



## **Advocacy Toolkit**

### **Part I: Advocacy process and tools**

*Prepared by*

**ICN ADVOCACY WORKING GROUP**

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## Contents

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<b>Introduction.....</b>	<b>3</b>
<b>Component 1: What are the relevant competition advocacy issues? .....</b>	<b>5</b>
<b>Component 2: Who are the key stakeholders? And how should we engage with them? .....</b>	<b>13</b>
<b>Component 3: Implementation and monitoring of advocacy activity .....</b>	<b>21</b>
<b>Component 4: Evaluating effectiveness of advocacy interventions .....</b>	<b>29</b>

## Introduction

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The mission of the Advocacy Working Group (AWG) is to develop practical tools and guidance, and to facilitate experience sharing between ICN member agencies, to improve the effectiveness of ICN members' competition advocacy activities.

### **What is meant by competition advocacy?**

For the purposes of this document, 'competition advocacy' "...refer[s] to 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"<sup>1</sup>.

### **What is the purpose of the Advocacy Toolkit?**

The purpose of the Advocacy Toolkit is to provide an overview of the advocacy process and the range of tools available in order to:

- 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.

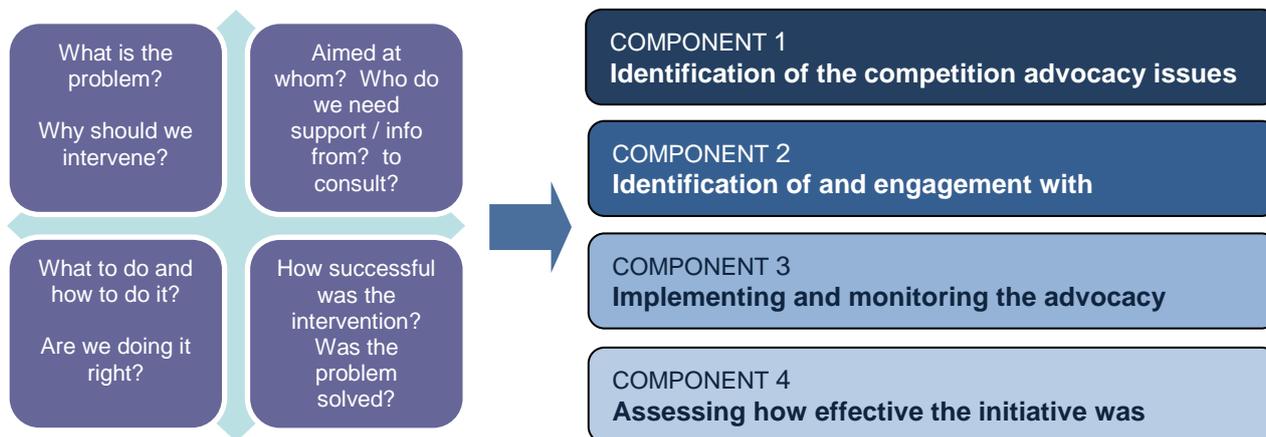
The Toolkit is aimed at all those engaged in competition advocacy.

The Toolkit does not seek to reflect ICN members' consensus on good practices in carrying out competition advocacy. Rather it is intended to be a resource from which those engaged in competition advocacy can draw.

The Toolkit recognises that competition advocacy activities can take many different forms, but identifies certain steps common to many effective advocacy projects. These are presented in the Toolkit as 'components' as follows:

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<sup>1</sup> See ICN 'Advocacy and Competition Policy' Report 2002, available at [www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf).



Each component of the Toolkit includes case studies from ICN member agencies, giving examples of how competition agencies conduct their advocacy activities in practice. The case studies describe the various steps in a particular advocacy project, with a particular focus on the relevant component.

To complement the Toolkit, the AWG has created a Competition Advocacy Postings facility on the ICN website<sup>2</sup> 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.

### Thanks

The AWG is grateful to the ICN member agencies that provided case studies or input into the drafting, and to Dimitris Mourkas at King's College London for his contribution to the drafting of the Toolkit.

<sup>2</sup> The posting facility can be found here: [www.internationalcompetitionnetwork.org/working-groups/current/advocacy/postings.aspx](http://www.internationalcompetitionnetwork.org/working-groups/current/advocacy/postings.aspx).

## Component 1: What are the relevant competition advocacy issues?

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### Overview

When they engage in competition advocacy, competition 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 competition law and policy can play in promoting and protecting welfare enhancing competition wherever possible, among economic agents, public authorities, the judicial system and the public at large<sup>3</sup>.

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 policy makers
- seek to avoid difficult or uncertain conflicts between competition laws and other bodies of law or regulation, 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.

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'<sup>4</sup>. Agencies may also identify advocacy opportunities based

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<sup>3</sup> See ICN 'Advocacy and Competition Policy' 2002 Report, available at [www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc358.pdf), where these are identified as the two main branches of competition advocacy.

<sup>4</sup> '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 organisations, international organisations and companies, research communities, and on-line and off-line 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.

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 regulations. Also, agencies sometimes discover advocacy opportunities while conducting enforcement activities; investigating a certain market/sector; or pursuing a complaint they have received.

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. Policy makers 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 institutionalised. 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 policy making.

Having identified advocacy issues, it may be appropriate for an agency to prioritise them against each other and against other agency commitments. For further information on prioritisation, please refer to the 'Strategic Planning and Prioritization' chapter of the ICN Competition Agency Practice Manual, available at [www.icn-istanbul.org/submenu/materials.aspx](http://www.icn-istanbul.org/submenu/materials.aspx).

The case studies at the end of this and other components of the Toolkit illustrate how different competition agencies have identified competition advocacy issues in practice.

## Case Study: FAS-Russia – Identification of Issues

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**Issue:** At a meeting of the EC ENPI Black Sea Basin Programme the representatives of regional Governments of the Black Sea and Mediterranean littoral regions of Bulgaria (Varna), Greece (Tessaliniki), Russia (Krasnodar, Rostov-on-Don), Turkey (Sinop), and Ukraine (Odessa) shared their concerns regarding the existence of a dominant intermediary agricultural services firm involved in purchasing farmers' products at low prices and selling them to food stores and processing factories at monopoly high prices. Thus, due to their pricing policies the farmers did not have sufficient margin for reinvesting and financing their working capital requirements, which could lead to a reduction in output, while the consumers were exploited by monopoly high pricing. The local competition authorities encountered difficulties in their attempts to prosecute due to a lack of evidence.

