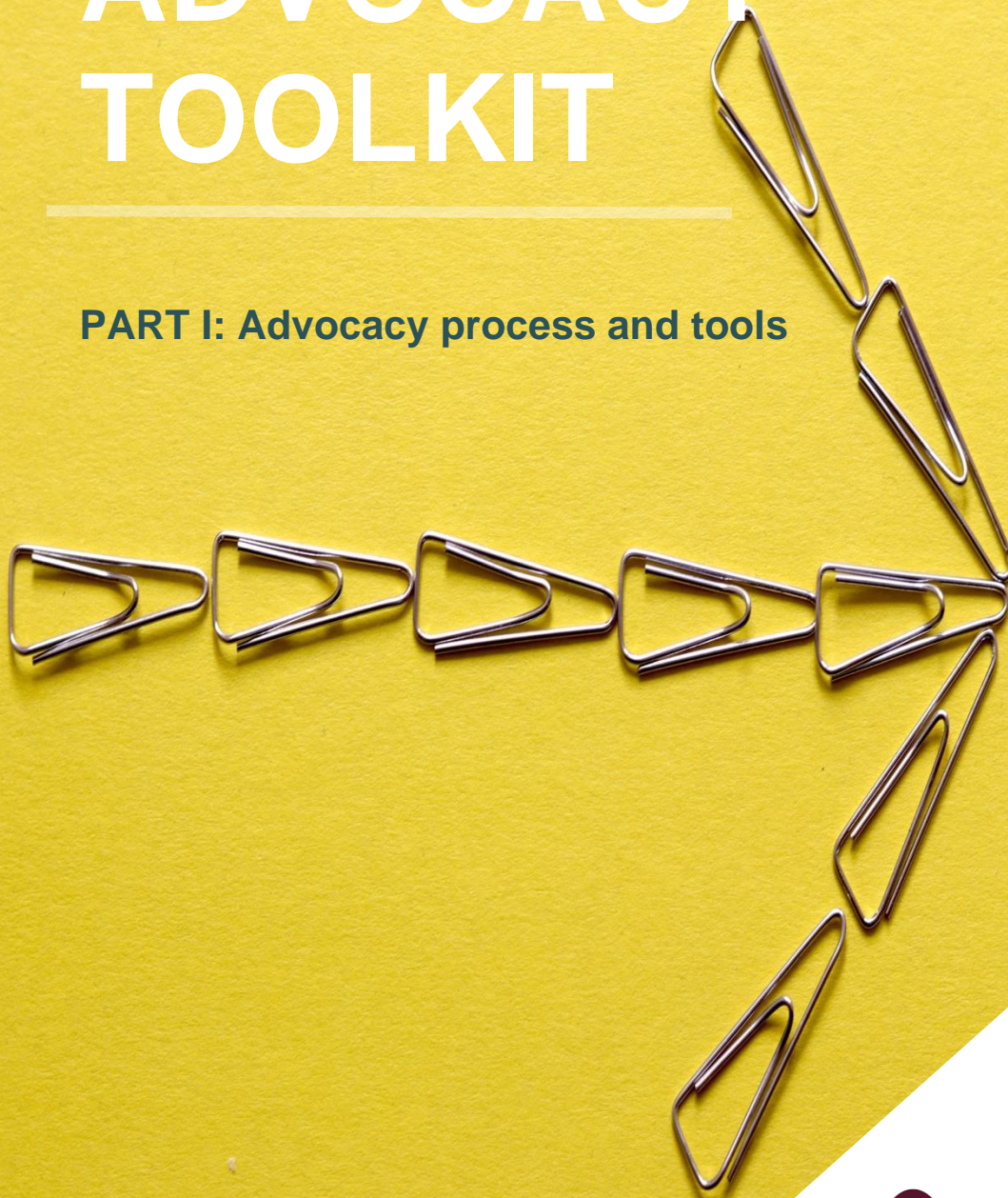


ADVOCACY TOOLKIT

PART I: Advocacy process and tools



International
Competition
Network

INTRODUCTION

WHY AN ICN TOOLKIT FOR IMPROVING THE EFFECTIVENESS OF COMPETITION ADVOCACY?

THE MISSION OF THE ADVOCACY WORKING GROUP (AWG) IS TO HELP ICN MEMBERS TO IMPROVE THE EFFECTIVENESS OF THEIR ACTIVITIES AIMED AT DISSEMINATING COMPETITION PRINCIPLES AND PROMOTING THE DEVELOPMENT OF A COMPETITION CULTURE IN THEIR JURISDICTIONS AND ABROAD. THUS, THE AWG WORKS ON DEVELOPING PRACTICAL TOOLS AND GUIDANCE, AND FACILITATES EXPERIENCE-SHARING ACTIVITIES AMONG ICN MEMBER AGENCIES.

NOWADAYS COMPETITION AUTHORITIES WORLDWIDE AND INTERNATIONAL ORGANIZATIONS AS THE INTERNATIONAL COMPETITION NETWORK, THE WORLD BANK, AND THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT HAVE UNDERScoreD THE IMPORTANCE OF PRIORITIZING THEIR COMPETITION ADVOCACY EFFORTS JUST AS MUCH AS THEIR ENFORCEMENT POWERS. IT IS COMMONPLACE TO SAY THAT COMPETITION ADVOCACY IS AN INFLUENTIAL TOOL TO EMBED COMPETITION PRINCIPLES AND PROTECTIONS INTO REGULATORY PROCESSES AND TO SPREAD A COMPETITION CULTURE ACROSS MARKETS AND SOCIETIES. INVESTING IN THE IMPROVEMENT OF THE EFFECTIVENESS OF THIS PIVOTAL TOOL WILL BRING TANGIBLE BENEFITS FOR THE ECONOMY, CONSUMERS AND SOCIETY AS A WHOLE. EVEN MORE, SOUND AND CLEAR COMPETITION ADVOCACY EFFORTS CAN HELP DETER ANTICOMPETITIVE BEHAVIOR AND INCREASE COMPLIANCE.

COMPETITION ADVOCACY INVOLVES COMMUNICATING THE GOVERNMENT, MARKET AGENTS AND STAKEHOLDERS OF THE BENEFITS OF PROMOTING AND IMPLEMENTING COMPETITIVE PROCESSES IN THE MARKETS. THE FUNCTION HAS BEEN UNDERSTOOD TO INCLUDE “THOSE ACTIVITIES CONDUCTED BY THE COMPETITION AGENCY RELATED TO THE PROMOTION OF A COMPETITIVE ENVIRONMENT BY MEANS OF NON-ENFORCEMENT MECHANISMS, MAINLY THROUGH ITS RELATIONSHIPS WITH OTHER GOVERNMENTAL ENTITIES AND BY INCREASING PUBLIC AWARENESS OF THE BENEFITS OF COMPETITION”¹.

THIS ICN TOOLKIT WILL COMPLEMENT THE WORK THE ADVOCACY WORKING GROUP DID WITH THE ADVOCACY HANDBOOK. IT HAS THE PURPOSE OF GUIDING COMPETITION AGENCIES THROUGH THEIR ADVOCACY EFFORTS SO TO ACHIEVE EFFECTIVE INITIATIVES AND OUTCOMES. THE TOOLKIT IS BASED ON

¹ See ICN ‘Advocacy and Competition Policy’ Report 2002, available at www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf.

A POOL OF CASE EXAMPLES SUBMITTED BY ICN MEMBER AGENCIES WORLDWIDE THAT EXEMPLIFY HOW THEIR ADVOCACY PROCESSES AND STRATEGIES. THE TOOLKIT FOCUSES ON STRENGTHENING ADVOCACY EFFORTS FOR THE PROMOTION OF COMPETITION PRINCIPLES IN REGULATORY PROCESSES AND ALSO WHEN ADDRESSING MARKET AGENTS AND KEY STAKEHOLDERS.

THE PRACTICES CONTAINED IN THE TOOLKIT ARE MEANT TO GUIDE AND ASSIST COMPETITION AGENCIES ACROSS THE WORLD IN THE STEPS FOR ATTAINING EFFECTIVE ADVOCACY INITIATIVES. FOR THIS REASON, THE METHODOLOGY USED BY THE ICN WAS TO COMPILE THE CASES THAT WERE BROUGHT TO THE ATTENTION OF EACH OF THE COMPETITION AUTHORITIES AND RELATED TO EACH COMPONENT OF THE TOOLKIT.

WHAT IS THE TOOLKIT'S PURPOSE?

