference - Digital Platforms and Concentration", organized by the University of Chicago's Booth School of Business. Two other COFECE staff have visited Brazil and Colombia for similar purposes.

Panama – Authority for the Protection of the Consumer and Defense of Competition (ACODECO)

Ride Sharing

Background of the competition advocacy initiative

ACODECO, through the media, learned that taxi drivers in the country were upset with the presence of companies that are engaged in the "selective transport of passengers". Amongst these companies, Uber was considered by the different guilds of taxi drivers to be providing an illegal public transport service that competes unfairly with them.

The objective of this advocacy initiative was to analyze passenger transport services developed through technological platforms, and to identify situations, actions, barriers which could affect the process of free economic competition, as well as aspects related to the consumer and thus enable ACODECO to issue recommendations or changes to the conditions in which these activities were conducted.

Advocacy strategies and tools used for this competition advocacy initiative

The strategy of the National Directorate of Free Competition was to carry out a study of the transport service which people hired through technological platforms. The study concluded that ACODECO was the competent authority to deal with claims by consumers and those economic agents which sell transport service through technological platforms.

The study was made public through different media which managed to capture the attention of different sectors, and thus caused the authorities directly related to the sector to show interest in knowing in greater detail our recommendations. The study was sent to the Commission of Communication and Transport in the National Assembly of Panama, to the Presidency, to the Authority of Transit and Transportation, (entities that have the capacity to make the necessary legal changes). The study served as a basis for the development of the Resolution that legalized the transport through technological platforms in the Republic of Panama which resulted in the regulation of the sector and the establishment of clear rules for all actors.

Outcome of this competition advocacy initiative

The authority responsible for regulating the transport sector issued a regulation that came to establish the rules of the game specifically in the digital market of passenger transport, thereby allowing the actors involved to coexist. The monitoring carried out by the authority subsequent to the implementation of the new regulation indicated that the market is operating in better shape.

Russia – Federal Antimonopoly Service, Russia (FAS)

E-Database Against Bid Rigging

Background of the competition advocacy initiative

The objective of the initiative was to develop an electronic database of behaviour of government suppliers and mechanisms of prevention of bid-rigging in public procurement in order to reduce the costs of public procurement. The major difference was the digitalization of the procurement market itself, involvement of big number of suppliers and use of big data for revealing collusive behaviour.

Advocacy strategies and tools used for this competition advocacy initiative

The advocacy strategy used was to have discussions with other government agencies engaged in public procurement and commodity exchanges in order to develop electronic trade spots with access of greater number of potential qualified bidders. The key message to secure support for the initiative by the Government was based on the argument of reduction of procurement costs and savings of government funds.

Outcome of this competition advocacy initiative

Five electronic public procurement platforms were established at major commodity exchanges and banks. They are operational for more than five years and the estimated savings in public procurement costs is about 20%

Singapore – Competition and Consumer Commission of Singapore (CCCS)

Big Data

Background of the competition advocacy initiative

The advocacy initiative is a study (i.e. research paper), titled “Data: Engine for Growth – Implications for Competition Law, Personal Data Protection, and Intellectual Property Rights.” The study reviewed data adoption practices in the following sectors: digital media, finance, healthcare, consumer retail, land transport and logistics sector. However, the key advocacy messages are targeted at all sectors of the economy, and the target audience of this advocacy initiative are businesses and the government.

Data is increasingly recognised as an asset to businesses and an engine for economic growth with the potential to drive innovation and contribute to the transformation of industries in Singapore. In collaboration with the Personal Data Protection Commission, Singapore (“**PDPC**”), and the Intellectual Property Office of Singapore (“**IPOS**”), this study sought to explore the implications of the proliferation of data analytics and data sharing on competition policy and law, personal data protection regulation and intellectual property law in Singapore. An important objective of this study is to explore how CCCS may assess business practices, in the context of data-driven industries, to ascertain their compliance with the Competition Act. CCCS also worked with PDPC and IPOS to better understand the implications of the proliferation of data analytics and data sharing on personal data protection regulation and intellectual property law. This helps to raise awareness and provides more certainty among businesses and government agencies on the various issues that may arise in data-driven industries and the approaches likely to be adopted by the relevant regulators in assessing these issues.