The Russian participants in the meeting discussed this issue with FAS-Russia. After analysing this situation the agency suggested that the farmers be provided an alternative way of reaching their customers and possibly reaching new customers. This could be undertaken through the establishment of an Internet based electronic commodity exchange. Technically such an exchange could be tailored from the Russian Government procurement web-sites which had helped reduce public procurement costs by an amount equivalent to \$ 1 billion, although some adjustments would be required. The establishment of an electronic exchange would help to establish direct links and bargaining between producers and customers and thus help to avoid rent seeking by the intermediaries and resulting exploitation of the buyers and sellers through unfair product pricing. The impact of the project may also have additional benefits by allowing farmers to access new customers and allowing customers to trade directly with farmers, thereby supporting regional economic growth.

**Key Stakeholders:** The key stakeholders identified through the discussions were: the Regional Governments of the Black Sea littoral regions, and farmers including farmer trade associations

**Engaging with Stakeholders:** The FAS provided informal advice to the Regional Governments of Krasnodar and Rostov on steps to organize the electronic exchange, liaised with representatives of the regional Governments of other Black Sea littoral countries, and advised the government stakeholders on steps to organize the electronic exchange. These included developing mutually acceptable rules and procedures of trade and settlements, providing technical facilities and software, and training non-government stakeholders, particularly farmers' associations and farmers in trading via an Internet based electronic commodity exchange. It was envisaged that relevant training

materials and guidelines should be developed and disseminated to farmers through their trade associations and via the Internet.

**Implementation and Monitoring of Activity:** A work plan and detailed project description has been developed and discussed between the project participants, i.e. the representatives of the littoral regions involved. The project participants are currently in the first phase of implementing the project by developing the first draft of the trading rules and procedures to be discussed with the stakeholders. After the rules are approved, the project participants will proceed to prepare the terms of reference for a web-design company to build the electronic exchange site architecture.

**Effectiveness of intervention: Evaluation** While a reliable date enabling project evaluation is not available at this stage, in the course of time the project plans to use such indicators as increase in farmer households' production investments, growth of income of the farmer households, and market prices for agricultural goods that should lead to lower prices for consumers and higher prices for farmers at the same time.

## Case Study: FNE Chile – Identification of issues in first steps for improving competition in private institutional healthcare providers sector<sup>5</sup>

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**Issue:** The FNE wanted to improve its knowledge about how competition in private sector healthcare provision<sup>6</sup> works, mainly because it had received some complaints regarding potential abuse of dominant position of certain healthcare providers. As result, the FNE launched a market study of this sector, focusing both on defining the relevant markets for different health services provided by those institutions and trying to establish a methodology for this definition based on how consumers choose between providers in this particularly complex market.

**Key Stakeholders:** The main stakeholder identified was the Superintendence of Health, which is responsible for leading the policy, both for protecting consumers' rights regarding healthcare and regulating the relationship among the citizens, public and private health insurance systems, and public and private healthcare providers.

In addition, interviews with key experts were conducted (such as a representative of the ISAPRE Association, public health specialists related to academia, etc.).

**Engaging with Stakeholders:** The FNE invited the Superintendence of Health to initiate a joint work, which lasted for a year and half. During this period (2008/2009), the team initially had meetings weekly, and thereafter twice a month, in order to discuss all the aspects of this joint project. The Superintendence provided the initial information that showed the most commonly provided health services and included the complete directory of private institutional health providers. Despite the fact that no cooperation agreement was signed among the parties, there were high levels of collaboration between FNE and the Superintendence of Health when developing the evidence base. For example, the Superintendence of Health commissioned a study for assessing health plans and staff of its Research Department was involved with staff of the FNE's Research Division in the

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<sup>5</sup> Healthcare providers are the establishments or professionals who supply healthcare services or actions. They can be either institutional in character, like clinics, hospitals or medical centres, or individual like those people who are enabled by law to provide health-related services, such as doctors, dentists or nurses. This action was involved to the former (clinics and non-public hospitals).

<sup>6</sup> The Chilean Health System has a private and a public component. The delivery of health services in the public system is ensured by the Municipal System for Primary Health Care and the hospitals' network managed by the National Health Service System and financially supported by the National Health Fund (FONASA). In turn, the private sector includes the private health plans administered through the Health Provision Institutions or ISAPRE (by its Spanish acronym) which provide health insurance. People affiliated to ISAPRE can choose between the public hospitals' network and private clinics for receiving healthcare services.

definition of technical criteria for hiring an external consultant to conduct both qualitative and quantitative researches. The former, grounded on focus groups, interviews and mapping valuation criteria which drive the consumer choices, among others, while the latter was based on a household survey plus some BPTO exercises<sup>7</sup>, which allowed the FNE to define relevant product markets.

**Implementation and Monitoring of Activity:** Implementation of the advocacy activity was pursued strictly under a project timeline. As a result of the joint market study, the FNE identified a number of problems of opacity on the information available to agents in the market, which were in a second phase addressed jointly by the Superintendence of Health, the National Consumer Service (SERNAC) and the National Statistics Institute (INE).

In addition, the BPTO methodology was successfully used for defining the relevant product market for childbirth services in private clinics in a later FNE investigation.

#### **Effectiveness of the intervention: Evaluation**

Evaluation of the intervention was not considered by the FNE in its original project plan. The market study's results were used as base for other interventions of the Superintendence of Health, currently being carried out. Any future evaluation of final effects should have to consider all the interventions as a whole and not just the preliminary joint market study.

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<sup>7</sup> The Brand-Price Trade Off exercise is a market research approach for assessing the relative value of a brand respect to several brands or products in a category. The final result is a ranking of preferences inferred relating brand to price that individuals are willing to pay.

## Case Study: Mexican Federal Competition Commission (CFC) – Identification of issues

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**Issue:** The Mexican Social Security Institute (IMSS, for its acronym in Spanish) is the basic instrument for social security, established as a public service of national nature for the workers and their families.<sup>8</sup>

The IMSS has been recognized as the biggest institution to provide health services in Latin America.<sup>9</sup> Thus, to provide its services it requires to buy, constantly, large volumes of medicines and medical supplies, frequently, through bidding processes conducted in compliance with the Mexican Federal public procurement rules.

In 2002, the CFC investigated and sanctioned three firms for bid rigging in the market of radiographic materials.<sup>10</sup> In this investigation the CFC became aware that the existing procurement rules and policies created potential incentives for collusion in its bidding processes if the buyer was not careful while choosing the bidding format.