THE PURPOSE OF THE ADVOCACY TOOLKIT IS TO PROVIDE THE STEPS OF AN EFFECTIVE COMPETITION ADVOCACY PROCESS, TO DESCRIBE EACH OF THEM WITH SUPPORT OF CASE STUDIES AND IDENTIFY WHICH TOOLS AND STRATEGIES MEMBER AGENCIES HAVE USED IN ORDER TO ACHIEVE EFFECTIVE ADVOCACY SOLUTIONS.

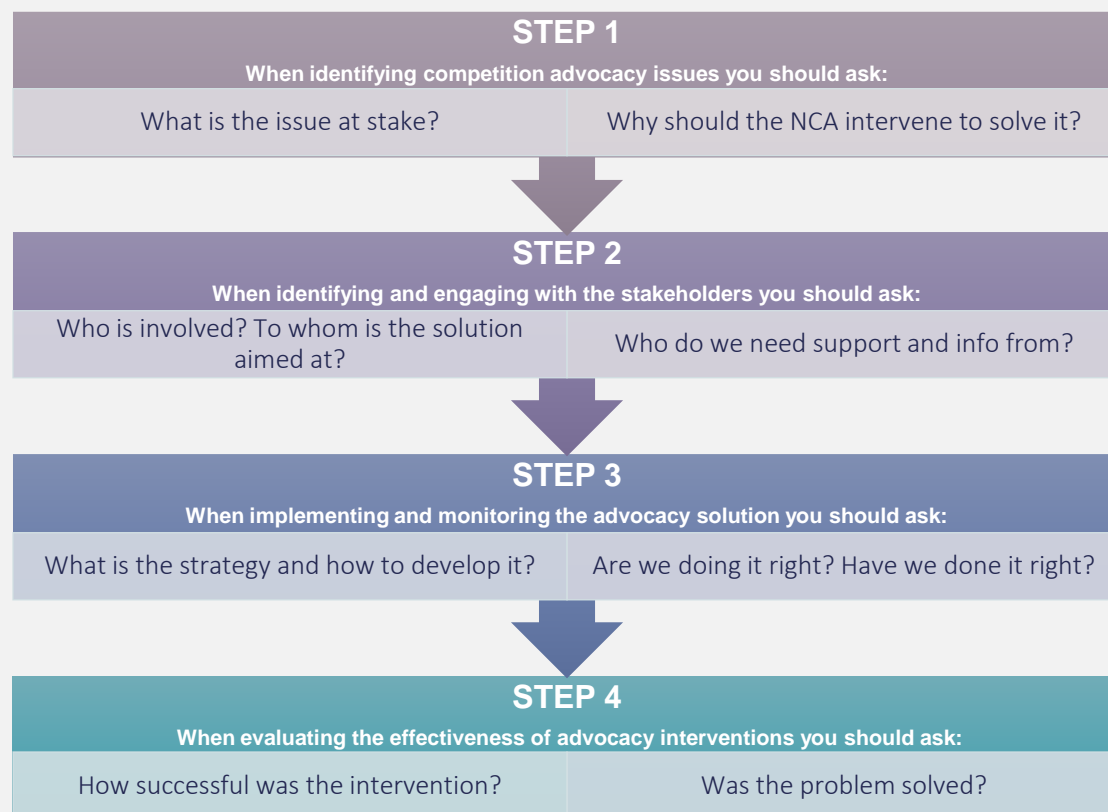
WITH THE TOOLKIT THE ICN ADVOCACY WORKING GROUP WILL:

- SHARE AND DISSEMINATE ALTERNATIVE APPROACHES TO ADVOCACY ACROSS COMPETITION AGENCIES; AND
- PROVIDE A USEFUL, PRACTICAL GUIDE TO COMPETITION AGENCIES LOOKING TO AMEND OR REFRESH THEIR CURRENT APPROACH.

THE TOOLKIT IS AIMED AT ALL THOSE ENGAGED IN COMPETITION ADVOCACY. IT DOES NOT SEEK TO REFLECT ICN MEMBERS' CONSENSUS ON GOOD PRACTICES IN CARRYING OUT COMPETITION ADVOCACY. RATHER IT IS INTENDED TO BE A SOURCE FROM WHICH THOSE ENGAGED IN COMPETITION ADVOCACY CAN DRAW.

HOW DOES THE TOOLKIT WORK?

WHILE THE TOOLKIT RECOGNIZES THAT COMPETITION ADVOCACY ACTIVITIES CAN TAKE DIFFERENT FORMS, IT ALSO IDENTIFIES CERTAIN STEPS COMMON TO ACHIEVING EFFECTIVE ADVOCACY PROJECTS. THESE ARE PRESENTED IN THE TOOLKIT AS 'STEPS', EACH OF WHICH COMPRISES DIFFERENT GUIDING QUESTIONS, AS SHOWN BELOW:



THE TOOLKIT PROVIDES A NUMBER OF CASE STUDIES PER STEP OR COMPONENT OF THE PROCESS FOR ACHIEVING EFFECTIVE ADVOCACY PROJECTS. , GIVING EXAMPLES OF HOW COMPETITION AGENCIES CONDUCT THEIR ADVOCACY ACTIVITIES IN PRACTICE. THE CASE STUDIES DESCRIBE THE VARIOUS STEPS INVOLVED IN PARTICULAR ADVOCACY PROJECTS, WITH A PARTICULAR FOCUS ON THE RELEVANT COMPONENT.

TO COMPLEMENT THE TOOLKIT, THE AWG HAS CREATED A COMPETITION ADVOCACY POSTINGS FACILITY ON THE ICN WEBSITE² TO ENABLE ICN MEMBER AGENCIES AND NON-GOVERNMENTAL ADVISERS (NGAs) TO POST THEIR NOTES, ARTICLES, PRONOUNCEMENTS, STATEMENTS, AND MESSAGES ON COMPETITION ADVOCACY MATTERS FOR WIDER DISCUSSION BY THE ICN MEMBERSHIP, NGAs, COMPETITION PROFESSIONALS, SCHOLARS, AND THE GENERAL PUBLIC.

THE TOOLKIT PROVIDES A LIST OF ICONS TO IDENTIFY SECTORS COVERED WITH THE ADVOCACY INITIATIVES AND ALSO THE TYPE OF INITIATIVE IMPLEMENTED BY THE AGENCIES. THIS ICONS WILL ALLOW YOU TO EASILY NAVIGATE AROUND THE INFORMATION CONTAINED IN THE TOOLKIT.

LIST OF ICONS

SECTOR



COMMERCE



HEALTH



LEGAL



TRANSPORTATION



DIGITAL MARKETS



ENERGY



FINANCIAL



TELECOMMUNICATIONS



EDUCATION



COVID-19



OTHERS

TYPE OF INITIATIVE



RECOMMENDATIONS



DIGITAL TOOL



MARKET STUDY



LEGISLATIVE PROPOSAL



NORMATIVE EXPEDITION



COMPETITION REGIME



SECTORIAL CONSULTATION



PUBLIC CONSULTATION



GUIDELINES



REPORTS

STEP 1: WHAT ARE THE RELEVANT COMPETITION ADVOCACY ISSUES?

OVERVIEW

WHEN DEVELOPING COMPETITION ADVOCACY INITIATIVES, AGENCIES MAY AIM TO:

PERSUADE OTHER PUBLIC AUTHORITIES NOT TO ADOPT UNNECESSARILY ANTICOMPETITIVE MEASURES AND HELP THEM CLEARLY TO DELINEATE THE BOUNDARIES OF ECONOMIC REGULATION.

- INCREASE AWARENESS OF THE BENEFITS OF COMPETITION, AND OF THE ROLE THAT COMPETITION LAW AND POLICY CAN PLAY IN PROMOTING AND PROTECTING THE WELFARE, ENHANCING COMPETITION WHEREVER POSSIBLE, AMONG ECONOMIC AGENTS, PUBLIC AUTHORITIES, THE JUDICIAL SYSTEM, AND THE PUBLIC AT LARGE².
- INCREASE THE PARTICIPATION OF PUBLIC AUTHORITIES IN RELATION TO SECTORS WHERE THE COMPETITION AGENCY IDENTIFIES PROBLEMS OR OBSTACLES THAT AFFECT COMPETITION AND REQUIRE LEGISLATIVE REFORMS.