Advocacy strategies and tools used for this competition advocacy initiative

The advocacy strategy took the form of a research paper as it allowed CCCS to explore a range of nascent competition issues arising from the proliferation of data analytics in Singapore and discuss how CCCS may assess and enforce the Competition Act in digital markets without tying CCCS prematurely to specific legal positions (unlike the use of more formal instruments such as guidelines or regulations). While the tool used in this case can similarly be applied to understand non-digital markets, the competition issues that may arise for digital markets are wide-ranging (with new issues arising frequently) and are still being explored by competition authorities around the world. Similarly, CCCS’s experience in this area is limited. As such, a research paper provides the platform for CCCS to engage different stakeholders to discuss these issues publicly and provide clarifications to businesses where necessary, without the need to commit to a formal position prematurely.

A key advocacy message is that while the ease of compilation of large data sets and proliferation of data analytics may be fresh developments, the existing analytical

framework for competition assessment remains sufficiently flexible and robust to deal with the competition issues that may arise in the context of data-driven industries. Businesses should continue to operate on a level playing field, to innovate, stay competitive and better serve their customers.

As part of this study, CCCS engaged government agencies and businesses through interviews to provide feedback on the current industry landscape. The businesses interviewed included firms across various industries and third party providers of data analytics solutions and infrastructure. As noted above, CCCS also collaborated with PDPC and IPOS to understand the implications for personal data protection and intellectual property law.

Outcome of this competition advocacy initiative

The outcome of the research paper is greater awareness among businesses and government agencies of the competition, personal data protection and intellectual property law issues that may arise with the proliferation of data and analytics in Singapore. Government agencies may consider these issues in their policy reviews.

Singapore – Competition and Consumer Commission of Singapore (CCCS)

Federated Lockers

Background of the competition advocacy initiative

The “Federated Locker” is an initiative under Singapore’s transformation plan for the logistic industry, which in turn is part of future economic strategies as developed by the government committee on the future economy. The aim is to grow the e-commerce share of total retail receipts to 10% by 2020. E-commerce revenues in Singapore were estimated to be more than US\$4 billion in 2018 (with 7 in 10 consumers in the country shopping online) and is expected to nearly double in the next four years. To facilitate the rapid growth of e-commerce and to optimise the use of resources, the pilot phase of the “Federated Locker” initiative, a nationwide government-led digital locker network for last-mile delivery, was launched in December 2018. This locker network is first of its kind in the world and is expected to improve delivery efficiency five-fold and halve the distance travelled by drivers.

Various operating models were considered, including a single-operator model that would enjoy efficiency of scale. However, this model could significantly reduce competition (by squeezing out other existing locker operators) and the incentive to innovate. The Federated Locker operator may also favour its affiliated downstream delivery service provider against other competitors. CCCS collaborated closely with members of the multi-agencies taskforce to advocate for a competitive multi-operator model, which was adopted for the pilot phase.

Advocacy strategies and tools used for this competition advocacy initiative

Given the involvement of the Government in the Federated Locker initiative, government advocacy was assessed to be the best strategy to bring about a pro-competitive operating model and landscape, rather than ex-post intervention subsequently.

To bring about positive outcomes, CCCS’s advocacy strategy included steps to understand the objectives and details of the project first-hand and to address the priorities of various agencies. A multi-disciplinary team that included a member of our senior management team was set up to give priority to this project. This team participated in all the taskforce meetings in order to understand the commercial and technical details, and the concerns and priorities of the government agencies involved.

To bring across the key competition messages, the CCCS team took a collaborative and multilateral approach by regularly seeking and addressing views from all taskforce agencies. The team also advocated transparently, circulating a competition analysis, with illustrative examples, of possible operating models for open discussion within the taskforce. Exchanges between our Chief Executive and senior management of the taskforce agencies also enhanced the advocacy efforts.

Differences between this advocacy initiative in relation to digital markets and those for other markets – Digital markets cut across a wide spectrum of the economy, as was the case in our initiative. A locker network leveraging on a digital platform is key to transforming Singapore’s urban logistics infrastructure. The benefits of such a network go beyond national borders, and there are already discussions to develop a network to enhance last-mile delivery capabilities regionally.