In 2006, the Institute requested the CFC to analyse a set of bids as it had some concerns about the often high or similar prices presented by some bidders and the apparent low competition levels among them. Following this request, officials from both entities conducted several face-to-face meetings to discuss the basis of the analysis and the information required to make the assessment. Also, almost at the same time, the CFC opened and investigation against several pharmaceutical companies for possible anti-competitive practices in the public procurement processes of IMSS.

The analysis conducted by CFC using the information provided by the Institute identified that its procurement rules and policies atomized its bidding process throughout the Mexican territory, facilitating market sharing and bid rigging, aside from preventing them from identifying collusive behaviour. Thus, the CFC's recommendations to the IMSS focused on consolidating its requirements and procedures. This recommendation was aggressively implemented while the CFC investigation procedure was still opened.

**Key Stakeholders:** The key stakeholders were the IMSS's officials.

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<sup>8</sup> [www.imss.gob.mx](http://www.imss.gob.mx)

<sup>9</sup> IMSS webpage: <http://www.imss.gob.mx/English>

<sup>10</sup> File DE-57-2000. The economic agents involved with this investigation were GPP Mexicana, S. A. de C. V., Kodak Mexicana, S. A. de C. V. nad Juama, S. A. de C. V.

**Engaging with Stakeholders:** Initially, officials from both government agencies met face-to-face to discuss the scope and resources needed to perform the assessment. During these meetings IMSS provided CFC's officials with enough data relating to the results and rules for each bidding procedure conducted from 2003 to 2007. This information allowed the CFC to estimate areas where the procedures could be improved in order to increase the levels of competition by eliminating incentives to collude.

**Implementation and Monitoring of Activity:**

The main recommendations to the IMSS issued by the CFC were:

- Consolidation of its procurement requirements and procedures;
- Limit multiple adjudications in a bidding process;
- Avoiding the publication of information such as results and prices of the previous procedures.

However, the latter recommendation was not implemented because it required amendments to legal provision of the Federal Law for Transparency and Access to Public Governmental Information, and this raised concerns about the transparency of the IMSS procedures.

**Effectiveness of intervention: Evaluation**

After the issuance and adoptions of the recommendations, the CFC and the IMSS continued with the exchanges of information. During this period, while continuing analysing the data during its investigation procedure the CFC detected a decrease in the prices of several medicines and the destruction of the cartel.<sup>11</sup>

The analysis conducted in the CFC's investigation resulted – in January 2010 – in the detection of a cartel and the sanctioning of six pharmaceutical companies after proving that bid rigging took place between the period of 2003 and 2006, and proving that these companies split the markets of insulin and electrolyte solutions.

Additionally, IMSS reported in its 2000 – 2006 Accountability Report estimated savings for 2006 of about 2,189 million Mexican pesos (approx. \$175 million USD) derived from the implementation of a consolidating policy in its procurement procedures.

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<sup>11</sup> A price decrease ranging from 20 to 30% in insulin and electrolyte solution markets.

## **Component 2: Who are the key stakeholders? And how should we engage with them?**

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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 maximise impact<sup>12</sup>.

### **Identifying stakeholders**

Stakeholders may include:

- 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 organisations and trade unions
- chambers of trade, commerce or industry, and chambers of agriculture
- legal and industry experts in the area studied
- academics with a specialism 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.

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 organisations
- joint working with stakeholder organisations on key issues
- conducting a public consultation exercise

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<sup>12</sup> On stakeholder engagement see also ICN 'Draft Market Studies Good Practice Handbook' of April 2010, chapter 4, available at [www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf).

- preparing an interim report for publication for comments
- seminars for broader debate of particular issues or topics
- written communications, for example in the form of newsletters, updates, guidelines or drafts of papers
- e-mails
- web sites hosting key papers
- focus groups and seminars – these might be a useful way of involving members of a sector, representative organisations and users
- offering and publicising the agency as a source of assistance to the relevant stakeholders.

Different approaches are likely to be appropriate for different stakeholders.

The case studies at the end of this and other components of the Toolkit illustrate how different competition agencies have identified and engaged with stakeholders in practice.

## **Case Study: FNE Chile – Stakeholder engagement (Bid Rigging in Public Procurement – Capacity building program developed by the Fiscalía Nacional Económica (FNE))**

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**Issue:** The FNE encouraged by the Organisation for Economic Co-operation and Development (OECD) launched in 2008 a pilot program in order to promote best practices for the prevention and detection of bid rigging in public procurement among the concerned entities. The initiative also benefited from the cooperation of the Canadian Competition Bureau. The program installed pro-competition criteria in the agendas of several public bodies and also enriched the FNE with the discussion of real cases and experiences of public procurement tenders across the country.

**Key Stakeholders:** The FNE identified public bodies involved in public procurement management and process auditing and invited them to participate in the program. In May 2008, the FNE brought together several public bodies and an association of public procurement officers, to a work team which was named *Comité Anti-Colusión entre Oferentes en Licitaciones de Abastecimiento Público* (hereinafter, the Interagency Taskforce). This team included representatives of the Bureau of the Nations' Controller General (constitutionally independent body in charge of controlling – ex-ante and ex-post – the legality of the Administration's acts), the E-Public Procurement Bureau (body in charge of modernizing the public contracting through electronic purchases), the Ministry of Public Works, the Council for the Internal Auditing of Government and Redaba (an association of officers and staff in charge of procurement areas of different public bodies). Other interested bodies attended for specific meetings.

**Engaging with Stakeholders:** The Interagency Taskforce's effort was supported by periodical meetings, which had the purpose of disseminating pro-competition strategies in procurement among the attendants and building a common body of knowledge of the reality of tenders in procurement. The Interagency Taskforce held 10 work meetings between May 2008 and March 2010, where the FNE played the role of coordinator.

**Implementation and Monitoring of Activity:** Annual work plans were used as guidance for years 2008 and 2009. A detection guideline was the main product of the taskforce's first year of work. The guideline was distributed in a seminar in 2008 which around 400 public procurement officers attended. In 2009, the FNE organised a round of seminars for public officials working in public procurements took place along the main regions of the country.<sup>13</sup>

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<sup>13</sup> The FNE is a centralised agency with no regional offices.

Compliance with the scheduled activities was monitored periodically by an executive committee of higher officers within the FNE.