WITH THESE AIMS IN MIND, COMPETITION AGENCIES MAY:

- ASSIST OTHER AUTHORITIES IN CONSIDERING THE RELATIVE IMPACT ON COMPETITION WHEN CHOOSING AMONG POLICY OPTIONS.
- PROVIDE TECHNICAL EXPERTISE REGARDING PARTICULAR INDUSTRIES OR MARKETS TO OTHER POLICYMAKERS.
- SEEK TO AVOID DIFFICULT OR UNCERTAIN CONFLICTS BETWEEN COMPETITION LAWS AND OTHER REGULATORY BODIES, BOTH WITHIN AND ACROSS JURISDICTIONS.
- INCREASE AWARENESS OF THE WAYS THAT APPLYING SOUND COMPETITION POLICY TO REGULATORY DESIGN CAN PROMOTE AND PROTECT THE CONSUMER BENEFITS ASSOCIATED WITH VIGOROUS COMPETITION.
- SELECT STRATEGICALLY AND IN A TIMELY MANNER THE COMPETITION ADVOCACY ISSUE AT STAKE IN ORDER TO ACHIEVE PENETRATION OF COMPETITION POLICY IN THE WHOLE SOCIETY.

² See ICN 'Advocacy and Competition Policy 2002 Report', available at the https://www.internationalcompetitionnetwork.org/wpcontent/uploads/2018/09/AWG_AdvocacyReport2002.pdf, where these are identified as the two main branches of competition advocacy.

- ADDRESS COMPETITION ISSUES RISING FROM RAPID CHANGES AND CHALLENGES IN THE SOCIETY.

COMPETITION AGENCIES MAY DISCOVER APPROPRIATE ADVOCACY OPPORTUNITIES IN MANY WAYS. FOR EXAMPLE, COMPETITION AGENCIES MAY IDENTIFY THE RELEVANT COMPETITION ADVOCACY ISSUES ON THEIR OWN INITIATIVE, USING TECHNIQUES SUCH AS 'HORIZON SCANNING'³.

AGENCIES MAY ALSO IDENTIFY ADVOCACY OPPORTUNITIES BASED ON RECURRING ISSUES THAT ARISE ACROSS JURISDICTIONS OR SUB-JURISDICTIONS, SUCH AS PROVINCES, STATES, OR MEMBER-STATES. IN SOME JURISDICTIONS, EXECUTIVE OR LEGISLATIVE AUTHORITIES ROUTINELY CONSULT WITH COMPETITION AGENCIES BEFORE ISSUING LAWS OR REGULATIONS⁴. ALSO, AGENCIES SOMETIMES DISCOVER ADVOCACY OPPORTUNITIES WHILE CONDUCTING ENFORCEMENT ACTIVITIES; INVESTIGATING A CERTAIN MARKET/SECTOR; OR PURSUING A COMPLAINT THEY HAVE RECEIVED.

³ 'Horizon scanning' is a technique for detecting early signs of potentially important developments through a systematic examination of potential threats and opportunities, with emphasis on new technology and its effects on the issue at hand. The method calls for determining what is constant, what changes, and what constantly changes. It explores novel and unexpected issues as well as persistent problems and trends, including matters at the margins of current thinking that challenge past assumptions.

Horizon scanning is often based on desk research, helping to develop the bigger picture behind the issues to be examined. Desk research may involve a wide variety of sources, such as the Internet, government ministries and agencies, non-governmental organizations, international organizations and companies, research communities, and online and offline databases and journals. Horizon scanning can also be undertaken by small groups of experts who are at the forefront in the area of concern: they share their perspectives and knowledge with each other so as to 'scan' how new phenomena might influence the future.

⁴ As an example, during the strong period of the pandemic crisis due COVID-19, COFECE published and sent to the congress a document proposing "12 measures on economic competition matters to support the recovery of the Mexican economy". Some of those topics may not be in the legislative agenda as of now, but it helps to feed the ideas of reform or initiatives relevant for the country: https://www.cofece.mx/wp-content/uploads/2021/01/COFECE-038-2020_ENG.pdf

THIRD PARTIES, BOTH PRIVATE AND PUBLIC, OFTEN BRING ADVOCACY ISSUES TO A COMPETITION AGENCY'S ATTENTION. PRIVATE PARTIES MAY BE ESPECIALLY INCLINED TO DO SO WHEN POLICY PROPOSALS WOULD, IF ADOPTED, INCREASE THEIR COSTS OR CONFER RELATIVE COMPETITIVE ADVANTAGES ON THEIR RIVALS. POLICYMAKERS OUTSIDE COMPETITION AGENCIES MAY CONSULT COMPETITION AGENCIES BASED ON PRIOR WORKING RELATIONSHIPS, PRIOR CONSIDERATIONS OF COMPETITION ISSUES, OR PARTICULAR CONCERNS ABOUT CONTENDING POLICY PROPOSALS. CONNECTIONS BETWEEN COMPETITION AGENCIES AND OTHER GOVERNMENT BODIES MAY ALSO BE INSTITUTIONALIZED. FOR EXAMPLE, SOME COMPETITION AGENCIES HAVE PERMANENT REPRESENTATION IN THE CABINET OF THE NATIONAL GOVERNMENT OR MAY BE INTEGRATED INTO GOVERNMENT AT THE TECHNICAL OR MANAGERIAL LEVEL, ALLOWING THEM TO BECOME INFORMED AT A VERY EARLY STAGE OF THE DRAFTING PROCESS OF NEW POLICY INITIATIVES.

ALSO, IN CERTAIN JURISDICTIONS COMPETITION AGENCIES MAY BECOME AWARE OF COMPETITION ADVOCACY ISSUES BECAUSE THE LAW MANDATES THAT THE EXECUTIVE OR LEGISLATIVE MUST CONSULT THE COMPETITION AGENCY BEFORE ISSUING A LAW OR REGULATION. THESE TYPES OF ROLES ENABLE AN AGENCY TO BE BOTH AN INFORMATION GATHERER AND AN INFORMED ADVOCATE FOR COMPETITION, AND TO INTEGRATE CONSIDERATION OF COMPETITION ISSUES INTO THE EARLY STAGES OF POLICYMAKING.

HAVING IDENTIFIED ADVOCACY ISSUES, IT MAY BE APPROPRIATE FOR AN AGENCY TO PRIORITIZE THEM AGAINST EACH OTHER AND OTHER AGENCY COMMITMENTS.

THE CASE STUDIES AT THE END OF THIS AND OTHER COMPONENTS OF THE TOOLKIT SHOW HOW DIFFERENT COMPETITION AGENCIES HAVE IDENTIFIED COMPETITION ADVOCACY ISSUES IN PRACTICE.

CASE STUDY: THE DANISH COMPETITION AND CONSUMER AUTHORITY- COMPETITION IN THE MARKET FOR LAWYER SERVICES

Denmark – Issue identification:

In Denmark, there are 12.000 persons employed in 1.800 lawyer companies. Overall, the market is pretty dispersed and the five largest companies hold approximately 25% of the revenue. But for legal services aimed at business customers, the concentration is larger.

A well-functioning market for legal services is crucial in order to maintain rule of law and due process for citizens. This will also increase economic welfare by reducing transaction costs and create a level playing field for economic activities.

Based on the comprehensive analysis, 16 recommendations were stated aimed at reducing regulatory barriers, increasing customer mobility, and increasing the focus of public purchase of legal services (primarily at the government level).



CASE STUDY: TURKISH COMPETITION AUTHORITY - EXHIBITION INDUSTRY INQUIRY

Turkey – Issue identification:

The exhibition industry (organization of fairs) is an important economic activity whose economic actors are organizations, participants (exhibitors), and visitors. Exhibitions are *ad hoc* events that are considered business opportunities to establish connections or penetrate any market. In addition to their benefits at the micro level, these events have other benefits for the economy in general, such as job creation in the place where they are held, contribution to the country's export and tax revenues, elimination of information asymmetry, thus promoting market transparency.

The Turkish Competition Authority (TCA) conducted an exhaustive sector inquiry in which it addressed how the sector operates, what are the current/possible antitrust problems, whether structural or behavioral.

In that sense, this initiative recognizes that one of the main antitrust tools of the competition authorities is sector inquiry, through which it addresses a specific sector to identify potential anticompetitive problems. It is carried out through broad participation of stakeholders, regulators, or other government authorities to pinpoint problems and provide a perspective that fits competition policy as a whole.



CASE STUDY: CROATIAN COMPETITION AGENCY - (NO NAME)

Croatia – Issue identification:

The Croatian Competition Agency issued an opinion to the business entity, the municipality, and the general public advising that cab service providers, as new market entrants, should have equal opportunity to access cab ranks (i.e., parking spaces).

