Government Advocacy and Disruptive Innovations

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Note to reader:
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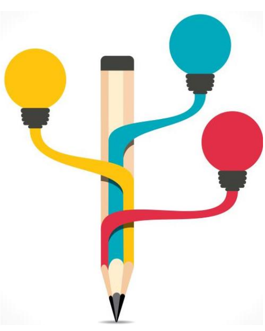
Executive Summary

Disruptive innovations feature prominently in many markets around the world. The advent of the internet coupled with growing internet and mobile penetration have, in part, catalysed the growth of disruptive firms and the proliferation of disruptive innovations. The emergence of such disruptive innovations has sometimes brought about significant benefits but not everybody welcomes disruptive innovations and disrupters. This is because of the challenges they pose to incumbents, as well as to legislative and regulatory bodies trying to keep pace with rapidly evolving businesses in their respective sectors.

Generally, disruptive innovations pose little concern for competition agencies as they tend to spur greater static and dynamic competition in markets. However, the responses to disruptive innovations by incumbents and Governmental and Legislative Entities (GLEs) can raise competition concerns for competition authorities. Given that disruptive innovations may raise concerns in areas such as employment, consumer protection, public safety and health, GLEs may face pressure from businesses and consumers to regulate, or even ban them altogether. Advocacy efforts by the competition agency thus play an important role in promoting regulations that achieve public policy objectives and goals in a way that minimises impact on competition.



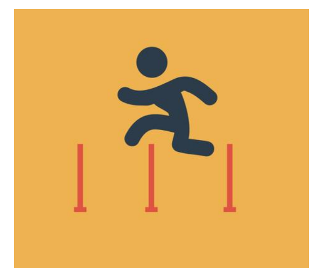
Survey Findings. To better understand ICN members' perspectives on disruptive innovation, and government advocacy experiences in relation to disruptive innovation, the Competition Commission of Singapore (CCS) administered a survey to 132 ICN members in October 2015. CCS received responses from 44 ICN members ("Responding Members").

Some of the headline findings from the survey are:

- 61% of Responding Members view disruptive innovations as top priority or a concern in relation to their advocacy and enforcement work;
- 48% of Responding Members have engaged in disruptive innovation-related government advocacy;
- Most Responding Members have engaged or are considering engaging GLEs on disruptive innovations in the transport sector;
- GLEs' responses to disruptive innovations may prevent disruptive firms from entering the market; stymie their ability to compete with incumbents; and consequently limit market developments;
- "Avoid imposing regulations/laws that restrict competition more than necessary to address legitimate public policy objectives" is the most important objective in Responding Members' disruptive innovation-related government advocacy; and
- Issuing opinions to GLEs; participating in meetings with GLEs and conducting market studies are more commonly used and considered to be more effective disruptive innovation-related government advocacy tools.

Disruptive innovations have not generally altered the manner in which Responding Members conduct government advocacy. For example, the ways in which Responding Members become aware of the competition concerns arising from disruptive innovations and related regulations, and the tools adopted, are similar to government advocacy in other areas. However, there are also aspects of disruptive innovations which are unique and may present specific challenges to ICN members.

Three Key Challenges. Responding Members face three key challenges in their disruptive innovation-related government advocacy efforts.



First, GLEs may not regularly consider or assess the impact of their proposed policies on market competition. To overcome this challenge, Responding Members have proactively explained the importance of competition to GLEs and encouraged GLEs to consider competition

issues throughout the policymaking process. Institutional safeguards can also be considered to ensure GLEs consider competition assessment.

Next, Responding Members face a lack of data and extensive studies on disruptive innovations. Empirical assessment is important and relevant to provide evidence to support advocacy efforts. Responding Members have handled this challenge by planning and collecting information in advance, relying on information collected as part of enforcement case work and market studies, and working with GLEs to collect information.

Lastly, GLEs and the competition agency face political pressures as disruptive innovation is an area that is particularly susceptible to defensive behaviour and aggressive lobbying by incumbents. Responding Members have tried to overcome this by reminding decision makers to be "competition-minded" when designing policies and targeting advocacy efforts at key decision makers.

Learning Points. Learning Points offered by Responding Members with regard to disruptive innovation-related government advocacy can be distilled neatly into three broad themes: "What? How? When?".

- 'What' refers to the content of the advocacy message to GLEs. ICN members need to determine the objectives for engaging with GLEs as they dictate the content and the direction of the advocacy message. Responding Members suggested engaging GLEs with clearly defined competition objectives, underpinned by sufficient knowledge of the disruptive innovation, the competitive dynamics in the affected sector(s) concerned, GLEs' proposed regulatory response and the motivations behind it. This will help to build a compelling narrative for the advocacy effort.
- 'How' refers to how government advocacy should be conducted. While it is impossible to prescribe the exact type of advocacy tool(s) ICN members should deploy, Responding Members' experiences offer a few guiding principles on how best to select the appropriate advocacy tool(s), e.g. creatively using an assortment of advocacy

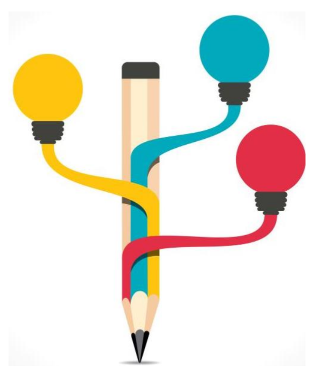
tools, adopting an open-minded and collaborative mindset, and to be a credible source of expertise on competition matters.

- 'When' refers to the timing of delivering the advocacy to GLEs. Advice to GLEs needs to be timely to ensure that GLEs have enough time to consider and work through the competition agency's views during their regulatory review process. In addition, Responding Members also observed that advocacy works better under certain circumstances. Competition agencies are encouraged to take on a long term view of government advocacy when GLEs choose not to take onboard their recommendations at the first instance.

In summary, there appears to be general consensus amongst Responding Members that disruptive innovations will continue to shape and influence developments in different parts of the market. Even Responding Members who do not think that disruptive innovations are prevalent in their economies today are keen to keep a watching brief as the proliferation of disruptive innovations in their economies is an eventuality. It is therefore critical that ICN members are able to learn from one another's experiences. This project is a step in that direction and we do hope that this report and Responding Members' Case Studies contribute to ICN members' understanding of government advocacy and disruptive innovation, and provide some ideas to guide ICN members' future advocacy engagements with GLEs.

■ICN Special Project Team 2016

About the Survey



Survey Background

To prepare for the survey, the Competition Commission of Singapore (CCS) drafted a project brief and questions regarding disruptive innovations and ICN members' disruptive innovation-related government advocacy. CCS sought feedback on the draft project brief and questions from the International Competition Network (ICN) Advocacy Working Group (AWG) members and volunteer ICN members. CCS thanks all AWG and volunteer ICN members for their inputs and suggestions to the project. Annex A documents the list of ICN AWG members and volunteer ICN members.