### **Effectiveness of FNE intervention: Evaluation**

Although a full evaluation of the program has not yet been conducted, there were some milestones which were interpreted as evidence of effectiveness and strong commitment of the stakeholders; for instance:

- The introduction of bid rigging detection criteria within the normal audits performed by the Nations' Comptroller General; and
- The creation of an Anti-Bid Rigging Units in the Ministry of Public Works.

In addition, some stakeholders have remitted cases to the FNE for investigation and some competitive changes in their procurement procedures were introduced.

In November 2010 the program was formally closed due to a new internal structure in the FNE. The Research and Advocacy Division will maintain its duties on disseminating strategies against bid rigging in public procurement. The final report of the program will contain a list of 'outcomes'.

## **Case Study: UK Office of Fair Trading – Stakeholder engagement**

**Issue:** The UK Government wanted to develop a voluntary industry agreement concerning light-bulbs, whereby producers of light-bulbs and retailers would agree not to sell certain types of light-bulbs which were energy-inefficient. While there are benefits to a voluntary approach, such arrangements may also raise competition concerns including a potential increase in the likelihood of coordinated behaviour.<sup>14</sup>

OFT officials learned of the issue informally and decided to pursue it as it aligned with the OFT's prioritisation principles.<sup>15</sup> In particular, voluntary agreements of a similar nature were being put forward in other sectors such as health & safety equipment, and the salt and fat content of foods.

**Key Stakeholders:** Other Government departments were identified as the main stakeholders, in particular the Department for Environment and Rural Affairs (Defra), which was leading the policy. Specifically, Government officials working on developing the voluntary agreement were identified as a way to influence and shape the policy development to ensure that competition concerns were appropriately addressed and reflected in any ministerial decisions.

**Engaging with Stakeholders:** The OFT provided informal advice directly to Defra officials, mostly in face-to-face meetings and via email, throughout the process of agreeing on the voluntary standards. For instance the OFT advised Government officials on the process of brokering voluntary agreements so that at the start of the meetings with industry representatives, statements were made about the importance of not breaching competition rules and competition lawyers would generally be present.

OFT followed up the informal advice by publishing a report analysing the potential competition impacts of environmental standards. The OFT report not only helped structure the views that the OFT put forward in this case but also is likely to provide a basis of analysis to support future advocacy efforts in the area of product standards.

This case, as the first intervention in the area of product standards, has helped the OFT in building a body of expertise that can be applied to other areas of where Government is proposing to introduce product standards. To

<sup>14</sup> Further detail on this case can be found in the report 'Evaluation of OFT Competition Advocacy' of April 2010, available at [www.offt.gov.uk/shared\\_offt/reports/Evaluating-OFTs-work/oft866.pdf](http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft866.pdf)

<sup>15</sup> OFT prioritisation principles are: 1) likely impact on consumer welfare, efficiency and productivity; 2) strategic significance; 3) risks i.e. likelihood of successful outcome; and 4) resource implications.

get further buy-in across Government, examples from a range of different Government departments were used in the OFT report to highlight examples of best practice.

**Implementation and Monitoring of Activity:** Implementation of the advocacy activity was pursued under a strict project timeline to ensure maximum effectiveness. Use of the guidance was monitored through measuring the number of downloads in addition to more informal means such as recording feedback from policy makers.

**Effectiveness of OFT intervention: Evaluation**

As part of a wider evaluation of OFT advocacy activity, Defra policy officials were interviewed and asked about the effectiveness of the OFT's advocacy activities in the voluntary standards area. The OFT also conducted a quantitative evaluation using probabilities assigned to counterfactual outcomes, i.e. what would have occurred had the advocacy not taken place. Our estimates were based on a number of assumptions, including the avoided increase in the probability of coordinated behaviour and the price increase resulting from this potential coordination. When applied to the UK light bulbs markets, these assumptions result in an estimated positive impact of some £7 million. However, this figure is very sensitive to the underlying assumptions.

## **Case Study Example: Antimonopoly Office of the Slovak Republic – Stakeholder engagement (Funeral & Cemetery Services)**

**Issue:** The Antimonopoly Office of the Slovak Republic (“AMO”) has called attention to the drawbacks of the existing legislation concerning funeral and cemetery services several times in the past. The AMO has investigated several complaints in this area and has issued some decisions accordingly. The main problems were a result of anticompetitive behaviour by providers of cemeteries. Most cemetery providers also provide funeral services and often come into conflict with other funeral service providers. In the majority of cases, they try to reach competitive advantage of their own funeral services to the prejudice of other competitors providing funeral services. To this purpose, they often either deny providers of funeral services entering a cemetery and providing funeral services in its area, or they enable entering a cemetery but on very discriminating conditions.

**Key Stakeholders:** Since this area is regulated by the Ministry of Health, the AMO communicated these issues and concerns to relevant divisions within the Ministry. Other key stakeholders include the companies in the market, potential new entrants & consumers.

**Engaging with Stakeholders:** A letter was sent from the Chairwoman to the Minister with the aim of holding dialogue on the issue, followed by other AMO initiatives. Subsequently, a meeting of representatives of both authorities was held, during which the AMO outlined the situation and competition concerns it had identified in the area. A conclusion was drawn that new legislation had to be introduced. The AMO provided advice through several meetings that were held, as well as through statements. The AMO has also suggested/drafted specific legislative provisions. The communication was also vivid during the legislative process, when the draft amendment to the Act on funeral services was introduced and the market participants had provided their views and objections.

The Amendment to the Act on Funeral services was approved by the Government and also passed in the National Council (parliament).

The new legislation opens the market of funeral and cemetery services to competition, where the provider of the cemetery has to provide the access to competitors - providers of funeral services according to the will of the consumer (clients). It also provided the opportunity of consumer choice of the funeral service in the case of death in the hospitals and health care centres.

**Implementation and Monitoring of Activity:** The Amendment was passed in parliament with the entry into force on January 1, 2011.

## **Effectiveness of intervention: Evaluation**

The AMO considers the new framework a significant step forwards. The new law is expected to enhance competition and should have positive effect on consumer choice and welfare. At the same time, a lot of problems of local markets were solved which would otherwise probably have been subject to intervention by the AMO.

The Act provides stronger competencies for the Ministry of Health and more deterrent sanctions for non-compliance with the new provisions.

## **Component 3: Implementation and monitoring of advocacy activity**

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### **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 government in relation to government relations with third parties
- recommendations to government to change the law.