The legislator opened access to the market to the new entrants who use electronic devices for communication with the potential customers (such as Uber). The provision of new services in practice led to traffic jams in old Croatian tourist towns, due to the lack of space for stopping for passengers entering into the vehicle or out of it.

The new market entrants encountered difficulties in providing their services and requested the Agency's assistance. For this reason, the agency recommended to the local government to take appropriate measures to solve the problems of bus stops and parking lots.

The local government undertook to regulate the possibility for all service providers to access stops and parking lots.



CASE STUDY: SWEDISH COMPETITION AUTHORITY - COMPETITION ON DIGITAL PLATFORM MARKETS IN SWEDEN

Sweden – Issue identification:

A number of different international expert panels and competition authorities in the past two years have argued that digital platforms give rise to structural competition concerns that cannot be addressed effectively by existing rules. While these issues to some extent overlap with the Swedish Competition Authority's (SCA's) case experience in digital markets, for example, that platforms may attempt to tip markets, it raises questions on whether the SCA's current enforcement in these markets is sufficient.

In order to shed light on these issues and gain a deeper knowledge of the competitive and market conditions on digital platform markets in Sweden, the SCA has conducted a sector inquiry. The SCA has analyzed five selected markets along with the SCA's previous competition cases concerning digital markets in order to assess whether there are obstacles to effective competition on digital platforms, and whether it is possible to exercise effective enforcement, or if there is a need for regulatory reforms or supplementary regulation.

The inquiry demonstrated that there is a risk for a number of different competition concerns on digital platform markets. In some cases, it is possible to address these concerns with the current competition law framework, which is applicable irrespective of the market. However, the current competition law framework has several built-in limitations, raising the need for regulatory modifications. At an EU level, legislative proposals have been presented for regulating large digital platforms. The SCA proposed that the question of additional regulation should be investigated at a Swedish level.



CASE STUDY: ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE OF BRAZIL - RETHINKING THE FUEL SECTOR: PRO-COMPETITION MEASURES

Brazil – Issue identification:

The fuel sector is the target of the largest number of complaints involving alleged antitrust violations, especially cartels. Nonetheless, it is the understanding of the Administrative Council for Economic Defense (CADE) that not every problem related to this market is the result of anticompetitive practices; there are other issues, such as the institutional and regulatory design of the market, including the fuel distribution (wholesale) and retail sectors, that can improve to foster competition.

The study is aimed at adding more information to the discussion on the fuel sector in Brazil. The document, titled “Rethinking the fuel sector: pro-competition measures”, was produced by the Department of Economic Studies of CADE, in partnership with the Office of the Superintendent General. It includes nine proposals intended to foster competition in the sector and, consequently, reduce prices to end consumers.

Amongst the topics available, the following were included in the document:

- Regulatory proposals include: (i) Allow ethanol producers to sell directly to service stations; (ii) Reconsider the vertical integration ban imposed on the fuel retail sector; (iii) Lift the prohibition imposed on fuel imports by distributors; (iv) Provide consumers with information such as the name of retail sellers, how many service stations they own, and to which other brands they are associated; (v) Increase the availability of information on fuel trade to improve the intelligence used to deter collusion.
- Tax-related proposals: (i) Reconsider the ICMS tax substitution (a sort of state value-added tax); (ii) Reconsider the excise tax (a per unit tax which costs a specific amount for a unit of the item purchased).
- Other proposals: (i) Allow self-service stations; and, (ii) Reconsider the rules related to the competitive use of urban spaces by service stations.

Finally, CADE recommended that institutional, regulatory, and tax matters that affect the wholesale and retail fuel sectors be reviewed. The most important message is: it is necessary to reconsider institutional aspects of the fuel sector to make it more competitive and efficient.



CASE STUDY: FEDERAL ANTIMONOPOLY SERVICE OF RUSSIA - CANCELLATION OF INTRA-BANK “BANK ROAMING”

Russia – Issue identification:

The adoption of the Federal Law dated December 16, 2019, No. 434-FZ “On Amendments to Article 29 of the Federal Law on Banks and Banking Activities” (hereinafter referred to as the Federal Law) was ensured in 2019. This Federal Law was developed by the Federal Antimonopoly Service (FAS) together with the Ministry of Finance of the Russian Federation, involving the Bank of Russia, and this instrument is aimed at eliminating the negative effects of the so-called “bank roaming”.

The great number of consumer complaints indicating that some banks often charge increased commissions for conducting transfers to the bank accounts of relatives and family members registered and located in different territorial units of the given bank proved the existence of the territorial barriers for the bank transfers within the territory of the Russian Federation. This current situation constituted the grounds for the adoption of the above-mentioned Federal Law.

Such cross-regional discrimination leads to the following negative effects:

- The restrictions of the freedom of movement of funds across the financial market of the Russian Federation due to the presence of geographic barriers;
- The existence of discriminatory tariff practices that infringe the interests of the consumer;
- Low attractiveness of banking services for the end consumer, which limits the development of cashless payments;
- The lack of motivation for the credit institutions to optimize their business models and business processes, including in terms of applied technological solutions, in order to fully meet the needs of the clients.

With the adoption of the Federal Law, the consumers of banking services who conduct the money transfers between different regions of the Russian Federation don't have to pay the increased commission for making cross-regional transfers within the same bank any longer.



CASE STUDY: JAPAN FAIR TRADE COMMISSION - ADVOCACY ACTIVITIES TO PROMOTE COMPETITION IN THE MOBILE TELECOMMUNICATIONS MARKET

Japan – issue identification:

Mobile phones have become even more essential to life with the growing number of contracts. Hence, our government recognizes that it is extremely important to tackle the issues in the mobile telecommunications market such as oligopoly consisting of 3 MNOs and high-priced and complicated mobile contracts.

We are concerned that the combination of the actions by MNOs which increase switching cost and/or cause unjust consumer inducement would obstruct new Mobile Virtual Network Operator (MVNO) to enter the market.

Considering the importance of the competitive environment, we examined the market through various tools, such as interviews and consumer surveys, and finally published the report. We explained the points of the report to stakeholders and proposed the solutions to the sector regulator. As a result, the sector laws and regulations were amended, which has led to improvement in restrictive practices on competition.

Relevant laws and regulations were amended as below:

- The following rules on the bundling discounts are introduced; i) prohibition of discounting communication charges on the condition of purchasing mobile phone; ii) prohibition of requiring refund of the amount of discount when terminating the service contract (prohibiting four-year restriction); iii) setting the maximum discount on mobile phone terminals; iv) prohibition of unfairly obstructing termination of contract from customers with regard to two-year restriction through setting the maximum cancellation fee.
- MNOs are mandated to accept the requests to remove SIM locks of used mobile phones.
- The sector regulator amended the guidelines of mobile telecommunications services to clarify that it is desirable to clearly indicate the estimated total payment including communication charges for the total contract term, terminal prices and initial costs.

Moreover, our authority and the regulator jointly examined trade practices in the market focusing on the distribution of used mobile phones.



CASE STUDY: JAPAN FAIR TRADE COMMISSION - GUIDELINES RELEASED IN COLLABORATION WITH REGULATORY AGENCIES

Japan – Issue identification:

The economic sectors targeted by the Japan Fair Trade Commission (JFTC) are those regulated by the sectoral legislations, such as electricity, gas, and telecommunications. In such markets, a regional monopoly in retail supply has so far been approved by entry regulation under sector legislations, and the harmful effects accompanying monopolization have been coped with regulations on business activities (regulation on rates, obligation to supply, etc.) under the provisions of the Industry Law.

Deregulation has encouraged new entrants to the market in recent years. However, in the current competitive environment it is normally hard for such new entrants to compete due to the existence of incumbent operators with strong market powers, derived from their own essential bottleneck facilities on which other new entrants need to rely, or because they already have big market shares.

The JFTC develops three sectoral guidelines in relation to three markets: electric power, gas trading and telecommunications. Which according to the JFTC these markets are in a transition from a monopoly to a competitive market. Therefore, in order to more actively promote fair competition in these business fields, it is necessary to establish measures to promote fair competition, as well as to ensure the necessary regulations to ensure the public interest and the benefit of users.