Given that this initiative affects not just the innovation and economic outcomes within the market, but also other important sectors of the economy, it was critical that competition considerations are included from the inception to optimise outcomes. Otherwise, it will be difficult to encourage competition in the future once the regulatory frameworks and operational norms are established. Further, given the many dimensions and aspects to consider, such as interoperability issues in a digital market, competition considerations would also need to be multi-faceted and take into account varied objectives. In spite of such differences, many existing approaches and tools of competition advocacy still apply, such as the need to understand policy objectives of the other agencies involved and to advocate collaboratively.

Key messages – The main thrust of CCCS’s advocacy activity was to emphasise the importance of undertaking a competition impact assessment to accompany the taskforce’s deliberation and decision making. Our team highlighted to the taskforce that effective competition plays a critical role in achieving the objectives of creating a set of key shared infrastructure that enhances e-commerce growth, economic efficiency and consumer convenience. In particular, in its deliberations of whether to have a single or multiple operators for the locker network, CCCS convinced the taskforce that a multi-operator model would not only be more competitive, but also encourages innovation and investments for an efficient and non-exclusive last-mile delivery industry. We further stressed that significant resources would have to be invested into regulating the conduct of a monopoly operator, but yet such regulatory oversight would not be able to address the loss of incentive to innovate and to invest in the infrastructure.

Stakeholders partnered with – Info-communications agency, housing development agency, land transport agency, security agencies, economic development agency, and urban logistics companies. These stakeholders were all critical to ensuring the success of the Federated Locker initiative as it is a transformative project that requires alignment over many inter-related aspects, such as competition, security, land use, technology, economic development and commercial viability.

Outcome of this competition advocacy initiative

CCCS successfully convinced the taskforce to accept its competition assessment, and its specific recommendation for a multi-operator model to improve competition was adopted and implemented as the Federated Locker initiative embarked on its pilot

phase in December 2018. To implement the multi-operator model, CCCS provided inputs into the design of the tender that was called to select the locker operators. A total of fifteen logistics firms and industry partners are collaborating in the pilot.

In addition, to enable interoperability between the locker operators, CCCS provided competition inputs for how this interface between locker operators should be operationalised. We advocated for an interoperable platform operator independent from the locker operators to ensure that there is no discrimination. This was also accepted and incorporated into the pilot of the Federated Locker.

Spain – Spanish National Commission on Markets and Competition (CNMC)

Fintech

Background of the competition advocacy initiative

The Advocacy Department of CNMC has been monitoring closely the general impact of digitization on competition and regulation in the overall economy. After a first wave of sectors affected by digitization (mostly transportation and touristic rentals), a second generation of activities is also disrupted by new information and communication technologies. One of these is the financial sector, which is very relevant from the standpoint of competition and regulation because of two reasons. First, competition in the financial sector spreads throughout the whole economy, since financial sector outputs (credit, payments...) are inputs for other activities, especially for small, nascent and innovative firms and projects. Second, financial sector is prone to market failures, which have been traditionally a justification for regulation, which has an impact on competition. Fintech affects these two dynamics: it is likely to increase competition in the financial sector and it may tackle market failures to some extent, especially information asymmetries, potentially reducing the rationale for restrictive regulation in some cases.

The main aim of the advocacy initiative was informing a better regulatory response by public authorities and carrying out a general assessment of the Fintech phenomenon. In addition, the scope of the project was competition advocacy and good regulation, being cognizant of other legitimate policy goals (like macrofinancial stability, consumer protection and integrity) which may affect the optimality of the final regulatory response. The target audience is mainly the Government, to ensure and appropriate regulatory response to this phenomenon but also undertakings (both incumbents and Fintech challengers), trying to draw attention to the opportunities and challenges in terms of competition, and consumers the general public, trying to spread the knowledge about this phenomenon's impact on firms and consumers.