It can be helpful to establish a detailed project plan with timelines 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: CNC Spain – Implementation and monitoring of activity**

**Issue:** Through investigations following a merger filing in the intercity passenger transport sector (National Express-Continental Auto<sup>16</sup>), the CNC perceived competition problems which then gave rise to an in-depth study in the same sector<sup>17</sup>. The focus was on the existing concessions system for the provision of services. The moment was right, since a Protocol (agreed guidelines) on the renewal of concessions at the national level signed in 2007 by the Ministry of Public Works, unions and transport companies, could also be assessed. A 2008 CNC Report found that the system set out by the Protocol established high entry barriers due to, inter alia, too long-term concessions, the existence of a right of preference on the side of the previous holder of the concession, and the high value given in tenders to quality criteria at the expense of other key variables such as price and frequency. The Report also found that some regional authorities were extending concessions beyond their original terms, precluding competition.

**Key Stakeholders:** Sector companies, including incumbents and potential entrants, consumers, the Ministry of Public Works, and regional Governments conducting their own tenders.

**Engaging with Stakeholders:** The CNC held meetings with key stakeholders and took account of their arguments.

**Implementation and Monitoring of Activity:** Two monitoring reports followed in 2010 on the situation of concessions at the national and the regional levels<sup>18</sup>, which revealed that the Protocol had undergone some, but insufficient changes. Very little room was allowed for competition in the sector, since concessions were extended almost automatically. At regional level the situation was even worse; most Governments had in practice closed down the markets, in some cases even in breach of EU rules (Regulation CE/1370/2007). Soon after the release of the 2010 Reports, and in view of the fact that no action had followed by two regional Governments in order to

<sup>16</sup> Case [C 106/07](#) (available in Spanish only)

<sup>17</sup> [www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=34752&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=34752&Command=Core_Download&Method=attachment)

<sup>18</sup> Reports available in Spanish only:  
[www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=38957&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=38957&Command=Core_Download&Method=attachment) and  
[www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=38958&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=38958&Command=Core_Download&Method=attachment). See press release in English at  
[www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=35483&Command=Core\\_Download&Method=attachment](http://www.cncompetencia.es/Inicio/GestionDocumental/tabid/76/Default.aspx?EntryId=35483&Command=Core_Download&Method=attachment)

address the competition problems of their concession systems, the CNC sent them both a request to take action, so as not be the object of an appeal before the Courts. Lacking a response by the regional Governments, the CNC, by virtue of article 12.3 of the Spanish Competition Act<sup>19</sup>, challenged the regional regulations governing the concessions systems before the competent Courts<sup>20</sup>.

**Effectiveness of intervention:** The CNC is confident that the judicial process will end in the legal annulment of the challenged measures, but it is going to take a long time. In any case, the deterrent effect of the CNC's intervention has already been felt: no more Regional Authorities have developed such schemes since then.

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<sup>19</sup> "The CNC is legally authorised to bring actions before the competent jurisdiction against any administrative acts and regulations from which obstacles to the maintenance of effective competition in the markets are derived".

<sup>20</sup> See press releases at: [www.cncompetencia.es/Inicio/Noticias/tabid/105/Default.aspx?Contentid=266511&Pag=4](http://www.cncompetencia.es/Inicio/Noticias/tabid/105/Default.aspx?Contentid=266511&Pag=4) and [www.cncompetencia.es/Inicio/Noticias/tabid/105/Default.aspx?Contentid=274450&Pag=2](http://www.cncompetencia.es/Inicio/Noticias/tabid/105/Default.aspx?Contentid=274450&Pag=2)

## **Case Study: Competition Commission South Africa – Implementation and monitoring of activity**

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**Issue:** After sustained economic growth in the first 10 years of democratic rule in South Africa, inadequate infrastructure proved to be a major bottleneck to economic growth, particularly in the transport and energy sectors. A 2007 scoping study set up by the Commission revealed signs of anti-competitive practices in the upstream markets for steel products and downstream markets for reinforcing steel, the latter being integral inputs into construction and infrastructure projects. Since 2007, the Commission has initiated several investigations into specific product markets and generally into the construction sector. Anti-competitive conduct has been uncovered in these markets and the Commission has established that bid-rigging in the construction sector is wide-spread. In identifying the input products that the Commission would investigate further, several factors were taken into account, including market concentration, whether the sector was characterised by high barriers to entry, limited competitive rivalry and factors that could enable collusion (such as homogeneous products).

The table below shows the total number of investigations currently underway in the infrastructure and construction sector.

### **Number of cases in the Infrastructure and construction sector**

<b>Infrastructure and construction</b>	<b>Number of ongoing cases</b>
Construction CLPs	65
Cement	1
Asphalt	1
Paving blocks and construction bricks	1
<b>Total</b>	<b>68</b>

For example, in 2007 and 2008, the Commission uncovered an extensive cartel in cast concrete products, specifically concrete pipes and culverts. This concrete pipes and culverts cartels detailed arrangement of a textbook example cartel with mechanisms for implementing agreements and ensuring they are adhered to in practice. The cartel operated for 34 years, rigging markets in South Africa and across the southern African region. Given its extent and duration, it raised wider questions about practices in the construction industry and a need for cooperation between countries for effective cartel enforcement.

**Key Stakeholders:** The National Treasury (the custodian of procurement policy in South Africa); the Public Administration Leadership Academy

("PALAMA"); the Office of the Auditor General; national government departments; provincial government departments and state owned enterprises were identified as key stakeholders on the prevention of bid rigging.

### **The advocacy interventions**

The Commission raised awareness about bid rigging and sought to prevent bid rigging in public procurement through:

- training of government procurement officials;
- the inclusion of bid rigging training as part of Supply Chain Management Training by government's public service training academy; and
- advocating for policy changes to include the use of a Certificate of Independent Bid Determination, drafted by the Commission, in the procurement process.

Several meetings were held with the National Treasury, PALAMA and the Office of the Auditor General in order to give effect to the required policy change. National Treasury made the policy changes necessary to include the Certificate of Independent Bid Determination.

Training of procurement officials from all the levels of government (national; provincial and local), including State Owned Enterprises (SOE) was also identified as one of the means of raising awareness about bid rigging. Insight from other projects suggests that procurement officials have a good knowledge of the relevant industry sector and can observe patterns in bidding processes that may indicate unlawful collusive activity.