CASE STUDY: SPANISH MARKETS AND COMPETITION AUTHORITY (CNMC) - MARKET STUDY ON THE IMPACT ON COMPETITION OF TECHNOLOGICAL INNOVATION IN THE FINANCIAL SECTOR (FINTECH)

Spain – Issue identification:

The market study conducted by the Advocacy Department of the Spanish Competition and Markets Authority (CNMC) addresses the disruptive impact of new digital technologies in the financial sector, the so-called Fintech phenomenon, to identify opportunities and challenges. The study also includes an assessment of sector-specific developments in distributed ledger technologies (DLTs, such as blockchain), payments, crowdfunding, asset management, and advice and insurance (Insurtech).

The market study concluded that the impact of Fintech was generally positive from a competition and consumer welfare perspective. Fintech is both a product innovation (driving more choice for consumers and unbundling financial services) and a process innovation (using inputs such as information and data more efficiently). This is a prototypical pro-competitive shock, forcing incumbents to improve quality/variety and/or compress prices, costs, and trade margins.



CASE STUDY: ESTONIAN COMPETITION AUTHORITY (ECA) – (NO NAME)

Estonia – Issue identification:

The Estonian Competition Authority (ECA) learned from the press that the incomes of the public notaries exceeded the reasonable level in comparison of not only the highest public officials but also the directors of publicly owned enterprises. As the notary fees were fixed in the law, there was no discretion left for the notaries to reduce the fees and no room for price competition. That led to the idea that consumers would profit from price competition in the field of notary services.

The Competition Authority recommends setting notary fees not as fixed rates but as an upper threshold (limit prices), notaries then being able to use price lists below that limit and, if necessary, then to agree more favorable prices with a client. With this, the consumer gets the opportunity to choose between notaries offering the same operations for different prices. As a result of the change, competition will drive the prices lower in certifying high-price real estate transactions and other similar operations, the notary fee rates of which currently exceed the cost-based level. Additionally, the price competition will ensure better transparency upon choosing a notary.



CASE STUDY: KENYAN COMPETITION AUTHORITY – (NO NAME)

Kenya – Issue identification:

The Competition Authority of Kenya received information that the Accountants professional body had issued a notice to its members to set minimum prices for their services. The importance of all Professional services in the realization of the country's economic agenda cannot be underscored. This implies that, existence of competition or its non-existence in the Professionals Services Sector will have an impact (positive/negative) in achievement of the development blueprint. In addition, Minimum (floor) price controls will hinder the attainment of Economic and Social Rights by every citizen of Kenya as envisaged under Article 43 of the Constitution. Minimum prices will result in consumers, unfortunately mostly medium and small enterprises firms (MSMEs) paying higher rates/fees hindering the achievements of the Post COVID Recovery Strategy.

It is against this background that the Authority issued an advisory opinion to the relevant ministry stating that this action would not only contravene the Constitutional provisions on attainment of Economic and Social Rights by every citizen of Kenya, Sections 9, 21, 22 and 29 of the Competition Act, it would also be going against international best practice.



STEP 2: WHO ARE THE KEY STAKEHOLDERS? WHY AND HOW SHOULD CA'S ENGAGE WITH THEM?

ONCE AN ISSUE IS IDENTIFIED, FOR ADVOCACY INTERVENTIONS TO BE EFFECTIVE, IT IS IMPORTANT TO:

- IDENTIFY THE RELEVANT STAKEHOLDERS; AND
- TAILOR THE ADVOCACY INTERVENTIONS TO THOSE STAKEHOLDERS TO MAXIMIZE THE IMPACT⁵

IDENTIFYING STAKEHOLDERS

DEPENDING ON THE ADVOCACY INTERVENTION, STAKEHOLDERS MAY INCLUDE:

- COURTS, GOVERNMENT DEPARTMENTS, REGULATORS, AND PUBLIC BODIES AT NATIONAL, REGIONAL, OR LOCAL LEVELS
- BUSINESS PEOPLE, BUSINESSES, AND TRADE BODIES INVOLVED IN THE AFFECTED MARKETS, INCLUDING PRODUCERS OF INPUTS, SUBSTITUTES, AND COMPLEMENTS
- CONSUMERS, CONSUMER ADVOCATES, AND CONSUMER GROUPS
- PROFESSIONAL ORGANIZATIONS AND TRADE UNIONS
- CHAMBERS OF TRADE, COMMERCE OR INDUSTRY, AND CHAMBERS OF AGRICULTURE
- LEGAL AND INDUSTRY EXPERTS IN THE AREA STUDIED
- ACADEMICS WITH SPECIALIZATION IN THE SECTOR
- MEDIA
- OTHER PARTIES THAT MAY HAVE AN INTEREST IN THE MARKET.

ENGAGING WITH STAKEHOLDERS

HAVING IDENTIFIED THOSE STAKEHOLDERS THAT WILL BE MOST CLOSELY INVOLVED WITH THE PROJECT, IT IS USEFUL TO IDENTIFY HOW BEST TO ENGAGE WITH THEM THROUGHOUT THE VARIOUS STAGES OF THE PROJECT. FURTHERMORE, IT CAN BE DESIRABLE NOT ONLY TO DEVELOP AN INITIAL STAKEHOLDER STRATEGY BUT ALSO TO REVIEW AND UPDATE IT ACCORDINGLY DURING THE ADVOCACY EFFORT.

ADDITIONALLY, IN THE FRAMEWORK OF THE ANALYSIS OF REGULATORY INTERVENTIONS, IT WOULD BE USEFUL TO JOINT GUIDELINES WITH THE REGULATORS TAKING INTO ACCOUNT THE OBJECTIVE OF ADDRESS THE CHANGING NEEDS OF INCREASINGLY COMPLEX ECONOMY.

⁵ On stakeholder engagement see also: "ICN Draft Market Studies Good Practice Handbook" of April 2016, Chapter 4, available at https://www.internationalcompetitionnetwork.org/wp-content/uploads/2018/09/AWG_MktStudiesHandbook.pdf

THERE ARE A NUMBER OF POSSIBLE APPROACHES TO ENGAGING WITH STAKEHOLDERS, INCLUDING:

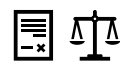
- ONE-TO-ONE MEETINGS (USUALLY REQUIRED ON REGULAR BASIS WITH INFLUENTIAL STAKEHOLDERS)
- INVITING STAKEHOLDERS TO SIT ON STEERING, ADVISORY OR WORKING GROUPS
- PRESENTATIONS TO STAFF/SENIOR MANAGEMENT TEAMS/BOARDS
- RECRUITING TEAM MEMBERS FROM STAKEHOLDER ORGANIZATIONS
- JOINT WORKING WITH STAKEHOLDER ORGANIZATIONS ON KEY ISSUES
- CONDUCTING A PUBLIC CONSULTATION EXERCISE

CASE STUDY: SUPERINTENDENCE OF INDUSTRY AND COMMERCE (SIC) - DEVELOPMENT AND PROMOTION OF A TECHNICAL STANDARD AIMED AT ESTABLISHING GOOD PRACTICES IN TERMS OF FREE ECONOMIC COMPETITION

Colombia – Key Stakeholders:

The authority's competition advocacy initiative was implemented in a joint effort with the national standardizing entity. This initiative consisted of the development and promotion of a technical standard aimed at establishing good practices in terms of free economic competition. The initiative's driving issue was the need identified by the competition authority to strengthen the culture of free competition in the markets.

The authority considered the large number of complaints submitted to the agency by citizens and market agents, reporting signs of anticompetitive behavior on both a small and a larger scale. The technical rule is the result of the dialogue between standardizing entity, competition authority, academy and market agents, with a view to issuing a technical standard as a self-regulation tool. In this way the competition authority identified that with this strategy it would have a long-term and progressive impact on Colombian markets, regardless of the size, activity or economic agents sector that participate in them. Consequently, the authority sought to counter the situation at hand by means of strengthening its enforcement powers (deterrence and repression of the behaviors), and through the enhancement of its advocacy strategies. Strengthening of a compliance culture then had to focus on organizations of all sizes and with participation in any market across the economy.



CASE STUDY: SWEDISH COMPETITION AUTHORITY (SCA) - COMPETITION ON DIGITAL PLATFORM MARKETS IN SWEDEN

Sweden – Key Stakeholders:

The Swedish Competition Authority (SCA) has conducted a sector inquiry in five selected markets, in order to assess whether there are obstacles to effective competition on digital platforms in Sweden, and whether it is possible to exercise effective enforcement, or if there is a need for regulatory reforms or supplementary regulation regarding digital platforms.