During the process, CCS also liaised with the Organisation for Economic Co-operation and Development's (OECD's) Competition Division to explore synergies and reduce duplication of work streams in the area of disruptive innovations. Following feedback from AWG and volunteer ICN members, CCS refined the draft project brief and survey questions. A copy of the survey can be found in Annex B.

Survey Questions

The survey was divided into **five** sections:

i. The **first** section was designed to request for basic background information, especially on the jurisdiction of the ICN members, which helps to shed light and provide context for their responses in the subsequent sections.
ii. The **second** section was designed to understand ICN members' perspectives on and advocacy objectives in relation to disruptive innovations, as well as ICN members' statutory powers to review regulations implemented by other Governmental and Legislative Entities (GLEs).
iii. The **third** section was designed to summarise ICN members' experiences during their engagements with GLEs on disruptive innovations. For example, there were questions relating to the triggers for advocacy efforts, GLEs whom the ICN members engaged with, sectors that were covered in ICN members' advocacy efforts, as well as tools and approaches used by ICN members.
iv. The **fourth** section covered learning points from ICN members' experiences, such as the typical competition issues, non-competition considerations and challenges they have encountered during their engagements with GLEs on disruptive innovation.
v. The **last** section requested for relevant case studies from ICN members.

Survey Responses

CCS administered the survey to 132 ICN member agencies through the ICN Secretariat and received responses from 44 ICN members (Responding Members).

Overall Response Rate The survey achieved a 33% response rate. The list of Responding Members is set out in Annex C. CCS thanks all ICN members for their time and effort in responding to the survey.

Response Region As shown in Table 1 below, the majority of responses were received from European Members, followed by Asia, and North and Central America.

Table 1: Responses by Region

Region	Respondents (number)	Responses (percentage)	Proportion of ICN membership by region (percentage)
Europe	18	41%	38%
Asia	13	30%	22%
North and Central America	8	18%	12%
Africa	2	5%	17%
South America	2	5%	8%
Oceania	1	2%	3%

Responses by Income Status. 59% of the responses received were from Responding Members from high-income economies, with the rest from middle-income economies.[1]

Responses by Types of Jurisdiction. As shown in Table 2 below, the majority of Responding Members are whole of economy competition regulators. Of particular relevance to this project is that almost one-third of Responding Members have some form of consumer protection and/or product safety mandate; as disruptive innovations may have triggered, apart from competition concerns, other areas of concern relating to consumer and product safety.

Table 2: Responses by Type of Jurisdiction[2]

Jurisdiction	Responses (Number)	Responses (Percentage)
Whole of economy competition regulator	44	100%
Whole of economy consumer protection regulator	14	32%
Whole of economy product safety regulator	2	5%
Sectoral competition regulator	1	2%
Sectoral consumer protection regulator	1	2%
Sectoral product safety regulator	1	2%
Monopoly Infrastructure regulatory role	6	14%
Other areas of jurisdiction	8	18%

[1] Classification is based on World Bank's Country and Lending Groups.
[2] Percentages do not add up to 100% as some Members have multiple jurisdictions.

Glossary of Terms

Disruptive Firms or Disrupters	Firms/businesses that introduce disruptive innovations into markets
Disruptive Innovations	New products/services, technologies, manufacturing processes and business models that drastically alter markets.[3] They are not incremental changes; instead, they affect markets dramatically by introducing radical changes which are typically unforeseen. [4]
Government Advocacy	Activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with GLEs and by increasing awareness of the benefits of competition with GLEs.[5]
Governmental and Legislative Entities (GLEs)	Government bodies that design, review, or implement regulation(s) within the same country/jurisdiction as the competition authority. Examples of GLEs include legislative bodies such as parliaments, judicial authorities, government departments, local authorities and sector regulators.
Responding Members	A collective reference to all or some of the 44 ICN members who participated in the ICN Special Project Survey. Note: where references are made to statistics, refer to the corresponding diagram to determine if Responding Members refer to all or a subset of these 44 Responding Members.
Transport Network Companies (TNCs)	Companies that connect (typically via websites and mobile applications) passengers with drivers who provide transportation services. TNCs may use commercial vehicles (e.g. taxis) or non-commercial vehicles (e.g. private cars) or both types of vehicles to deliver such services.

[3] Disruptive innovation is originally a term of art coined by Professor Clayton Christensen, describing a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.

[4] We adopt a wider definition of disruptive innovation for the purposes of this report. Our definition follows closely from an Organisation for Economic Co-operation and Development (OECD) issues paper "Hearing On Disruptive Innovation – Issues Paper By The OECD Secretariat". See Section 2 of the issues paper on "Defining disruptive innovation" and Section 3 on "Characteristics of disruptive businesses".

[5] This definition is adapted from the ICN's definition of competition advocacy in its 2002 report on Advocacy and Competition Policy. Competition advocacy refers to activities conducted by the competition agency that are 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 in regard to the benefits of competition.

About Disruptive Innovations

When one talks about disruptive firms, ridesharing platforms such as Uber and accommodation sharing platforms such as Airbnb come to mind. It is well publicized how these disruptive firms have respectively challenged and disrupted taxi and hotel industries across the globe.

The advent of the internet coupled with growing mobile phone penetration have, in part, catalysed the growth of disruptive

firms and enabled their innovative offerings to businesses and consumers.

Disruptive innovations feature prominently in many markets around the world. They take many forms and have made significant inroads into our everyday lives. The emergence of such disruptive innovations has often brought about significant benefits such as greater choice, greater convenience and more competitive prices to consumers; which explain their ability to disrupt markets in the first place. The upheavals in markets caused by disruptive innovations have been described as the realization of Schumpeter's vision of competition, that of "creative destruction".

Needless to say, not everybody welcomes the "creative destructive force" of disrupters. Incumbents' bottom line and their very existence are threatened by these new and innovative offerings. Legislative and regulatory bodies are also racing against time to ensure that their regulations keep pace with these rapid market developments.

Food for Thought: What is Uber? A technology company or transport company? Who are Uber drivers? Employees or individual contractors?

Generally, disruptive innovation itself has to date posed little concern for competition agencies as it tends to spur greater static and dynamic competition in the market. However, the responses to disruptive innovation by incumbents and Governmental and Legislative Entities (GLEs) can instead raise competition concerns for competition agencies.

Disruptive innovations may raise concerns in areas such as employment, consumer protection, public safety and health, as they may not be effectively regulated under the existing regulatory frameworks. There may also be instances where disruptive firms may begin operations without complying with existing regulations. As such, GLEs may face pressure from businesses and consumers to regulate, or even ban them altogether.

GLEs may react by enforcing existing regulations. For example, the Belgian Competition Authority noted that,

> *"GLEs' initial reflex is usually to enforce existing rules. It should also be noted that disputes between traditional operators and "disruptive" innovators are normally brought before the courts. They are bound to enforce existing rules. "*

However, there is a risk that existing regulations, which are designed for "older" business models, are not well suited for such disruptive firms and do not adequately address the underlying market circumstances. In fact, existing regulations may prove to be unnecessarily restrictive, such that they prevent entry and/or expansion of such disruptive firms.