### **Implementation and Monitoring of Activity:**

Implementation of the advocacy intervention was made through a project plan with timelines. For instance, after six months of the project being initiated, the National Treasury amended its General Conditions of Contract to include the prohibition of bid rigging in public procurement and provision of additional penalties for engaging in collusive tendering. The National Treasury also issued a Practice Notice in terms of the Public Finance Management Act<sup>21</sup> and the Municipal Finance Management Act<sup>22</sup> on the 21 July 2010 giving effect to the use of the CIBD by the national government departments; provincial government departments; municipalities; public entities and constitutional bodies.

By the 30 August 2010 procurement officials from the national government departments; provincial government departments; state owned enterprises

<sup>21</sup> Section 76(4)(c) of the PFMA

<sup>22</sup> Section 168(1) of the MFMA

and municipalities were trained on identification, detection and reporting of bid rigging.

Finally by the 30 September 2010, a curriculum was developed by the Commission to be used for the continued training of procurement officials on an annual basis at PALAMA. From 1 April 2011, procurement officials will be trained on bid rigging over two days annually at PALAMA as part of the Supply Chain Management Training.

Monitoring is conducted with the assistance of the Auditor General's Office who checks the signing of the CIBD by contractors as part of its auditing function.

### **Effectiveness of CCSA intervention: Evaluation**

Effectiveness is measured through feedback from the National Treasury and the Office of the Auditor General. Furthermore, a Bid Rigging Working Committee has been established to evaluate whether advocacy activities have led to a reduction in rigged bids.

## **Case Study: FNE Chile – Implementation and monitoring of activity (competition advocacy in land transport sector with the transport regulator)**

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**Issue:** Historically, competition authorities have received constant complaints about the land transport sector, being frequent those for the anticompetitive conduct of buses associations such as price fixing agreements and boycott or actions in order to exclude new entrants (competitors) to certain defined routes. These claims and cases in land transport sector have been compounded by the fact that the Regional Ministerial Secretariat of Transport and Telecommunications (Seremitt),<sup>23</sup> when trying to reach its objective of ensuring effective public transport, have served to facilitate anticompetitive practices such as price fixing by bus providers.

**Key Stakeholders:** The Undersecretariat of Transportation of the Ministry of Transport and Telecommunications (MTT), specifically its Legal Division and Regional Coordination and its Seremitt. Although up to now the FNE has not worked with transport associations, they are also indirectly stakeholders of this competition advocacy activity.

**Engaging with Stakeholders:** After TDLC Ruling No. 94, which ordered to notify the anticompetitive nature of the conduct to the MTT and its Seremitt in order to prevent the occurrence of similar actions, the FNE included in its advocacy plan for 2010 rapprochement with the Undersecretariat of Transportation to develop a competition training program focused on the sector.

### **Implementation and Monitoring of Activity:**

The work plan for 2010 included two reciprocal training activities for professionals of the MTT's Undersecretary – the Legal Division and Regional Coordination – and, in turn, the staff of the FNE (Litigation and Investigation Divisions). These training sessions dealt with the application and interpretation of rules concerning to land transportation and free competition. In addition, there were two other competition training activities aimed at the Seremitts: The first one was carried out as soon as the authorities took office after the change of government (April 2010) coordinated with the induction course given by the MTT. The second training took place via teleconference and addressed simultaneously the Seremitts and their professionals in 13 regions of the country. The final activity planned for 2010 was a Guideline on Competition in the land transportation sector, which will be made available for Seremitts' ongoing consultation.

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<sup>23</sup> The regional representation of the Ministry of Transport and Telecommunications.

**Effectiveness of intervention: Evaluation** An explicit mechanism for evaluating the effectiveness of this relationship and its impact on the transport sector has still not been considered. However, the FNE regularly monitors the performance of markets and receives complaints from third parties in the case of existing potential anti-competitive infringements, which may serve as an indirect evidence about the behavior of the buses associations and whether it has actually changed or not, and in particular, how the Seremitts have addressed the need to harmonize their objectives with the defense of competition principles.

## **Component 4: Evaluating effectiveness of advocacy interventions**

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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 prioritisation 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<sup>24</sup>.

The following case studies provide examples of how agencies have evaluated their competition advocacy activities.<sup>25</sup>

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<sup>24</sup> For an overview of how competition agencies measure the success of their advocacy efforts see 'Report on Assessment of ICN Members' Requirements and Recommendations on Further ICN Work on Competition Advocacy', pp 15-17, available at [www.internationalcompetitionnetwork.org/uploads/library/doc362.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc362.pdf). For useful tips on how to develop an evaluation programme, also see the ICN 'Draft Market Studies Good Practice Handbook' of April 2010, pp 111-118 and Annex 2, available at [www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf).

<sup>25</sup> A further example can be found in a report on 'Evaluation of OFT Competition Advocacy' of April 2010, commissioned by the UK Office of Fair Trading, available at [www.offt.gov.uk/shared\\_offt/reports/Evaluating-OFTs-work/oft866.pdf](http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft866.pdf).

## **Case Study: European Commission DG Competition – Evaluation (Energy sector inquiries<sup>26</sup>)**

**Issue:** DG Competition wanted to increase its in-depth knowledge of the functioning of gas and electricity markets, identifying obstacles to competition or any other shortcomings. DG Competition wanted to ensure a full overview of the industry concerned by this exercise so as to improve the quality of the findings on how energy markets function and to allow stakeholders to identify potential remedies that could address any of the shortcomings identified.

The power to carry out sector inquiries is granted to the European Commission by Regulation 1/2003 to enforce Articles 101 and 102 of the TFEU<sup>27</sup>. A decision to launch an inquiry is not made lightly and will be carefully researched and discussed internally, and examined in the overall context of the Commission's enforcement priorities. In general terms, the following questions are relevant: to what extent would consumers benefit from the inquiry, as they are the ultimate victims of competition problems in markets? What is the likely output in terms of remedies and enforcement actions? Will the increased interest in competition in the sector and the analysis under EU competition rules improve competition compliance by the companies concerned?

DG Competition decided to initiate the Energy Sector Inquiry in June 2005 on a number of grounds suggested by evidence coming from a number of sources (including complaints, information from other EU Competition Authorities or other parts of the Commission, etc.).<sup>28</sup>

**Key Stakeholders:** The main stakeholders identified were the undertakings active in the market (e.g., wholesalers, producers, transmission system operators, traders), consumers and public authorities. Energy policy makers were identified as a way to influence and shape the policy and legislative development in order to ensure that competition concerns in the energy sector

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<sup>26</sup> For further details, please see

<http://ec.europa.eu/competition/sectors/energy/inquiry/index.html>

<sup>27</sup> Chapter V of Regulation 1/2003 entitled "Powers of Investigation" and the wording of article 17 stating that in the context of the sector inquiry the Commission may use its ordinary powers to gather "the information necessary for giving effects to Articles [101] and [102] of the Treaty" through requests for information or inspections.