In this sense, market actors were approached through public consultation with follow-up requests for information. Part of the analysis in this sector inquiry was based on a selection of 16 platforms on five different markets. The selection was made after a review of markets that had been examined in sector inquiries in other countries and in previous cases from the SCA, as well as markets that had been mentioned in tip-offs and complaints to the SCA. The selection was also made after considering information submitted to the SCA during the consultation phase of this sector inquiry.



CASE STUDY: EURASIAN ECONOMIC COMMISSION - PROCEDURE FOR DETERMINING THE COUNTRY OF ORIGIN OF GOODS

Eurasian Economic Commission – Key Stakeholders:

The Eurasian Economic Commission (EEC) Act titled “*The Procedure for Determining the Country of Origin of Goods for the Purposes of Public Procurement*” was adopted in 2020. The Act aimed at providing public procurement access to suppliers from all the member-states of the Eurasian Economic Union (EAEU).

EEC invited national regulators, business and trade associations to discuss the provisions of the Act, indicate their concerns and propose relevant and innovative dispositions. Producers and manufacturers of a wide range of products discussed online and gave written opinions regarding the markets affected by the Act. The open discussion gave the opportunity for both EEC and the stakeholders to find appropriate solutions in an extremely sensitive issue, in a relatively short time.



CASE STUDY: UNITED STATES DEPARTMENT OF JUSTICE (DOJ) - CRIMINAL COMPLIANCE POLICY

United States – Key Stakeholders:

In July 2019, the Antitrust Division of the United States Department of Justice (DOJ) announced a new policy for incentivizing corporate antitrust compliance. Under the policy, for the first time, the DOJ announced that it would consider compliance efforts at the charging stage of its criminal (cartel) investigations. Also, incident to its policy change, the DOJ published a guidance document that focuses on the evaluation of corporate compliance programs at both the charging and sentencing stages of criminal investigations under antitrust laws.

The DOJ involved numerous stakeholders in developing and promoting its 2019 compliance policy. It first consulted with officials and sought guidance from other agencies to ensure consistency with agency-level practice. Also, it sought compliance guidance from the U.S. Sentencing Commission, international organizations, including the OECD, and other international enforcers. Finally, in April 2018, before the compliance guidance was published, the DOJ hosted a public roundtable to understand the views of in-house and outside legal counsel, as well as several international enforcers, with regard to compliance.

Since publication, DOJ officials have promoted the new compliance policy in a variety of fora, including on the Division's public website and through numerous public statements and outside publications, to continue to reach these same stakeholders and encourage the implementation and enhancement of antitrust compliance programs.



CASE STUDY: AUTHORITY OF KENYA – CEMENT INDUSTRY

Kenya – Key Stakeholders:

The Competition Authority of Kenya issued an advisory opinion to the government against increasing the import duty of clinker which is a key raw material in the manufacturing of cement. Cement is a key input in construction and development of infrastructure in the economy. In line with its economic blueprint dubbed “Vision 2030”, the government has prioritized the construction of low cost houses and development of road infrastructure as drivers for the double digit economic growth. There has been tremendous growth in cement consumption in the country that attracted (entry of more) cement producers with several cement manufacturers venturing into the Kenyan market bringing to five (5) the total number of top cement producers in the country. Clinker is a key raw material for the cement production. Most of the cement manufacturers in Kenya either buy clinker directly from their competitors or import. Imported clinker is cheaper in comparison to locally sourced clinker. So any industrial policy aimed at increasing import duties would raise the barriers to entry not only in the cement grinding market but also the clinker production since one market player is dominant in the upstream markets. The increase in import duty for clinker would have led to market exit by key firms thereby causing anti-competitive practices occasioned by high market concentration, incidences of refusal to deal, limited consumer choices and above all, job losses cutting of thousands of citizens who depend on the cement industry for their livelihoods. Prices of cement would also have increased by 20% - 40% in the short run.



CASE STUDY: UNITED STATES FEDERAL TRADE COMMISSION (FTC) - COPA ASSESSMENT PROJECT

United States – Key Stakeholders:

Certificates of Public Advantage (COPAs) are regulatory regimes adopted by state governments intended to displace competition among healthcare providers and immunize mergers and collaborations from antitrust scrutiny. States are increasingly using COPAs to allow certain hospital mergers to proceed despite clear antitrust concerns, with the assumption that state regulatory oversight will mitigate the effects resulting from the elimination of competition and allow the hospitals to achieve certain efficiencies. The FTC had undertaken this advocacy initiative, including a workshop and a market study, to develop a better understanding of the actual benefits and harms associated with COPAs, and to advance the agency's policy and enforcement strategies.

First, the FTC sought and received stakeholder input and public comments that allowed the inclusion of relevant empirical research and aided in the design of the COPA Workshop and COPA Market Study. Then, at the Workshop, FTC engaged with academics, health policy experts, healthcare industry stakeholders, state regulators, and law enforcers, which gave further insights for the development of the Market Study. Also, it is important to mention that FTC constantly issued press releases and that various media attended the Workshop, informing of the current study design to the general public. Finally, as part of the study, FTC issued information requests to five health insurance companies and two health systems.



CASE STUDY: UNITED STATES FEDERAL TRADE COMMISSION (FTC) - HEARINGS ON COMPETITION AND CONSUMER PROTECTION IN THE 21ST CENTURY

United States – Key Stakeholders:

The FTC held a series of public hearings in 2018-19 called: 'Hearings on Competition and Consumer Protection in the 21st Century', examining 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.

To that aim, FTC chose the format of the hearings to meet the agency's goals of involving as many stakeholders as possible and facilitating informed dialogue on various topics. The FTC involved stakeholders at all stages of the hearing's initiative. Public comments were sought throughout the process, beginning with the FTC's announcement of the hearing's initiative in June 2018. Stakeholders involved in the process and target audiences included attorneys, academics, economists, business people, government decision-makers, consumers, and the media. In addition, the FTC webcast and transcribed all of the hearings, and made the archived video and written records of each hearing session available online.



STEP 3: IMPLEMENTATION AND MONITORING OF ADVOCACY ACTIVITY

THE IMPLEMENTATION AND MONITORING OF THE ADVOCACY ACTIVITY ALLOWS THE COMPETITION AUTHORITIES TO (I) IDENTIFY OPPORTUNITIES FOR IMPROVEMENT, (II) ANALYZE IN THE DIFFERENT SECTORS IF THE CURRENT REGULATIONS RESPOND TO THE CONDITIONS OF EACH MARKET OR IT IS NECESSARY TO APPLY OTHER REGULATION ALTERNATIVES AND (III) ASSESS THE IMPACT OF THE COMPETITION TO IMPROVE THE QUALITY OF REGULATIONS AND MEASURE THE EFFECTIVENESS OF ADVOCACY ACTIVITY

IMPLEMENTATION

AS THE CASE STUDIES AT THE END OF THIS AND OTHER COMPONENTS OF THE TOOLKIT SHOW, THE IMPLEMENTATION OF THE ADVOCACY ACTIVITY MAY INCLUDE:

- WRITTEN GUIDANCE AND REPORTS (WHICH MAY BE PUBLISHED AND ACCESSIBLE TO STAKEHOLDERS VIA THE INTERNET)
- TRAINING OF GOVERNMENT OFFICIALS
- RECOMMENDATIONS TO THE GOVERNMENT IN RELATION TO GOVERNMENT RELATIONS WITH THIRD PARTIES
- RECOMMENDATIONS TO THE GOVERNMENT TO CHANGE THE LAW.

IT CAN BE USEFUL TO DESIGN PLANS AND MEASURES THAT ENABLE GOVERNMENT OFFICIALS, BUSINESSES AND OTHER STAKEHOLDERS TO UNDERSTAND COMPETITION POLICY IN A PRACTICAL AND EFFECTIVE MANNER, AS WELL AS TO ESTABLISH A DETAILED PROJECT PLAN WITH TIMETABLES TO GUIDE THE IMPLEMENTATION PROCESS.

MONITORING

COMPETITION AGENCIES MAY MONITOR THE PROGRESS OF THE ADVOCACY ACTIVITIES THEMSELVES OR WITH THE ASSISTANCE OF OTHER INSTITUTIONS.

TOOLS THAT AGENCIES MAY USE INCLUDE:

- PUBLICATION OF MONITORING REPORTS, ASSESSING THE SITUATION AFTER THE ADVOCACY INTERVENTION
- FEEDBACK RECEIVED FROM RECIPIENTS OF ADVOCACY ACTIVITY – WHICH MAY BE FORMAL OR INFORMAL
- MEASURING USAGE OF ADVOCACY WORK PRODUCTS.

