

ICN Training on Demand Module V-3 Competition Assessment: Case Selection & Prioritization
[Slide 1 - Competition Assessment Sub-module]

[Slide 2 - Welcome and Introduction]

MICHELE PACILLO: Hello, welcome to this ICN training module on competition assessment. My name is Michele Pacillo. I'm from the Italian Competition Authority, the International Department.

MOLLY ASKIN: And I'm Molly Askin at the Federal Trade Commission in the United States. I work in the Office of International Affairs.

MICHELE PACILLO: Now, we will talk about how to identify opportunities for competition assessment and how to prioritize competition assessment among other advocacy activities. There are indeed different ways, not mutually exclusive, of identifying opportunities for competition assessment, according to the ICN Recommended Practices 4 and 5.

[Slide 3 - How to identify opportunities for competition assessment]

MICHELE PACILLO: For instance, competition agencies may wish to engage in structured and long-term relationship with the relevant public organizations and other government agencies so as to identify early opportunities for competition assessment and incorporate them into their overall planning. Of course, this strategy fits very well when the institutional framework provides for a formal involvement of the competition agency in a drafting legislative process or if a regulatory impact assessment requirement is imposed on all the government bodies when introducing a new regulation on economic activities or when, on the basis of legislative provisions, there are memorandum understandings or informal procedures which enable competition agencies to cooperate with sector regulators.

[Slide 4 - Informal ways of identifying competition assessment]

MOLLY ASKIN: If not involved formally in the process, a competition agency may identify possible areas for future competition assessment work by monitoring governments and legislative agendas. Conducting market studies sector inquiries and other research on specific markets or economic sectors may also help a competition agency identify, consider, and select competition assessment opportunities.

[Slide 5 - Outreach initiatives towards government and]

MOLLY ASKIN: An additional way is to conduct specific outreach initiatives with respect to government, including central, regional or local governments, as well as the legislature or other bodies. For example, this could occur through training, holding public conferences, seminars, informal meetings with government officials. These initiatives help further a culture of competition and can also help agencies better identify opportunities and possible areas for competition assessment.

MICHELE PACILLO: Yes, let's not forget other interested parties. Indeed, it's important that competition agencies are open to consider relevant expertise from academia, consumer organizations, independent nongovernment bodies and the private sectors. True, for instance, consultations in the form of a permanent forum or occasional seminars and conferences on specific topics or through voluntary submissions, for instance, in the form of complaints from interested parties, all these may provide the helpful indications of opportunities for competition assessment.

[Slide 6 - How to select competition assessment opportunities]

MOLLY ASKIN: Let's move on and talk about prioritization. Competition assessment is only one among other advocacy activities carried out by competition authorities.

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We will discuss the principles presented in recommended practice 6. Selection criteria can give guidance to competition agencies to focus its actions on the most significant matters and consider the interaction between law enforcement and advocacy. Selection criteria can be particularly helpful for smaller agencies in allocating resources.

MICHELE PACILLO: Well, I would start by an obvious consideration the likelihood that the policy will be adopted. If the chances of a policy for being approved are rather low, there is no point in investing time and resources to assess its competition impact. Then I would consider the potential or actual competitive impact of the policy in question. The impact depends on the extent and the nature of the possible restriction on competition, but also on the importance of the economic sector or matter at stake.

MOLLY ASKIN: What do you mean by importance of the economic sector or matter at stake?

MICHELE PACILLO: Well, the policy may concern an economic activity which is relevant for the domestic economy or for the consumers, taxpayers, or for both. The importance of an economic sector for the economy as a whole can be measured, for instance, by the following proxies.

[Slide 7 - Selecting a sector for the importance to the economy]

MICHELE PACILLO: Its size, the size of the market concern, for example, in terms of number of consumers or the geographic area affected by the policy. Then the volume of commerce concerned, its contribution to the GDP, its connection to the other economic sectors as provider of inputs or services, for instance, the energy sector and, finally, its significance for investment and productivity.

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[Slide 8 - Other selection criteria]

MOLLY ASKIN: Let's not forget that there can be spillover effects into other sectors. For example, there may be wider gains through innovation, improved distribution or business processes because procompetitive reforms in one sector affect others. Some agencies also consider the expected additional impact on the economy more generally. This captures, for example, whether, as a result of the agency's actions, economic efficiencies and productivity would be expected to increase, as well as the impact on macroeconomic variables, for example, inflation or government debt.

MICHELE PACILLO: That's right, Molly. This is also a factor to be considered, especially in today's world, where digitalization and the internet are changing the way of doing business in many sectors.