Incumbents may also demand new or revised regulations to "level the playing field" against these disruptive innovations. For example, such demands have featured prominently in the transportation services industry, where incumbent taxi companies, taxi drivers and taxi associations have argued against "unfair competition" from ride-sharing applications operated by Transport Network Companies (TNCs), like Uber, which are not subjected to the same rules. [6] The GLEs have the unenviable job of ascertaining whether these demands are legitimate or actually attempts by incumbents to use regulation to make it difficult for disruptive firms to flourish.

A key question is obvious - to regulate or not to regulate? Both proponents for and opponents against regulations for disruptive innovations and firms have raised valid points in their debate. We present the pertinent arguments here.

Arguments for regulation #1: To address public concerns e.g. public safety, liability and workers' rights. Going back to the taxi industry, incumbent taxi companies have been vocal in their protests against TNCs. Concerns include non-compliance with existing law and industry standards, inadequate insurance and workers' compensation, lack of industrial relations arrangements and the introduction of surge pricing.

For example, Uber has been accused by the district attorneys of San Francisco and Los Angeles of giving the public false assurances that its drivers are safe when its background check system failed to prevent it from hiring registered sex offenders, thieves, burglars, kidnapper and a convicted murderer in California.[7]

Next, consider the case of Airbnb. Airbnb faces challenges in preserving privacy and ensuring safety of its guests, among others, in the United States. While Airbnb relies on self-regulation through user reviews to police undesirable behaviours and uphold consumer protection, one can argue that Airbnb's heavy reliance on its users is misguided as vacationers, who have never been trained for the job, are doubling up as safety inspectors. Airbnb was reportedly hit with a lawsuit recently after a couple who rented an apartment in Irvine, California discovered that the owner had placed a hidden video camera in the living room. According to the report, the couple argued that Airbnb did not conduct a background check on the owner of the apartment and given that the action of the owner was sufficiently foreseeable, Airbnb's inaction resulted in stress, humiliation and other damages.[8]

Arguments for regulation #2: It is a matter of fairness. That disruptive firms may not be playing within the same boundaries also raises the issue of fairness, i.e., disrupters are competing with the incumbents without being held to the same standards and rules, or even any standards and rules at all. For example, incumbent taxi companies in Singapore (which have their respective taxi-booking apps) felt that third-party taxi booking apps provided by TNCs have not been competing on a level playing field.[9] For instance, TNCs do not have to meet stringent service requirements imposed on

[6] Channel News Asia, 83 arrested in Indonesia after taxi drivers' protest turns violent, March 22 2016.

[7] BloombergBusiness Uber Driver Screening Missed Ex-Convicts, Prosecutors Say, August 20 2015.

[8] Yahoo! Tech, Airbnb nightmare: Couple finds hidden video camera in rented apartment, December 19 2015

[9] Straits Times, Regulations for taxi apps on the way, November 5 2014.

the incumbent taxi companies, such as the 92 per cent success rate of matching call bookings with taxis.[10]

Many incumbents affected by the proliferation of disruptive innovations have voiced that they cannot compete with disruptive firms due to the more stringent rules imposed on them. This had led to calls for new but fair rules to be applied to both incumbents and the disrupters so that the playing field can be levelled.

Arguments for regulation #3: Disruptive firms want clear regulation. Perhaps what might be surprising to some is that disruptive firms themselves may want to have clear rules on what they can and cannot do. Contrary to what critics of disruptive innovations believe, not all disruptive firms enjoy hiding behind legal ambiguity. Instead, disruptive firms themselves want a set of rules that is clear, relevant and non-burdensome in order to legitimize their existence and define their identity.

We cite two examples from Singapore. In the transport sector, TNCs like Uber and Southeast Asia-based Grab,[11] both cheered the Singapore Land Transport Authority's move to introduce a basic regulatory framework for ridesharing platforms as progressive and giving stakeholders clarity about the industry.[12] In the financial sector, Singapore-based peer-to-peer lending platforms have also come together to ask the Monetary Authority of Singapore for a clear regulatory framework to help the industry grow, which in turn will support start-ups and small and medium enterprises with wider access to funding.

These disruptive firms hold the view that clear regulations and compliance with them are critical as they help to boost investor confidence and avoid the mismanagement of any platform that could threaten the reputation and credibility of disruptive innovations.[13]

This view is echoed by Mr. Nathan Blecharczyk, one of the co-founders of Airbnb, who reportedly commented that Quebec's recent move to consider regulations governing the online home-rental industry could boost Airbnb's credibility.[14]

Arguments against regulation #1: Top-down government imposed regulations are too costly, slow and rigid for disruptive innovations. On the other hand, some believe that rapid growth of these disruptive innovations alleviates the need for much top-down regulation, because it does a better job of serving consumer needs.[15] For example, self-regulation (such as user ratings and online review on product/service quality) may be a more effective means of addressing issues that arise in many digital platform-based innovations than passing new legislation on product/service quality.

Nobel Prize winning economist Elinor Ostrom showed that government-imposed 'permissioned' regulations may disintegrate the complex civil society institutions of governance given that top-down control lacks the local information used to develop the existing institutions, and top-down rules often ignore the

[10] Land Transport Authority, Quality of Service Results.
[11] Grab website.
[12] The Business Times, Market players welcome LTA regulation of third-party taxi apps (Amended), November 22 2014.

[13] The Business Times, Singapore crowdlending platforms call for clear regulations, 31 August 2015.
[14] The Canadian Press, Airbnb asks Quebec to carefully consider new rental rules, 29 June 2015.
[15] ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act" at page 16

unwritten social norms and values.[16] In other words, government intervention may crowd out and hinder progress, rather than protect individuals.[17]

As such, the default position for regulators should be to allow bottom-up, organic, self-regulating institutions to develop. It is argued that bottom-up governance tends to be more dynamic, nimble, flexible and cost-effective as it is in the best interests of the platforms to produce a reliable and safe service in the most efficient way. For example, sharing platforms rely heavily on user reviews to promote their services; a significant number of negative reviews on these platforms would drastically impact their popularity. To avoid such a situation, they would develop and implement rules that best address the needs of their customers.

Only when self-governance has shown to be ineffective, should regulators impose top-down regulatory solutions.

Arguments against regulation #2: Regulations do not always act to maximize social welfare. Some may argue that regulations do not always act to maximise social welfare but rather promote private interest. Regulation can be susceptible to being introduced and implemented in a manner that furthers the private interest rather than the public interest. George Stigler described this situation as regulatory capture i.e. regulation as being acquired by firms for their own benefit.[18] For instance, incumbents in a market often welcome new regulations – even costly new regulations – because they present barriers to entry for new competitors and the proliferation of new offerings.

Food for Thought: Should competition agencies discourage GLEs from conducting regulatory reviews in relation to disruptive innovations?