Advocacy strategies and tools used for this competition advocacy initiative

The strategy thus far includes a general assessment of Fintech through a background document. In order to frame that general view, CNMC exchanged views with financial sector regulators and relevant undertakings. In order to increase the knowledge of this phenomenon among firms and consumers, less traditional communication tools were used, like blog posts (<https://blog.cnmc.es/2018/11/13/que-es-fintech-las-claves-de-la-nueva-tendencia-del-mercado-financiero/> <https://blog.cnmc.es/2018/11/14/la-revolucion-fintech-cual-es-su-impacto-y-que-propone-la-cnmc/>) and a short video (<https://blog.cnmc.es/2018/12/04/que-es-fintech-te-lo-explicamos/>). When approaching a sector shaken by digitization, building a general view can be useful before focusing on specific activities. In this initiative on Fintech, the background document includes first a general assessment of both the financial sector and Fintech from the standpoint of competition and regulation. Afterwards, this general framework

is applied to specific innovations: distributed ledger technologies (DLTs), payments, asset management and advice, crowdfunding and insurance. Another important difference with non-digital markets is the use of innovative communication tools (see above) to increase awareness among less specialized firms and consumers.

The key advocacy message is Fintech is fostering competition in finance, so this phenomenon should be embraced by regulators and undertakings, unless there are overriding reasons of general interest which advocate for a cautious response in specific cases. Furthermore, Fintech is likely to address (if partially) some market failures, so the rationale of restrictive regulation should be reassessed according to principles of good regulation: necessity and proportionality.

Outcome of this competition advocacy initiative

There is no specific or quantitative measurement of the success of this initiative. The background document was issued very recently, in November 2018. But the Advocacy Department of CNMC plans to follow closely developments in financial markets, especially with regard to the impact of digitization. Furthermore, CNMC plans to be very active in participating in (and even organizing) debates on this topic.

Spain – Spanish National Commission on Markets and Competition (CNMC)

Online Ticketing

Background of the competition advocacy initiative

In January 2018, the former Ministry of Education, Culture and Sport requested the CNMC to issue a report on the possibility of regulating the activity of online reselling tickets for cultural events. This request was due to some problems in the functioning of ticketing markets, such as lack of transparency, use of robots to gather great volumes of tickets and high prices related to primary market prices. The Competition Advocacy Department (CNMC) seized the opportunity to examine this economic activity in digital markets, analyzing both the economic fundamentals of such activity and its regulation both in some selected countries and in Spain (by the Central Government and the Autonomous Regions), from the perspective of efficient economic regulation.

The main objective was providing the authorities with a broad view of the phenomenon, based on the economic functioning of primary and secondary ticketing markets and the regulatory actions undertaken in similar countries, in order to help to promote an appropriate regulatory response to this situation.

Despite the strict competition advocacy and efficient regulation scope of this initiative, consumer protection considerations were at issue, especially when examining the activities of other national competition authorities that are entrusted to enforce consumer protection law.

Advocacy strategies and tools used for this competition advocacy initiative

Since the government asked for the CNMC's opinion on online sale and resale ticketing, prior to the potential regulation of this activity, the Competition Advocacy Department decided to issue a Report (INF in Spanish) on actions either regulatory or not. For the elaboration of this Report, the Advocacy Department took into account the contributions to the public consultation carried out by the Ministry.

The CNMC recommended the overhaul of the out-dated regulatory framework (both, central and regional regulation) in accordance with the principles of better regulation, trying to minimize the regulatory dispersion among Autonomous Regions. The way of selling tickets should be an unconstrained decision by the promoter of the concert or special event, taking into account that resale (or secondary markets) can improve the efficiency in the primary market (initial sale of tickets by or on behalf of the promoter). Finally, if the Government wanted to regulate these activities in order to protect consumers and promote culture, this should be done in the less harmful way for competition and business freedom.

Outcome of this competition advocacy initiative

Despite the elaboration of a final report on the contributions and reports gathered by the Ministry, there is no draft regulation on this phenomenon yet. The CNMC's opinion was taken into account in this final report.

Spain – Spanish National Commission on Markets and Competition (CNMC)

Sharing Economy

Background of the competition advocacy initiative

The Advocacy Department of CNMC initiated a work stream on the general impact of digitization on competition and regulation in the overall economy. The main problem CNMC was trying to solve was the flawed regulatory approach that many (central, regional and local) authorities were adopting as a response to digitization. Apart from a general view on the digital disruption to the overall economy, a specific focus on touristic rentals and road transportation (both city and intercity) was included.