<sup>28</sup> The decision made particular reference to the following: that cross-border flows in the electricity and gas sectors were having limited effects on prices; that prices were rising and there was little trust in the price formation mechanisms; that liquidity on exchanges was low and prices volatile; that customers had difficulty securing competitive offers from different suppliers; that network operators appeared to favour their affiliates despite the legal provisions on unbundling; and that there was high market concentration and limited new entry.

are appropriately taken into account, in particular in the Third (legislative) Energy Package<sup>29</sup>.

**Engaging with Stakeholders:** The Commission engaged in preliminary meetings with various stakeholders to identify areas of the energy market which it should analyse for the sector inquiry. Based on its knowledge and the information gleaned from these preliminary meetings, the Commission prepared various sets of questionnaires to be sent to different types of companies in the energy sector – such as producers, wholesalers, traders and transmission system operators. In total the Commission addressed more than 3,000 questionnaires to stakeholders in the sector.

In view of the significant investment required in terms of timing and resources both on the part of sector participants and of the Commission (see below), care was taken to minimise the demands placed on the sector. The Commission discussed the process for gathering information with industry bodies: questionnaires were "road tested" with stakeholders before being sent out, and the mechanism for sending supplementary clarification questions was discussed and agreed upon with industry associations.

Based on the information it received in reply to its questionnaires, the Commission published, in February 2006, a preliminary report identifying and analysing market malfunctions. As a supplement to the report, the Commission also published a comprehensive study analysing the functioning of six national wholesale electricity markets. The study showed that consumers were paying substantially more due to the lack of competition. The Commission carried out a public consultation of the preliminary report, inviting stakeholders to comment, to correct any errors and to provide additional facts or context.

**Implementation and Monitoring of Activity:** After careful research and discussion of the objectives and scope of the sector inquiry, a detailed work plan was worked out with time lines for each step.

In terms of the resources needed by DG Competition to conduct the sector inquiry, during the peak period of the inquiry, namely the gathering and analysis of information, and the preparation of the preliminary report, up to 20 case handlers could be working on the inquiry. The process was closely monitored and steps were taken in order to minimise the burden both on the sector and on DG Competition, as noted above.

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<sup>29</sup> [http://europa.eu/legislation\\_summaries/energy/internal\\_energy\\_market/index\\_en.htm](http://europa.eu/legislation_summaries/energy/internal_energy_market/index_en.htm); see also below under evaluation.

Taking into account the comments received from stakeholders, as well as further analysis of the data it gathered, the Commission published, in January 2007, the final report of the energy sector inquiry.

#### **Effectiveness of DG Competition intervention: Evaluation**

The energy sector inquiry helped DG Competition to refine its analysis of difficult competition issues and determine which areas should become priorities for future competition enforcement cases. Information gathered through the sector inquiry has enabled the Commission to improve its activity both from the perspective of competition enforcement (in particular through antitrust cases) and advocacy, including in advocating for regulatory reform.

The in-depth knowledge gained into the functioning of the gas and electricity markets proved crucial in advocating for regulatory change (Third Energy Package) with the objective of liberalising the sector, as it allowed the Commission to speak perceptively about the many problems it had identified in the sector and also provided it with an insight into potential solutions to these same problems. In particular, this included the strengthening of the unbundling provisions to address vertical foreclosure issues, but also the monitoring of wholesale markets by national regulators, and increased transparency obligations on energy companies. The weight of DG Competition in these advocacy activities was significantly increased by the fact that it had carried out the energy sector inquiry and was recognised as fully understanding the issues facing the sector.

The energy sector inquiry also provided a knowledge platform for the Commission to pursue several antitrust cases, addressing many of the issues identified in the sector inquiry report. While the sector inquiry was an ideal tool for identifying the problems in the energy sector, vigorous enforcement activity by the Commission remains the most efficient way to resolve competition issues.

The final report also provided undertakings active in the sector with an opportunity to adapt their behaviour on a voluntary basis in the light of its findings.

## **Case Study: Japan Fair Trade Commission (JFTC) – Evaluation**

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### **Issue**

Bid rigging is a typical cartel behaviour and one of the most serious breaches of the Antimonopoly Act (“AMA”). Bid-rigging runs counter to a bidding system in which suppliers and prices are decided through fair and free competition among bid participants. Bid rigging in public projects by national or local governments, prevents the appropriate spending of the budget as well as harms the interests of public as taxpayer. Therefore, the Japan Fair Trade Commission (“JFTC”) has been strictly and proactively taking actions based on the AMA against bid rigging.

### **Key Stakeholders**

Many aspects of public procurement systems are related to bid rigging. From the viewpoint that the effort of procurement agencies is very important to prevent bid rigging, the JFTC considers that advocacy activities related to the AMA and related acts for procurement officers of the national and local governments, and for procurement officers of public corporations are very important.

### **Engagement with Stakeholders**

(1) Meetings among Liaison officers with the JFTC concerning public bids  
“Meetings among Liaison Officers with the JFTC Concerning Public Bids” are held for the purpose of facilitating procurement agencies of the central government to provide information on activities suspected to be AMA violations for the JFTC. Both the JFTC staff and directors of accounting affairs and other equivalent officers who have been designated as liaison officers in each procurement agency attend the meetings to exchange their opinions and information. Such meetings are held between the JFTC and liaison officers not only at the headquarter level but also at the local branch level.

(2) Training for procurement officers to prevent bid rigging

To prevent bid rigging concerning procurement not only by the central government but also by local governments and public corporations, the JFTC has held training sessions for procurement officers of these procurement institutions. In addition, the JFTC is willing to dispatch its staff as lecturers to the workshops held by procurement organizations for the purpose of preventing bid rigging. The JFTC creates a textbook for the training sessions, explains and distributes it. In addition, it is posted on the website of the JFTC for procurement officers and public.

### **Implementation and Monitoring of Activity**

“Meetings among Liaison officers with the JFTC concerning public bids” have been annually held at the headquarter level since FY 1993 and at a local branch level since FY 1994. The JFTC has also dispatched lecturers and provided training materials to their workshops for procurement officers in national and local governments since FY 1994. The JFTC has been annually holding training sessions for procurement officers from public companies and public business organizations since FY 1995.