The discussion above is also being mirrored in Responding Members' experience. About a third of Responding Members shared that "political will in the face of strong lobbying by the incumbents" is a challenge when advocating for GLEs to consider competition impact in their proposed or existing regulations related to (but not limited) to disruptive innovations. For example, the entry of TNCs in Italy has affected the value of the taxi licences. The limited number of taxi licences has traditionally represented a considerable entry barrier for those interested to enter the trade. It is obvious that incumbent taxi drivers have strong incentives to lobby GLEs for new regulations that block entry of disruptive innovations. Competition agencies are not immune from the lobbying efforts of incumbents.

[16] Ostrom, Elinor. Governing the Commons: The Evolution of Institutions for Collective Action (Cambridge University Press, 1990).

[17] Darcy Allen, Chris Berg, The Sharing Economy – How over-regulation could destroy an economic revolution (Institute of Public Affairs, 2014).

[18] Stigler, George J. "The theory of economic regulation." The Bell Journal of Economics and Management Science (1971): 3-21.

Examples of disruptive innovation-related regulations

Taxation: In the City of Portland, Oregon, Airbnb reached an agreement to voluntarily collect local hotel or occupancy taxes from guests on behalf of hosts. In an attempt to quell growing criticism of its success in Paris, Airbnb has also agreed to collect "tourist taxes" in its biggest market worldwide.

Licensing: In Singapore, taxi-hailing applications provided by TNCs (e.g. Grab and Hailo) are required by the Land Transport Authority to obtain a certificate of registration to operate a third-party taxi-booking mobile app. The certificates are issued in accordance with Singapore's Third-Party Taxi Booking Service Providers Act. According to the legislation, in order for an app operator/provider to qualify for registration, they have to use only LTA-licensed taxis which are driven by professional taxi drivers. They also have to work with a fleet of over 20 cars. In California, the California Public Utilities Commission requires TNCs like Uber and Lyft to get a permit and to run criminal background checks on drivers.

Insurance: Commercial insurance coverage for participants of disruptive innovations/businesses has also become a licensing requirement in many countries. The Columbus City Council (Ohio) required app-based car services that dispatch drivers using their personal vehicles to comply with new insurance requirements in 2014. With the new regulations, companies will have to carry $1 million liability coverage and $1 million for uninsured and underinsured motorist coverage, and match whatever comprehensive and collision coverage a driver carries on a personal policy. In Washington DC and Virginia, companies such as Lyft and Uber must pay $100,000 for a licence to operate in the state and provide at least $1 million in liability insurance.

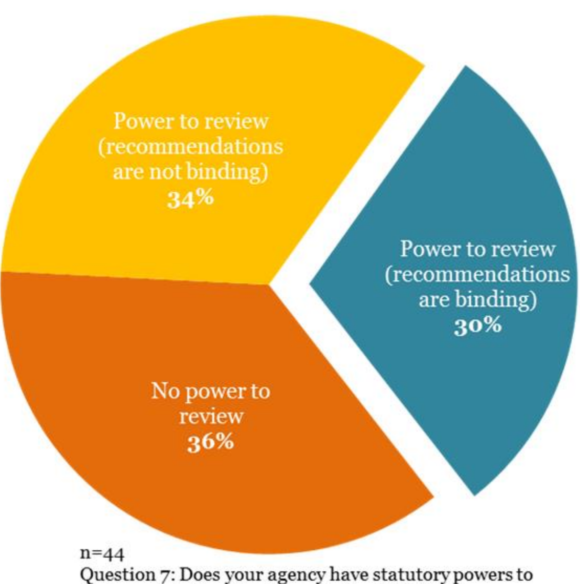
Compliance with Employment Law: In June 2015, the California Labor Commission ruled that Uber drivers are employees, not independent contractors. At present, the ruling is being appealed and currently only applies to one driver, though there is the potential for wide-ranging implications. For example, the ruling puts the onus on Uber to cover workers' compensation, employee expenses and other charges. In Seattle, Uber and Lyft drivers have recently been granted the rights to form a union, allowing them to collectively bargain for benefits such as higher pay and better working conditions, just like any other employees.

Disruptive innovations can create tensions between regulation and competition policy. Advocacy efforts by the competition agency play an important role in addressing such tensions, for example, through the promotion of regulations that achieve public policy objectives in a way that minimises impact on competition.

CCS surveyed ICN members on whether they have statutory powers to review regulations implemented by GLEs. Approximately 36% of Responding Members do not have statutory powers to review regulations implemented by GLEs, while 34% had powers to review but their recommendations were not binding on the GLEs. Only 30% had powers to review regulations and issue opinions or comments that were binding to some degree.[19] For example, the Federal Antimonopoly Service of the Russian Federation has powers to review every draft government regulation and condition their adoption on eliminating provisions that may harm competition. On the other hand, the Komisi Pengawas Persaingan Usaha (KPPU) noted that article 35 of Indonesia competition law,

> "*provides the KPPU with authority to provide policy advice on government's regulation. However, the [adoption of] advice is not mandatory.*"

However, when asked how "competition-savvy" GLEs are, only 28% of Responding Members indicated that their GLEs promote competition as one of their objectives. In such instances, the Responding Members typically have some form of formal institutional process in place to ensure this. An oft-cited example is the need for a regulatory impact assessment to be carried out by the GLEs where competition is considered as part decision making. The remaining 72% of Responding Members reflected that GLEs do not or only 'sometimes' consider the promotion of competition when formulating regulations and/or laws for markets affected by disruptive innovation.[20]



n=44
Question 7: Does your agency have statutory powers to review regulations implemented by GLEs?

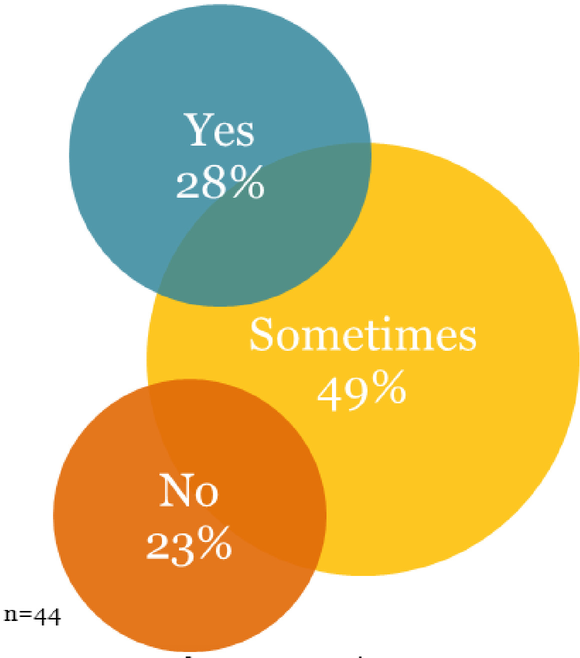
It would therefore appear that in some jurisdictions, where the competition agency does not have statutory power to review regulations or impose binding recommendations on GLEs, advocacy is the only viable tool to argue against regulations that limit or restrict competition in an affected market. That said, government advocacy can be used more generally by competition agencies to influence and promote pro-competition policies and regulations to, for example, enable the entry and

[19] Based on Members' response to question 7 of the survey.