The main aim was to inform a better regulatory response by public authorities, it also targeted the general public to spread the knowledge about this sector's impact and challenges throughout firms and consumers. The scope of the project was competition advocacy and good regulation, being cognizant of other impacts of the sharing economy and digitization (like environmental and distributional concerns) which may affect the optimality of the final regulatory response.

Advocacy strategies and tools used for this competition advocacy initiative

The first stage of the strategy was a public consultation, in order to gather relevant information and opinions from stakeholders (actually, before the public consultation in March 2016 there was a previous one at the beginning of 2015 (<https://blog.cnmc.es/2015/02/03/que-nos-han-respodido-a-la-consulta-publica-sobre-economia-colaborativa-publicamos-las-respuestas/>)). Afterwards, other conventional tools, like reports and the assessment of draft laws, were used. Apart from these ex ante and non-coercive tools, the strategy involved ex post more binding tools, like the legal powers to appeal some administrative acts and regulations before courts

Even if the use of public consultations is a good practice that can be generalised to all sectors, their use in digital markets is especially advisable. Especially at that juncture, where the disruption of digitization was starting to materialize. So many questions were still pending: the applicability (or not) of sectoral regulation, the interplay with horizontal regulation, the positive or negative impacts on competition, etc. That was why the CNMC opted for a public consultation in the first place: in order to gather the relevant views from stakeholders on these issues. Once this knowledge is incorporated into the institution, more traditional tools, like reports and assessments on draft laws, can be deployed. The CNMC has also resorted to its capacity to appeal before Courts uncompetitive administrative acts and regulations. And, finally, the CNMC has been very active in participating in (and even organizing) debates on digitization and the sharing economy, in order to spread its analysis and recommendations.

The key advocacy message is digitization is driving positive dynamics for competition and is increasing general and consumer welfare (higher supply, variety, differentiation, costs and mark-ups compression, innovation...). Therefore, the regulatory response to this phenomenon must respect the principles of good regulation: mainly necessity and proportionality. Potential risks to competition can be tackled with competition policy enforcement if needed.

Outcome of this competition advocacy initiative

There is not a specific or quantitative measurement of the success of this initiative. But, needless to say, there has been a monitoring of the development of digital markets in Spain and the role of regulation. So, as was abovementioned, the CNMC has been very active in the assessment of draft or actual regulation in order to safeguard the principles of necessity and proportionality (see a specific report on touristic rentals <https://www.cnmc.es/expedientes/ecnmc00318> and the link to draft laws assessments <https://www.cnmc.es/en/ambitos-de-actuacion/promocion-de-la-competencia/informes>). When this advisory activity has not been successful and regulation is raising anticompetitive barriers (<https://www.cnmc.es/en/ambitos-de-actuacion/promocion-de-la-competencia/legitimacion-activa>), the CNMC has taken advantage and has challenged these regulations before Courts. Some appeals included an economic report trying to estimate the cost to consumer welfare of anticompetitive regulations (<https://www.cnmc.es/en/ambitos-de-actuacion/promocion-de-la-competencia/informes-economicos-en-legitimacion-activa>).

Sweden – Swedish Competition Authority (swe: Konkurrensverket)

Sharing Economy & E-Commerce

Background of the competition advocacy initiative

The SCA was tasked to do a special inquiry of the sharing economy and e-commerce in 2016 (report presented in early 2017). In addition, the SCA was tasked to do an inquiry of the whole economy including an in depth chapter on digitalization. The objective of the inquiry was to analyse and understand digital markets, their function, benefits to consumers and influence on traditional sectors of the economy.

The report on sharing economy and e-commerce highlighted that there are other regulations or practices that hindered or in other ways influenced the possibilities to establish sharing economy services. The broad report on Swedish economy from a competition perspective included in depth chapters on digitalization and circular economy, and thus included perspectives on the intersection between competition, digitalization and circular economy.