#### **Evaluation**

Although the JFTC does not directly measure the impact of Meetings among Liaison officers and training for procurement officers, it evaluated the effect of overall advocacy activities to procurement officers conducted from FY 2006 to FY 2008 based on the “Government Policy Evaluations Act”.

The JFTC calculated the number of cases that the JFTC dispatches its staff as lecturers to the workshops and the number of download times for text book. And the JFTC conducted a questionnaire survey to the participants after the lecture. The JFTC analyzed the increase of cases and the number of downloads, and the survey results indicated improvement of understanding of participants, participation of working-level staffs, and their intention to report the content of the lecture. Therefore, from the viewpoint of necessity, effectiveness and efficiency, we can evaluate this activity achieved a certain result.

## Case Study: CNC Spain – Evaluation

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**Issue:** Articles 25 and 26 of the 2007 Spanish Competition Act entitles the CNC to assess draft new pieces of legislation and regulation and to make proposals for modifications to reduce potential harmful effects on competition, where deemed needed. The CNC had issued a number of regulatory reports in diverse areas – retail distribution, public contracts, professional services, to mention a few – by the time it decided to adopt a more proactive and ex ante strategy to let law-makers know the principles they should apply when undertaking a competition assessment of legislative or regulatory proposals.

**Key Stakeholders:** Law-makers and regulators, the Ministry of the Public Administration.

**Engaging with Stakeholders:** Meetings with the Ministry of the Public Administration.

**Implementation and Monitoring of Activity:** After issuing in 2008 a report on [\*Recommendations to the public administrations for a more efficient and pro-competitive market regulation\*](#), the CNC published in January 2009 a [\*Guide to Competition Assessment\*](#), which took advantage of the OECD Competition Assessment Toolkit.

The aim of the Guide is, in short, to help law-makers and regulators bear in mind, from the very outset, the eventual impact on competition of their proposals, and avoid any unnecessary or disproportioned negative effects on competition.

For that purpose, the Guide suggests that law and regulation drafters undertake a three-step analysis on competition matters: Step 1 consists in identifying the possible negative effects on competition that the draft law or regulation may generate. Identification is based on a checklist of key questions that, in a highly intuitive manner, help the user “think” from the perspective of competition and spot possible problems. Where the proposal is found to include provisions or mechanisms capable of restricting competition, the analysis should carry on into step 2, which involves analysing the public interest goal pursued by the proposal so as to evaluate how necessary and proportional anti-competitive constraints are relative to that goal. Where a restriction of competition cannot be justified, the proposal will have to be modified accordingly. Where the restriction is found to be necessary and proportionate, other regulatory alternatives with less negative impact on competition must be considered, as advised in Step 3 of the analysis. If a less anticompetitive regulatory alternative is identified, then this alternative should be adopted instead of the original.

The CNC made, and keep making, great communication efforts about the Guide. Over 1000 copies were distributed during the first five months. Presentations were made, and are still being made, to central government public authorities, sector regulators, regional competition authorities and universities. The CNC also tried to reach the media through meetings with journalists and newspaper articles.

**Effectiveness of intervention: Evaluation.** Royal Decree 1083/2009, of June 3, on the report of impact assessment of new pieces of legislation and regulation, established the need to conduct competition impact assessments. The *Methodological guide on impact assessment* accompanying the Royal Decree incorporated the principles and orientations advocated by the CNC in its Guide. The CNC has been invited to participate, and it participates, in workshops aimed at public officers and civil servants on the *Methodological Guide*.

The CNC has noticed an increased, and increasing, awareness of competition matters on the side of law and regulation drafters. Indeed, their competition assessments are of better quality all the time. Moreover, the CNC now receives more drafts for analysis, which also indicate a better understanding of the fact that new pieces of law and regulation need to take into account their impact on competition in the markets.

Besides, the principles in the Guide are applied in the CNC regulatory reports it regularly issues.

## **Case Study: Self-Evaluation of the U.S. Federal Trade Commission's Advocacy Program**

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In 2007, the FTC prepared a model for evaluation wherein it would gauge the extent to which the FTC's advocacy program influenced policymaking. The evaluation focused on instances in which the FTC sought to affect a particular policy outcome, rather than assessing advocacy outputs (e.g., number of advocacy actions) or inputs (e.g., resources devoted to advocacy).

The FTC survey targeted decision-makers involved in legislative or regulatory proceedings on which the FTC provided formal comments on proposed actions, during the period 2001-2006. For reasons involving professional ethics, the FTC did not survey judges who received FTC amicus briefs, nor recipients of FTC comments who were involved in an on-going proposed rulemaking process.

The FTC received a 45% (36/80) response rate. The responses involved a broad range of regulatory issues, including professional regulation (e.g., law, optometry, real estate brokerage, and morticians), wine and beer distribution restrictions, pharmacy protection legislation, physician collective bargaining, food and drug labeling, airline reservation systems, electronic fund transfers, and "do-not-email" lists.

Seventy-five percent of respondents agreed that the FTC's comment "presented sound analysis and clear reasoning" (11% disagreed, 14% had no opinion) and 73% agreed that the comment "would be useful to decision-makers facing other relevant issues in the future" (12% disagreed or strongly disagreed, 17% had no opinion). Furthermore, 80% of respondents gave the comment more weight because it came from the FTC (11% disagreed, 8% had no opinion), while 55% agreed that the FTC's comment "provided information from a perspective that was not previously considered" (22% disagreed, 22% had no opinion).

Sixty-one percent agreed that the outcome of their decision-making process was consistent with the FTC's position. Examining the data more closely reveals that 94% of respondents said that the FTC comment was considered and 54% of respondents (and 79% of those who had an opinion on the question) said the FTC comment influenced the outcome. When the outcome was consistent with FTC position, 79% of respondents said the FTC comment influenced the outcome.

The FTC incorporates an ex post evaluation with its advocacy efforts by conducting follow-up surveys and interviews. The purpose of such correspondence is to capture the contemporaneous impressions of the

advocacy and gather any post-hoc data as to the impact such advocacy had on affected stakeholders.

Additional details regarding the FTC's survey, including a summary of the survey responses, can be found at [www.ftc.gov/bc/international/docs/evalauth.pdf](http://www.ftc.gov/bc/international/docs/evalauth.pdf).