[20] Based on Members' response to question 6 of the survey.

expansion of disruptive firms to improve competitive outcomes in markets.

"Government advocacy may not yield immediate results but over time it helps to build a strong competition foundation."



Question 6: Based on your agency's experience, in the formulation of regulations/laws for market(s) affected by disruptive innovation, is promoting competition in these markets one of the GLEs' objectives generally?

NB: A Responding Member had not observed any GLEs' response towards disruptive innovations.

Competition agencies' advocacy efforts may not always be successful or lead to substantial changes at the onset. However, advocacy to GLEs can still help to generate good practices in the regulatory process, contribute to shaping public debate and create a culture of competition over time. For example, consultation meetings with government officials in charge of drafting guidelines provide competition agencies with the opportunity to highlight the need for GLEs to consider competition matters which in turn can help to prevent future competition problems such as the formulation of licensing regimes which favour incumbents.

More importantly, Responding Members agreed that their role of protecting and promoting competition should not be limited to competition enforcement. For many Responding Members, both advocacy and enforcement work hand in hand in achieving competition outcomes in their respective markets.

For example, the DG Competition's competition proceedings against the European Union association of banks dealing with payments led to a new legislation that gives innovators in the internet payments market, a legal basis and a clear right to provide their services. [21] The Barbados Trading Commission added that the "*usual anti-competitive practices which it would normally investigate*" are triggers for the Commission to engage in government advocacy.

"Competition advocacy and enforcement reinforces one another. Enforcement lends credibility to advocacy."

The Finnish Competition and Consumer Authority summarised the views shared by many Responding Members:

> *"One of the points of departure in modern advocacy is that advocacy and the control of competition rules support and* reinforce each other. The *supervision of competition rules can in many instances be reinforced by advocacy, and advocacy lacks credibility unless it is connected to the powers pertinent to the monitoring of*

[21] DG Competition, Case Study.

competition rules and the information received in the context of this work on the real problems relating to the functioning of markets. "[22]

With the increasing prevalence of disruptive innovations and the challenges faced by Responding Members to resolve competition problems arising from disruptive innovations, the majority of Members have voiced the need for greater sharing of experiences and learning points in relation to competition government advocacy and disruptive innovation either through international organizations e.g., ICN, OECD or forums and databases.

This special project report contributes to the broader efforts by the ICN Advocacy Working Group to develop practical tools and guidance, and to facilitate experience-sharing among ICN members, in order to improve the effectiveness of ICN members in promoting the development of a competition culture within society.

In preparing for this special report, the project team sought the views of ICN members on government advocacy and more specifically their experience in working on government advocacy and disruptive innovations.

In the next section, we present an overview of Responding Members' experience in this area of government advocacy. The following sections summarise the solutions to the three key challenges that Responding Members face in their advocacy efforts before identifying some learning points for good disruptive innovation-related government advocacy.

At a Glance: Special Project Report Sections

p.20 Responding Members' Disruptive Innovation-related Government Advocacy Experience

p.47 Three Key Challenges and How to Overcome Them

p.60 Learning Points for Good Disruptive Innovation-related Government Advocacy

p.71 Concluding Thoughts

p.72 Case Studies on TNCs

p.98 Case Studies on other Sectors

[22] Finnish Competition and Consumer Authority Website: Advocacy.

RESPONDING MEMBERS' EXPERIENCE WITH DISRUPTIVE INNOVATIONS AND GOVERNMENT ADVOCACY

Priority| 61% of Responding Members view disruptive innovations as top priority or a concern in relation to their advocacy and enforcement work.

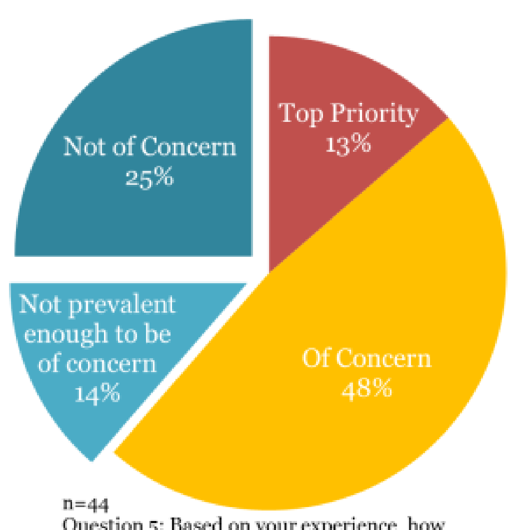
This statistic [23] is made up mostly by Responding Members from high-income economies. 77% of Responding Members from high-income economies are concerned about disruptive innovations, compared to 39% of Responding Members from middle-income economies.

The main reason for Responding Members from middle-income economies not viewing disruptive innovations as a concern is that they are not yet prevalent enough in their respective economies. The El Salvador Superintendencia de Competenica noted that,

> *"the prevalence of disruptive innovations seems barely significant, and is not as widespread as it is in more developed economies. For instance, smartphone based car hire applications like Uber are not used within the country, nor products like Bitcoin and C2c mobile payments for C2C businesses like Airbnb."*

That said, these Members noted that the trend may change as their economies develop and technological improvements become more widespread. For example, although the Czech Republic Office for the Protection of Competition has not handled significant legislative initiatives in relation to disruptive innovations as yet, it noted that,

> *"if the legislative proposal would raise a competition concern it would definitely be a high priority task for the Office to advocate the procompetitive character of the draft."*



n=44
Question 5: Based on your experience, how important a concern/focus is disruptive innovation in relation to your agency's work e.g. competition law enforcement and government advocacy?

[23] Based on Members' response to question 5 of the survey. 27 out of 44 Members indicated that disruptive innovation is of concern or is one of their top priorities.

High-income Economies (n= 26)

Top Priority	Of Concern	Not prevalent enough to be of concern	Not of Concern
19%	58%	11%	11%

Middle-income Economies (n= 18)

Top Priority	Of Concern	Not prevalent enough to be of concern	Not of Concern
6%	33%	44%	17%

Question 5: Based on your experience, how important a concern/focus is disruptive innovation in relation to your agency's work e.g. competition law enforcement and government advocacy?

There is also general recognition that such "immunity" will not be long lasting and they should therefore start acquiring learning points from other ICN members early in preparation for the need to engage in government advocacy on this front. The Georgia Competition Commission noted,

> *"If dealing with innovative disruption is not the case today, it will be tomorrow, therefore sharing the knowledge and methodology used by other agencies is the best way to get prepared."*

Similarly, the Office of Trade Competition Commission Thailand is "*interested in the issue and will initiate a study on the effect of disruptive innovations to Thailand's competition environment.*"

Responding Members from high-income economies who are not concerned with disruptive innovations in their work noted that the concept of disruptive innovation is not a distinct, standalone, or unique concern, but rather can be an aspect of specific markets that may raise competition concerns.