Advocacy strategies and tools used for this competition advocacy initiative

The strategy for the report on sharing economy and e-commerce was to explain the economic impacts of these services and analyse possible change in regulation.

In working with the sharing economy and digital business models we relied mainly on existing and current literature because of its availability and overwhelming size, while data was lacking (in part because of the cross-border nature of sharing economy companies). In covering the e-commerce sector we had access to different surveys (Governmental inquiry and The European Commission's sector inquiry and trade).

The key advocacy messages were:

- The sharing economy in Sweden is small.
- Existing regulation should be adjusted to take sharing services in to account.
- Threshold values in mergers need to be supplemented with threshold values for the proposed price in the merger.
- Sharing economy business models can be complicated and the markets moves fast which poses new problems for competition authorities.
- E-commerce is increasing, but varies in importance between different sectors.
- E-commerce consumers value low prices and safe payments.
- Existing competition law is well suited to deal with competition within the e-commerce sector, but competition problems within this sector can require new investigation tools and competences for competition authorities.

The SCA regularly held meetings with stakeholders to benefit from their perspectives in the inquiries made, but rarely partnered or collaborated with other organizations. While working on the inquiry on sharing economy and e-commerce we benefited from

the annual research conference Pros & Cons which in 2016 had the theme Sharing Economy. In 2019 (November) the theme of the conference will be “More pros and cons of vertical restraints”, and will include digital perspectives on these issues.

Outcome of this competition advocacy initiative

The reports brought the competition perspective to the wider societal debate on the effects of digitalization, sharing economy and e-commerce and has helped us to better understand these issues.

Turkey – Turkish Competition Authority (TCA)

Big Data

Background of the competition advocacy initiative

Big data has emerged as a new topic which challenges not only the TCA but also other public authorities such as regulators and market players. The TCA felt the need to use advocacy tools to explore the impact of use and collection of digital data in commercial activities and establish a dialogue between stakeholders in order to follow up with such an important development.

The TCA's advocacy efforts regarding this emerging topic of big data were aimed at creating a discussion forum thus preparing the TCA for potential future competition cases and establishing contacts and relationships between relevant stakeholders.

Advocacy strategies and tools used for this competition advocacy initiative

The TCA chose to organise discussion forums in partnership with business associations which is open to participation of general public. This strategy was chosen because it was important for the TCA to address the widest audience possible, especially business circles, and stir a discussion about this emerging topic. The TCA faced some challenges in organising these events. Firstly, it was costly to hold major meetings with large attendance. Secondly, it required special effort to disseminate the news before and after the events, invite right speakers about a topic which has not been discussed in detail in Turkey from competition perspective. However, partnerships with business associations helped to overcome both challenges.

The “Big Data, Online Platforms and Competition Law” seminar in 2018 was organised in partnership with Turkish Business and Industry Association (TÜSİAD). The “Big Data, Protection of Personal Data and Assessment of Data Sharing in Insurance Sector from Competition and Regulation Perspective” panel in 2017 was organised in partnership with Insurance Association of Turkey. Both associations have wide membership of sector actors and both of them helped the TCA to disseminate the news, invite and address right audience and decrease the cost of holding such events. We believe that these partnerships also provided the opportunity to strengthen the relationship between the TCA and business circles.

There are many advocacy tools available to competition authorities. In some cases, the TCA conducts sector enquiries and publishes reports. This is rather done in cases where the TCA has encountered competition law cases which points out systemic or structural problems in the sector or where the TCA has vast enforcement experience. In cases where a new regulation is being drafted, the TCA issues opinions to the relevant public authority. For big data's impact on competition, the TCA preferred to organise events for discussion which is open to participation of general public because

its aim was to spark a discussion from competitive perspective and prepare itself for potential cases.

As mentioned, advocacy efforts were aiming at creating an open discussion environment and preparing the TCA for the future cases rather than delivering a specific message about big data issue. However, these events clearly conveyed the message that TCA's agenda for future includes new generation of competition infringements and the TCA is determined to be proactive and innovative in the face of digital challenges.

Outcome of this competition advocacy initiative

Since the main objectives were to start a discussion on a new emerging subject and prepare the TCA for the future cases, no monitoring or assessment was required further than regular media coverage assessment.