CASE STUDY: HELLENIC COMPETITION COMMISSION (HCC) - COMPETITION AND ART

Greece – Implementation:

The HCC hosted a creativity contest in its attempt to promote the principles, message and culture of competition through the use of modern digital means. The aim of the contest was to choose the best proposal or idea from a functional, aesthetic and technical point of view for the creation of a Symbolic Figure and a Video/Message. Prizes are going to be awarded in both categories listed above.



CASE STUDY: ADMINISTRATIVE COUNCIL FOR ECONOMIC DEFENSE OF BRAZIL - COMPETITION IN DIGITAL MARKETS

Brazil – Implementation:

In September 2019, the Administrative Council for Economic Defense (CADE) of Brazil released the report: '*BRICS in the Digital Economy*'. The report provides a general overview of competition policies and enforcement carried out by the BRICS countries in digital markets, presenting different experiences in the enforcement of antitrust standards as a means to explore common challenges and possible understandings of each authority.

In August 2020, the Department of Economic Studies of CADE released the paper: '*Competition in Digital Markets: a review of expert reports*'. The work was aimed at summarizing the analysis of other antitrust authorities and international research centers in order to improve CADE's internal policies and ensure its antitrust policies are up-to-date with technical and scientific advancements.



CASE STUDY: AUSTRIAN FEDERAL COMPETITION AUTHORITY - THE MACROECONOMIC EFFECTS OF MERGERS IN THE CONTEXT OF THE COVID-19 CRISIS (SHUT DOWN MERGERS)

Austria – Implementation:

The COVID-19 pandemic and the restrictions put in place to deal with it have triggered a global economic crisis. Many companies have had to switch to survival mode from one day to the next. It is expected that competition conditions will change many markets in the long term, with an increased number of acquisitions being reported to the Austrian Competition Authority

The Austrian Competition Authority published a paper concerning the ‘Macroeconomic Effects of Mergers in the Context of the COVID-19 Crisis’ in July 2020. The position paper aims to provide useful information to companies that are notifying shutdown mergers, ensuring that these merger notifications are handled swiftly and efficiently.



CASE STUDY: SPANISH MARKETS AND COMPETITION AUTHORITY (CNMC) - LEVELLING THE PLAYING FIELD IN URBAN PASSENGER TRANSPORT: THE CASE OF PRIVATE HIRE VEHICLES (PHV)

Spain – Implementation:

The advocacy initiative of the Spanish Markets and Competition Authority (CNMC) focuses on the improvement of regulation of urban passenger transport, specifically on the regulation of taxi and PHV activities. The CNMC’s actions in this regard are clear and go in the direction of fair and equal treatment for every kind of operator, be it taxi or PHV, and the suppression of every rule that could unjustifiably restrict competition.

Firstly, in the context of active legal capacity, the CNMC legally challenged several decrees and local regulations regarding urban passenger transport. The Advocacy Department, in order to support the judiciary lawsuits, completed the appeals with economic reports focusing on the welfare impact of local regulations that set operating conditions for licenses of PHV.

Secondly, the CNMC issued a report given its opinion of the royal decree that modified the regulation on Private Hired Vehicles (PVH). In that report, the CNMC made recommendations to Spanish public authorities in order to develop a regulatory framework aligned with free competition and economic efficiency principles, that was to remove unfair discrimination between the sectors of taxi and PHV.



CASE STUDY: SPANISH MARKETS AND COMPETITION AUTHORITY (CNMC) - PUBLIC PROCUREMENT AND COMPETITION ADVOCACY

Spain – Implementation:

In parallel to antitrust enforcement, the CNMC deploys an intense advocacy activity in the area of public procurement, with the aim of disseminating best practices that foster competition within contracting authorities and public procurement policymakers.

The initiative is aimed at engaging with public bodies for the enhancement of competition in public procurement, therefore it encompasses different advocacy actions:

1. Guide on Public Procurement and Competition: The main resource document for procurement officials is our 'Guide on Public Procurement and Competition', which helps public procurement bodies choose the friendliest competition options when designing procurement processes, on the one hand, and recognize signs of bid-rigging among firms, on the other.
2. Technical assistance to the Government on the legal framework on public procurement: Following a consultation from the Government, the CNMC issued two reports on draft laws -the first on public procurement and the second on utilities procurement- to transpose the '2014 EU Directives on Public Procurement'. Several provisions of the final laws incorporate CNMC proposals to reinforce the collaboration between the CNMC and procurement bodies.
3. Assessing specific tender procedures as a competition consultative body: CNMC has issued over 30 reports on competition-related aspects on draft tender procedures at the request of procurement bodies at all levels of government (national, regional and local).
4. Training to procurement officials: CNMC has been very proactive in providing trainings to public officials since its creation, which is aimed at improving the design of tenders and facilitate detection of bid-rigging. Thanks to these sessions, the number of formal and informal contacts from contracting bodies to the CNMC has considerably increased in recent years.



CASE STUDY: JAMAICAN FAIR TRADING COMMISSION (FTC) - DEVELOPING A FRAMEWORK TO MANAGE AGGREGATE SPECTRUM HOLDINGS TO SAFEGUARD COMPETITION IN THE MOBILE TELECOMS SECTOR

Jamaica – Implementation:

The Spectrum Cap Policy (“The Cap”), administered by the Spectrum Management Authority (SMA), is the subject of the advocacy initiative of the Jamaican Fair Trading Commission (FTC). The Cap was introduced in 2014 with the objective of safeguarding competition in the mobile telecoms sector. The FTC deduced that the Cap was a means of ensuring there was adequate spectrum to accommodate future entry by limiting the amount of spectrum assignable to market participants. However, the system was too rigid and was likely compromising the ability of current market participants to offer quality mobile-based services, especially in light of the increased demand for mobile telecommunication services occasioned by the COVID-19 pandemic.

In May 2020, the SMA requested that the FTC conduct a study to assess competition in the mobile telecoms market, specifically about the Spectrum Cap Policy, which was up for review in August 2020. Accordingly, the FTC examined the spectrum management framework and systems used in assigning spectrum and proposed changes to improve service quality and offerings to consumers by recognizing the competitive constraints arising from current and potential market participants.



CASE STUDY: ITALIAN COMPETITION AUTHORITY (AGCM) - ADVOCACY REPORT FOR THE PURPOSE OF THE ANNUAL LAW ON COMPETITION

Italy – Implementation:

In 2009, a law provision introduced a mechanism to allow policymakers to regularly amend the economic regulation in Italy in a more pro-competitive manner. Every year the government would submit to the Parliament a 'Competition Bill', with legislative or regulatory changes inspired by recommendations made by the Italian Competition Authority (AGCM). Therefore, since 2010, the AGCM has submitted every year to the government a report containing all its advocacy proposals.

In preparing its '2021 Advocacy Report' for the government, the AGCM decided to focus on those sectors and reforms that would have the highest potential to boost productivity and competitiveness of the Italian economy, to address the challenges posed by the pandemic.

Many of the proposals of the '2021 Advocacy Report AGCM' came from previous advocacy recommendations and enforcement experience. Therefore, the approach was both reactive and *ex-officio*.



CASE STUDY: COMPETITION AND CONSUMER COMMISSION OF SINGAPORE (CCCS) - RETAIL PETROL MARKET INQUIRY TO IMPROVE TRANSPARENCY OF FUEL PRICES THROUGH FUEL KAKI

Singapore – Implementation:

Following a retail petrol market inquiry, the Competition and Consumer Commission of Singapore (CCCS) recommended that greater transparency of effective retail prices will help consumers make more informed choices and encourage a more competitive market.

Fuel Kaki is the solution to long-standing problems faced by consumers in comparing petrol prices and is an attempt to encourage a more competitive retail petrol market in Singapore. The idea is that if petrol price information were made more readily available and with greater transparency, thereby enabling consumers to compare prices, consumers would then be better equipped to make more informed petrol purchase decisions. This would in turn facilitate a more price-competitive retail petrol market in Singapore, as petrol retailers would then be encouraged to offer better prices and promotions to attract consumers.

Fuel Kaki presents up-to-date listed prices from each petrol retailer, a full list of discounts and rebate schemes offered, and an effective price estimator that helps consumers compare the effective price of retail petrol based on the discounts a consumer is entitled to.