For example, the Swedish Competition Authority opined that,

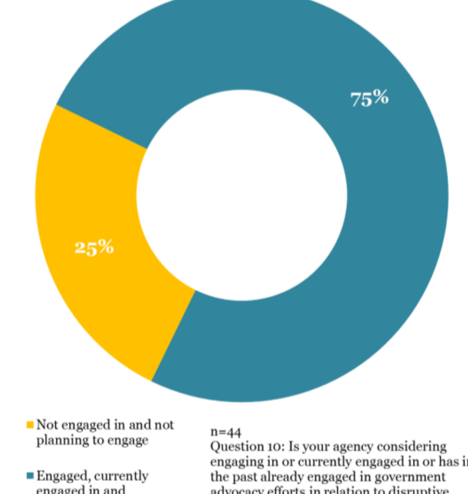
> *"generally, markets where disruptive innovations exist are not the markets with the most prevalent competition problems. [...] It is however, always relevant to consider whether market concentration and other competition problems may be hindering disruptive innovation."*

Similarly, the Danish Competition and Consumer Authority noted that,

> *"disruptive innovation is not a concern in itself. Our focus is on supporting the development of and maintaining well-functioning markets. Part of a well-functioning market would be the 'threat' of entry or of disruptive or non-disruptive innovation."*

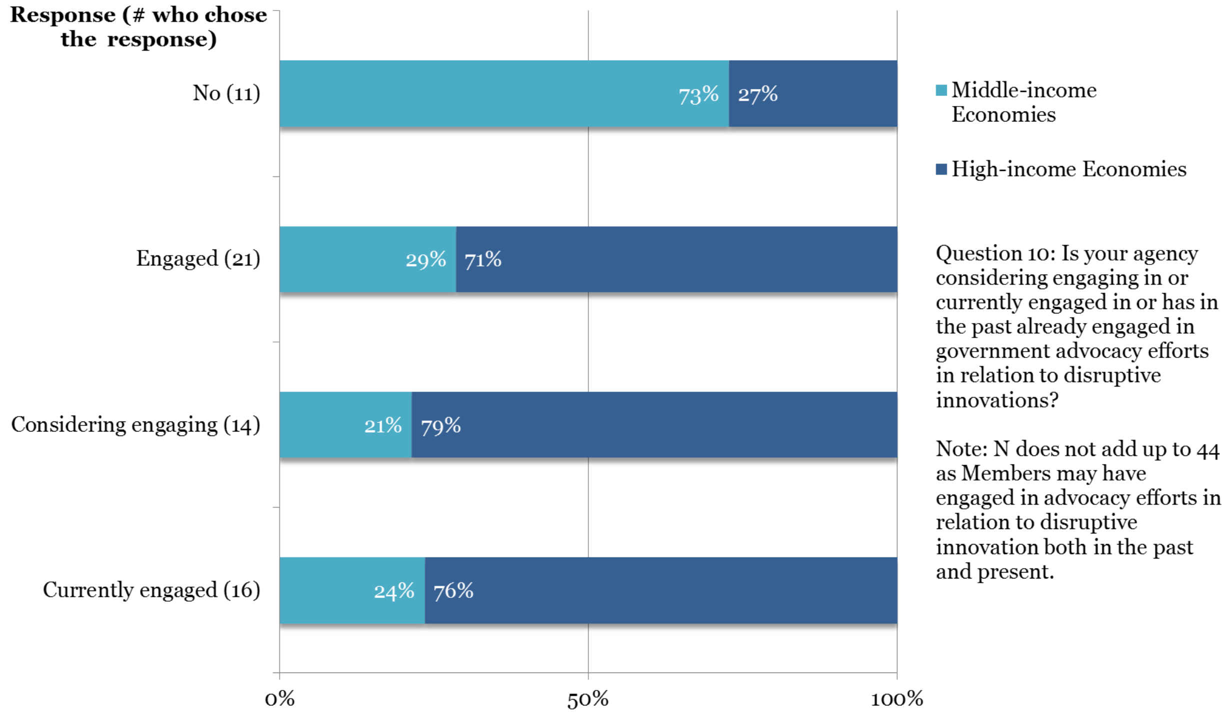
Another metric for determining the degree of relevance of disruptive innovation to Responding Members' work is their past, current and planned government advocacy efforts in relation to disruptive innovation.

Disruptive Innovation-related Advocacy Experience| 48% of Responding Members have engaged in disruptive innovation-related government advocacy.

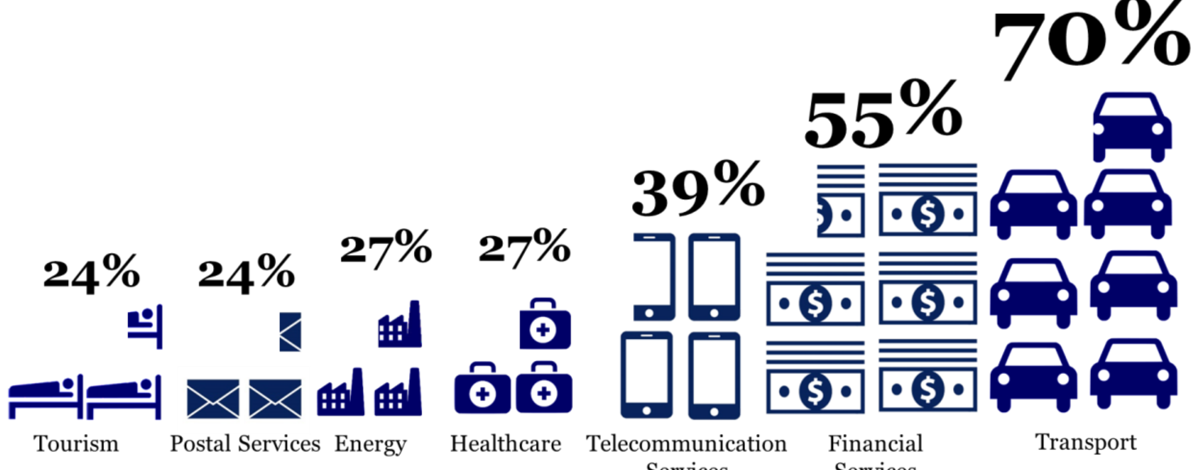


Further, out of these Responding Members who have engaged in disruptive innovation-related government advocacy, 52% of them are still currently engaged in similar advocacy efforts.

On the other hand, 25% of Responding Members have not engaged in and are not planning to engage in disruptive innovation-related government advocacy. They cited the same reason for the lack of government advocacy work in this area - disruptive innovations are not prevalent in their economies yet.[24] As with the responses to question 5, the majority of Responding Members who have engaged in or are currently engaged in disruptive innovation-related government advocacy are from high-income economies. That said, a number of middle-income economies (e.g. Brazil, Colombia and Mexico) have worked on similar issues faced by high-income economies, in particular, GLEs' regulatory response to TNCs, as such disruptive innovations proliferate rapidly across many parts of the world. Other middle-income economies like Turkey and Malaysia have similarly engaged GLEs on disruptive innovations in other economic sectors.