USA - Federal Trade Commission

Public Hearings on New Business Practices / Technologies

Background of the competition advocacy initiative

Beginning in the Fall of 2018 and continuing into the Spring of 2019, the Federal Trade Commission (FTC) held a series of public hearings to examine whether broad-based changes in the economy, evolving business practices, new technologies, or international developments might require adjustments to competition and consumer protection law, enforcement priorities, and policy. Information relating to the “Competition and Consumer Protection in the 21st Century Hearings,” including agendas, presentations, webcasts, archived transcripts, and public comments related to each session can be found at <https://www.ftc.gov/policy/hearings-competition-consumer-protection>.

Several of the hearings addressed topics related to digital markets, including:

- identifying and analyzing collusive, exclusionary, and predatory conduct by digital and technology-based platform businesses;
- the antitrust framework for evaluating acquisitions of potential or nascent competitors in digital marketplaces;
- the intersection between privacy, big data, and competition;
- the role of intellectual property and competition policy in promoting innovation; and
- the consumer welfare implications associated with the use of algorithmic decision tools, artificial intelligence, and predictive analytics.

The hearings and related public comment process provided opportunities for FTC staff and leadership to listen to interested persons and outside experts representing a broad and diverse range of viewpoints. Stakeholders involved in the process and target audiences included attorneys, academics, economists, business people, government decision-makers, consumers, and the media.

The hearings stimulated thoughtful internal and external evaluation of the FTC’s near- and long-term law enforcement and policy agenda. The hearings sought to identify areas for enforcement and policy guidance, including improvements to the agency’s investigation and law enforcement processes, as well as areas that warrant additional study.

Discussions of digital market topics focused on competition, consumer protection, and privacy-related issues, while identifying other policy areas that are involved or affected. Questions were framed to address definitions (e.g., “What is ‘big data’? Is there an important technical or policy distinction to be drawn between data and big data?”), and “What are the defining characteristics of multi-sided platforms? Is there a way to distinguish between multi-sided and single-sided businesses?”) and how specific technologies are being used and could potentially be used (e.g., “How quickly are

these technologies advancing?”). Discussions then focused on the implications of the: (i) pace of innovation and (ii) changes to technologies and business practices for competition, consumer protection, and privacy enforcement and policy.

Advocacy strategies and tools used for this competition advocacy initiative

The FTC chose the hearings format to meet the agency’s goals of involving many stakeholders and facilitating informed dialogue on various topics.

The agency involved stakeholders at all stages of the initiative. Public comments were sought throughout the process, beginning with the FTC’s announcement of the hearings initiative in June 2018 and lasting until after each hearing session was held.

Based on internal agency discussions, research, and initial public comments received, FTC staff refined hearing topics, drafted further questions for public comment, and selected stakeholders to serve as speakers. Some stakeholders who were invited to speak as part of each hearing also provided additional written materials that were published on the FTC’s website. Before each hearing, a detailed agenda, press release, and biography of each speaker were published, which enabled other stakeholders, including the media and general public, to attend sessions in person or watch via a live webcast. In addition, after each hearing, the FTC published the video and transcript, which allowed for more stakeholder engagement. The FTC also kept the record open for a period of time after each hearing session, seeking additional public comments on each specific session. The FTC also invited public comment upon completion of the entire series of hearings. Comments were published online.

To better understand aspects of digital markets, the FTC used the same information-gathering strategies, tools, and approaches that the FTC employs to examine other subject matters. During the hearings, the FTC explored issues specifically impacted by digital markets in greater depth than it had in the past and began considering topics, like artificial intelligence, that it had not studied before.

Outcome of this competition advocacy initiative

The FTC’s overall hearings initiative, which included many digital-market related topics, had 14 sessions. More than 350 non-FTC participants either gave a presentation and/or spoke on a moderated panel. At the conclusion of the hearings, the FTC had received more than 850 germane, non-duplicative public comments. It is too early to quantify the overall benefit or influence the hearing sessions may have, but the agency received positive feedback from the public regarding the usefulness of the hearings.

At the time this submission was due to the Advocacy Working Group, the FTC was continuing to assess the information received and consider what output might best serve the public.