MOLLY ASKIN: What about the economic sectors that are important for consumers and taxpayers?

[Slide 9 - Selecting a sector for its importance to consumers]

MICHELE PACILLO: Well, when selecting an economic sector for its relevance for consumers or taxpayers, the competition agency may generally look at the following of proxies, the share of consumer expenditures for the relevant products or services, the fact that the goods or services are purchased by the government, this can have an impact on the public finances and ultimately on taxpayers, and also the impact on vulnerable consumers. In other words, the likelihood that a procompetitive reform may contribute to the alleviation of poverty or improve the quality of life of this category of consumers.

MOLLY ASKIN: So to sum up, the potential or actual competitive impact of the

ICN Training on Demand Module V-3 Competition Assessment: Case Selection & Prioritization policy in question, across sectors and the economy, is an important factor to consider when setting priorities and selecting opportunities for competition assessment. Competition agencies also use criteria linked to institutional and procedural considerations. These practical criteria should not be overlooked or underestimated.

[Slide 10 - Practical considerations when selecting]

MOLLY ASKIN: Competition agencies also use criteria linked to institutional and procedural considerations. These practical criteria should not be overlooked or underestimated.

[Slide 11- Other practical considerations]

MOLLY ASKIN: Such considerations can include the risks and costs associated with a competition assessment project, the institutional significance of such a project and the project's timeliness.

[Slide 12 - Risks and costs associated with a competition]

MICHELE PACILLO: That's right, Molly. For example, in terms of risks, the agency may consider the likelihood of a successful delivering on a competition assessment project taking into account factors such as the likelihood of gathering sufficiently strong arguments or the complexity of the assessment itself, the know-how, the expertise within the authority.

Another risk factor is the policymaker's perceived openness to competition assessment, which may be influenced by the type of relationship with the competition agency and by the level of competition culture in that particular environment. It is important for competition authorities to be able to read the political contest and changes by acknowledging that

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sometimes it might be counterproductive to insist on a particular project because it is simply impossible to turn the tide towards competition.

MOLLY ASKIN: Agencies also consider the costs relating to a potential competition assessment project. This includes understanding available financial and staff resources and how those resources can be allocated to a particular competition assessment. Costs will be different for each type of assessment because different sets of advocacy tools will best address the matter at hand in the available time. Resource allocation decisions should consider the potential costs to the public as well as to the agency of pursuing particular activities.

[Slide 13 - Other prioritization principles]

MOLLY ASKIN: Besides the available resources, agencies should consider a particular project within the context of its overall priorities. In this regard, it is important to consider the goals and likelihood of a successful competition assessment compared to conducting other advocacy work. Prioritization of competition assessments can also include how an assessment may complement competition law enforcement.

MICHELE PACILLO: Yes, agency may decide to prioritize a project because of its institutional significance.

[Slide 14 - Institutional significance]

MICHELE PACILLO: A project may have such significance because, for instance, it applies an innovative approach or you can establish legal precedents or you can test new legal economic approaches, theories, or you can build up credibility of the agency or it can be a useful tool for the purposes of capacity building. For example, the fact that an agency may be trying to establish a new president does -- to expand on how competition law has been

ICN Training on Demand Module V-3 Competition Assessment: Case Selection & Prioritization interpreted so far, may well justify devoting substantial resources to that particular type of case even if the consumer benefits that are directly associated with the positive outcome are likely to be relatively small. Indeed, establishing a precedent or even the associated deterrent effect may bring benefits to the competition environment that are proportionally much greater than the direct benefits associated with individual enforcement action.

[Slide 15 - Other institutional considerations relevant]

MOLLY ASKIN: Another institutional consideration focuses on the agency's existing expertise. In which sectors do agency staff have experience and knowledge? Which issues are already on the competition agency's radar? Indeed, these sectors can be good candidates for competition assessment. If past advocacy, monitoring or enforcement activity indicates, for example, a history of anticompetitive conduct or competition concerns, a pattern of unexplained higher prevailing prices than in a similarly situated economy or high market concentration or high barriers to entry within the sector.

Finally, agencies may also prioritize a project based on its timeliness.

[Slide 16 - Prioritization Timeliness]

MOLLY ASKIN: For example, the degree of liberalization of the market may matter since an advocacy intervention may be particularly beneficial at the outset of a liberalization process rather than later.

[Slide 17 - Greetings]

MOLLY ASKIN: And this concludes the second submodule. Thank you for joining us for this competition assessment module.

MICHELE PACILLO: Thank you.

[Slide 18 - End of submodule]