[24] Note that simple sum of statistics with regard to Responding Members who have (i) engaged, (ii) currently engaged or (iii) considering engaging in disruptive innovation-related government advocacy will be greater than 75% as Responding Members may choose all or some of the three options. 75% is derived from 100% minus 25% (Responding Members who chose the option of not engaged in and not planning to engage in disruptive innovation-related government advocacy).



n=33 (Responding Members who are currently engaged in; planning to engage; or have engaged in disruptive innovation related government advocacy)

Question 11: What are the sectors covered in your agency's previous, current, and/or forthcoming government advocacy efforts in relation to disruptive innovations?

Sector| Most Responding Members have engaged or are considering engaging GLEs on disruptive innovations in the transport sector.

Responding Members' disruptive innovation-related government advocacy efforts cover a wide variety of sectors. Of the 33 Responding Members who have experience with disruptive innovation-related government advocacy or are planning to, 70% cited that they were engaged in or are planning to engage with GLEs on TNCs related matters in the transport sector. Much of the advocacy efforts by Responding Members in this area are related to easing regulations which sought to protect the position of taxis in the hailing market, improving availability of taxis and creating incentives to develop new forms of services, and ensuring regulatory restrictions were no broader than necessary to achieve legitimate public policy objectives, e.g. in terms of safety. For a more detailed discussion of this sector, please refer to Case Studies submitted by Members on Transport Network Companies.

Financial services and telecommunications services are also commonly cited sectors due to the emergence of new forms of "e-payment" or mobile payment systems, peer-to-peer loans, financial technology companies, e-commerce, video-on-demand and streaming technologies.

Much of the advocacy efforts in financial services centre on identifying and reviewing regulatory barriers and to ensure that regulations regarding standards for payment systems do not give rise to anti-competitive concerns.

Responding Members' advocacy efforts relating to telecommunications services were focused on lowering barriers to entry and expansion and improving access for new forms of technologies or smaller players with innovative models and aggressive pricing. It is also worth highlighting that there is close synergy between the developments in many different sectors. Financial, telecoms and retail services are one such example; the emergence of new telecoms technologies, payment systems and increasing

popularity of e-commerce mean that issues often cut across these three sectors. Similarly, the Australian Competition and Consumer Commission's Case Study provides a useful case in point on how distribution and consumption patterns in the media sector has evolved with the advent of the internet and new streaming technologies.

The DG Competition's Case Study on internet payments and sector inquiry into the e-commerce sector [25] is another example. E-Commerce has also transformed business models in postal services. Companies have introduced new courier services focussed on e-Commerce goods delivery. 18% of the 33 Responding Members raised concerns in e-Commerce and logistics fulfilment and are planning to or are in the midst of collaborating with GLEs on studies in the sector.

Responding Members' concerns with regard to healthcare services are considerably more varied, ranging from the provision of innovative healthcare services by providers other than doctors and nurses, medical savings and health insurance services, to the manufacturing of generic pharmaceutical products.

Other sectors that Responding Members have had experiences in are energy (in particular electricity, e.g. smart meters, grids' deployment and innovative solutions for generation of electricity) and tourism (e.g. online hotel booking sector and peer-to-peer platforms such as Airbnb).

Having identified the common sectors where Responding Members have encountered disruptive innovations, the next section discusses the common competition concerns caused by proposed or existing regulations vis-à-vis disruptive innovations.

Concerns| GLEs' responses to disruptive innovations may prevent disruptive firms from entering the market; stymie their ability to compete with incumbents; and consequently limit market developments

More than 60% of Responding Members indicated that GLEs' responses give rise to these three competition concerns. Sometimes, such concerns stem from lobbying by incumbents for rules that inhibit or prevent entry, or raise the cost of entry for innovative entrants.

For example, in the city of São Paulo in Brazil, in light of the pressure exerted by the taxi drivers union to ban car ride applications, especially Uber, the local

[25] DG Competition, Sector Inquiry into E-Commerce.

legislative assembly passed a bill that banned Uber in the city.[26]

Citing concerns in relation to public safety, consumer protection and compensation for holders of existing taxi licences who stand to lose significantly from entry of ride-sharing applications, Canadian GLEs have had a number of similar responses, from banning ride-sharing applications (Vancouver) to trying to enforce existing taxi bylaws against transportation network companies and their drivers (Ottawa, Toronto, Montreal (Québec)).[27] Turkey's sector inquiry into the retail electricity markets illustrated the importance of smart meters and smart grids, and how incumbents may try to block new entry and artificially raise the cost of deployment of smart technologies.[28]

Existing regulatory processes may also make it more difficult for innovative products to compete. This could happen when GLEs try to fit disruptive firms and their products within the existing regulatory frameworks or they legislate amendments to these frameworks to explicitly cover the new products or services even though these frameworks are fundamentally unsuitable. The result is that disruptive firms either cannot comply with the rules or will lose aspects of their innovation that are valuable to consumers.

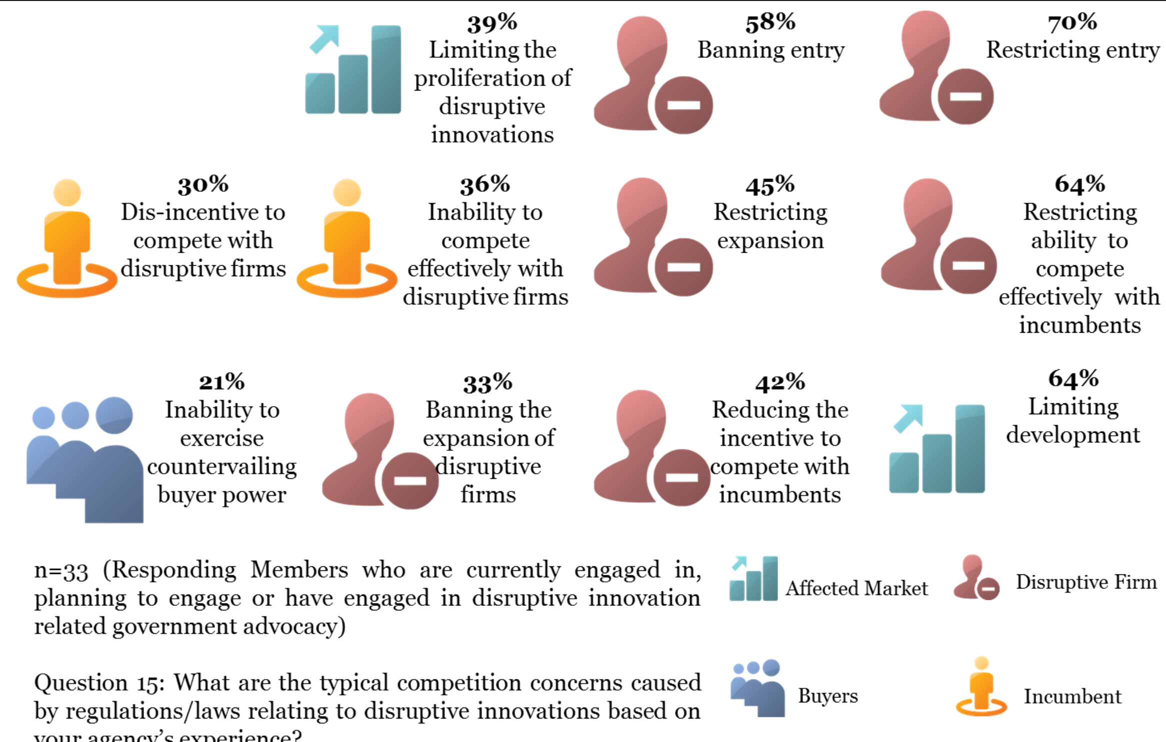
For example, in relation to chauffeur-driven passenger transport services in France, the government proposed various measures, including a 15-minute-delay requirement between the time of booking a chauffeur-driven car (CDC) and the time of picking up the passenger (2013 draft decree) and an obligation for the CDC to return to its base or remain at an authorized parking lot once the passenger is dropped off (2014 draft decree). Instead of using alternative measures to counter and discourage illegal hailing, the government intended to implement measures distorting competition by protecting the hailing market under taxis' monopoly and impeding CDCs' activity in the adjacent pre booking market (a market for which taxis do not hold a monopoly).[29]