STEP 4: EVALUATING THE EFFECTIVENESS OF ADVOCACY INTERVENTIONS

EVALUATION IS THE INVESTIGATION INTO THE EFFECTIVENESS OF POLICY INTERVENTIONS; POLICY IMPLEMENTATION; AND POLICY PROCESSES WITH A VIEW TO INFLUENCING FUTURE ADVOCACY AND POLICY DEVELOPMENT.

IT CAN BE USEFUL TO EVALUATE COMPETITION ADVOCACY ACTIVITIES IN ORDER TO ASSIST THE PRIORITIZATION OF FUTURE ADVOCACY ACTIVITIES AND IMPROVE HOW COMPETITION ADVOCACY IS CONDUCTED WITHIN THE AGENCY; DEMONSTRATE THAT THE AGENCY HAS MET ITS OBJECTIVES COST-EFFECTIVELY; AND HIGHLIGHT THE VALUE OF COMPETITION ADVOCACY INTERVENTIONS.

EVALUATION OF THE COMPETITION ADVOCACY ACTIVITY CAN TAKE PLACE:

- EX ANTE: TRYING TO ESTIMATE THE IMPACT OF THE ADVOCACY INTERVENTION BEFORE ITS OUTCOMES ARE KNOWN, OR
- EX POST: MEASURING THE IMPACT OF THE ADVOCACY ACTIVITY AFTER ITS OUTCOMES ARE KNOWN.

WHEN COMPETITION AGENCIES SET OUT TO EVALUATE THEIR ADVOCACY ACTIVITIES IT IS HELPFUL TO DECIDE THE OBJECTIVES OF THE EVALUATION AND THE BEST METHODOLOGY TO MEASURE THE EFFECTIVENESS OF THE ADVOCACY.

OBJECTIVES OF THE EVALUATION

THE EVALUATION OF ADVOCACY MIGHT SEEK TO ASSESS (AMONG OTHER THINGS) WHETHER THE AGENCY'S INTERVENTIONS:

- AFFECTED PARTICULAR POLICY OUTCOMES/INFLUENCED POLICYMAKING
- BENEFITED OTHER ACTIVITIES OF THE COMPETITION AGENCY (E.G., ENFORCEMENT ACTION)
- RAISED AWARENESS AMONGST VARIOUS STAKEHOLDERS AS TO THE BENEFITS THAT COMPETITION POLICY MAY BRING TO SOCIETY, OR IT MIGHT SEEK TO ASSESS THE EFFECTIVENESS OF THE AGENCY'S OWN PROCESSES WHEN IT ENGAGES IN ADVOCACY.

METHODOLOGY

COMPETITION AGENCIES CAN USE A VARIETY OF TOOLS IN ORDER TO ASSESS THE EFFECTIVENESS OF THEIR ADVOCACY INTERVENTIONS. SOME OF THEM INCLUDE:

- SURVEYS OF THE RECIPIENTS OF ADVOCACY EFFORTS — BE THEY GOVERNMENTAL OFFICIALS, BUSINESSMEN OR CONSUMERS
- PUBLIC OPINION POLLS
- STATEMENTS OR ASSESSMENTS BY INDEPENDENT EXPERTS
- MEASURING THE NUMBER OF COMPETITION ADVOCACY INITIATIVES
- MEDIA COVERAGE AND INTERNET EXPOSURE.

CASE STUDY: SWEDISH COMPETITION AUTHORITY — REGIONS' PROCUREMENT OF HEALTHCARE PROFESSIONALS

Sweden – Effectiveness of advocacy interventions:

This advocacy initiative took the form of a follow-up report on the findings made by the Swedish Competition Authority (SCA) in 2015 regarding public procurement of healthcare staff. In its '2020 Follow-up Report', the SCA tried to identify if there had been an improvement within the regional procurement departments and if there had been any improvement regarding the behaviors of the contracting companies in the healthcare industry.

The '2020 Follow-up Report' was based on interviews, questionnaires, and agency ex-officio intelligence, which allowed the SCA to find persistent difficulties in staffing healthcare centers, particularly in rural areas.



CASE STUDY: EL SALVADOR'S COMPETITION SUPERINTENDENCE - EX-POST IMPACT ASSESSMENT OF THE SC DECISIONS

El Salvador – Effectiveness of advocacy interventions:

As interventions of public entities have effects over a variety of agents, the Competition Superintendence of El Salvador (SC) developed a methodology to perform impact assessments of its anticompetitive practices decisions and merger reviews that allows it to present to the general public, in an easily understandable manner, why the SC intervention was in benefit of consumers and economic efficiency.

In the 2018 - 2019 period the SC performed ex-post assessments of past decisions in the following sectors: breweries, fuels, construction, ports, and telecommunications. Those assessments suggested savings for consumers amounted to USD \$144,665,499.95 (in total) resulting from the SC intervention through the investigation of anticompetitive practices and merger review, which allowed the elimination or prevention of price increases in the respective goods.



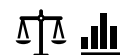
CASE STUDY: EL SALVADOR'S COMPETITION SUPERINTENDENCE - AUDITS TO PROMOTE COMPETITION PRINCIPLES IN PUBLIC PROCUREMENT

El Salvador – Effectiveness of advocacy interventions:

The Competition Superintendence (SC) studied public procurement bid files and analyzed the behavior of offers and awards of four items purchased by the Social Security Institute of El Salvador (ISSS) during a 5-year period, considering international best practices and experiences in public procurement and competition. The SC also screened the procurement files of three out of the four items and created a database tailored to each good or service purchased. In the future, that database might help the ISSS to analyze the historical behavior of offers and awards and to check for possible alerts of collusive offers.

The project also concluded with 20 non-binding recommendations related to the pro-competitive design of ISSS tendering instruments and cover the following issues: mandatory on-site visits, offer submission, offers language, term to collect contracting documents, term to request clarifications, answers to questions, design of technical requirements, experience evaluation, evaluation criteria, the extension of a contract, reveal the budgetary availability and reference prices, award through a draw, subcontracting, modifications to the amount awarded by contract, revealing award results and digital bid submission.

In 2018, before delivering its final report, the SC monitored the implementation of the 20 recommendations envisaged through a brief review of a sample of public procurement instruments presented by the ISSS and a selection of 11 instruments of awarded processes from the January 2017 to April 2018 period that were randomly chosen by the SC in the country's website for public procurement. The SC verified changes and concluded that 60% of the recommendations had seen progress in implementation, 25% remained as opportunities to adopt international best practices and 15% did not show variations by 2018.



CASE STUDY: FEDERAL TRADE COMMISSION (FTC) OF UNITED STATES - THE IMPACT OF PHYSICIAN GROUP AND HEALTHCARE FACILITY MERGERS (A MERGER RETROSPECTIVE)

Effectiveness of advocacy interventions:

Merger retrospective analysis seeks to determine, *ex post*, whether a merger has affected competition in one or more of the markets impacted by the merger. The analysis can shed light on whether the agency's threshold for bringing an enforcement action in a merger case has been too permissive. It can also assess the performance of a pricing pressure index, merger simulation model, or other tools used to predict the effects of a proposed merger.

The Federal Trade Commission has issued orders to six health insurance companies to provide information that will allow the agency to study the effects of physician group and healthcare facility consolidation that occurred from 2015 through 2020.

The results of the study should aid the FTC's enforcement mission by providing much more detailed information than is currently available about how physician practice mergers and healthcare facility mergers affect competition. The study results will also aid policymakers by providing important evidence documenting how mergers and acquisitions of physician groups and healthcare facilities affect the proper functioning of healthcare markets. Advocacy messages will be formulated and a strategy to reach stakeholders will be developed as the study continues.



CASE STUDY: SUPERINTENDENCE OF INDUSTRY AND COMMERCE (SIC) OF COLOMBIA

Colombia – Effectiveness of advocacy interventions:

The Superintendence of Industry and Commerce of Colombia (SIC) developed a report that seeks to identify the implementation of the recommendations issued by the Competition Advocacy Working Group in the framework of the concepts carried out during the period from September 20, 2018, to June 20, 2020, regarding the draft regulatory acts proposed by the regulatory authorities. The above, in order to define the effectiveness of the competition advocacy activity.

The report aims to help the Superintendence of Industry and Commerce to identify opportunities for improvement in order to focus its efforts in the short and medium term, identifying:

- The reasons why the recommendations are not accepted by the regulatory entities,
- Which are the entities that to a lesser extent accept these recommendations and,
- Which entities have never requested concepts from the Competition Advocacy Working Group of the SIC.