n=33 (Responding Members who are currently engaged in, planning to engage or have engaged in disruptive innovation related government advocacy)

Question 15: What are the typical competition concerns caused by regulations/laws relating to disruptive innovations based on your agency's experience?

[26] Brazil CADE's Case Study at part (b).
[27] Competition Bureau Canada's Case Study at part (c).
[28] Turkish Competition Authority's Case Study.

[29] French Autorité de la concurrence's Case Study at part (c).



In another example, Australia's Broadcasting Services Act (BSA) contains a "two out of three" rule, which prevents anyone from holding a radio broadcasting licence, a television broadcasting licence and a newspaper licence in the same licence area. One can control two of these mediums but not all three. This rule was introduced before the internet became a key medium of media content for consumers. The Australia Competition and Consumer Commission (ACCC) has publicly questioned whether the "two out of three" rule is preventing the efficient delivery of content over multiple platforms, and suggested it be reviewed to see whether it is still relevant for the purpose of preservation of diversity; changing technology may have made the initial justification for the 2 out of 3 rule (from 30 years ago) redundant.[30]

It is noteworthy that 36% of Responding Members indicated that incumbents are also affected by proposed or existing regulations as their ability to compete effectively with disruptive firms may similarly be restricted.[31] Disruptive firms may not be required to comply with existing regulatory requirements relating to safety, consumer protection or other public policy goals, therefore possibly disadvantaging incumbents who continue to be subject to such regulations.

For example, the Italian Competition Authority noted that the Italian public taxi service is highly regulated with limits on availability of taxi licences, regulated itineraries and timetables and mandatory insurance scheme for passengers. In order to obtain a licence, taxi drivers face

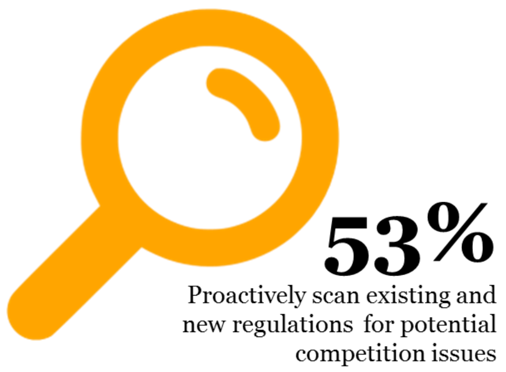
[30] Australian Competition and Consumer Commission's Case Study at part (c).

[31] See also paragraph 542 of the German Monopolies Commission's report on [Competition policy: The challenge of digital markets](). *"542. In product-market terms, the existing regulations may be unjustifiably preventing providers with innovative business models from entering the market. By contrast, established business models may also not be competitive vis-à-vis new business models, or only to a restricted degree, because of the existing regulation. In the view of the Monopolies Commission, there is a need to analyse in each case, against the background of technological and economic development, whether the new business models may need to be subject to regulation in order to create a level playing field, and if so, then to what regulation."*

significant fixed costs which entail long depreciation periods. Taxi drivers would therefore not be able to offer prices that are able to compete with those offered by Uberpop (a service provided by Uber) drivers, who are basically private non-professional drivers.[32]

This idea of 'regulatory neutrality' (i.e., that regulators should not favour one company or business model over another) is an important consideration for ICN members when dealing with disruptive innovation. This idea is explored in the later part of this section on Responding Members' government advocacy objectives.

These tensions arise because GLEs have many policy considerations other than promoting competition. The issue on whether ICN members should take these policy considerations into account when engaging in government advocacy is discussed later. That said, it is important for ICN members to keep abreast of market as well as regulatory developments in relation to disruptive innovations to ensure timely advocacy engagements with GLEs.



n=44
Question 8: Does your agency proactively scan existing or new regulations related to disruptive innovations for any potential competition issues?

[32] Italian Competition Authority's Case Study at parts (a) and (d).

Awareness | Responding Members become aware of developments in relation to disruptive innovations and competition concerns arising from proposed or existing regulations through various channels

Formal requirements for GLEs to carry out regulatory impact assessments is one such channel, as the competition authority may be called upon to advise the GLEs in their impact assessment or to validate the assessments made.

Responding Members may also receive requests for advice or invitations to comment on competition issues from GLEs through other channels. Complaints from different sources may also alert Responding Members to such competition concerns.

Responding Members also proactively scan existing or new regulations for potential competition issues. 53% of Responding Members indicated that they engage in some form of proactive scanning but many of these efforts are not specifically targeted at disruptive innovations. Typical scanning approaches include:

i. reviewing of government platforms, legislative or administration agendas, or budget debates, where new regulations are published or discussed;

ii. working closely and engaging in discussions with relevant GLEs;
iii. media monitoring, internet scanning, and scanning of industry and sector specific publications;
iv. monitoring of overseas developments; and
v. formal periodic processes to review regulations by GLEs that may raise competition concerns.

The National Markets and Competition Commission of Spain's (CNMC's) innovative approach towards scanning is worth highlighting in this regard. The CNMC noted that,

> *"we are developing a powerful IT screening tool (Systematic Restriction Detector) that was included in our 2015 action plan :*
>
> > *10.5 Develop IT screening tools to analyse legislation and detect any possible restriction to competition well in advance."*

The CNMC's advocacy department also scans and reviews new regulations to detect potential obstacles to effective competition. For example, it has challenged several regional and local regulations on tourist apartments and touristic housing for imposing what it considered to be an unnecessary restriction (Madrid and Canarias); and on the taxi service (Córdoba and Málaga) that introduce disproportionate restrictions and requirements on the sector.

Resource prioritisation was the main reason cited by Responding Members for not proactively scanning regulations. As an alternative to proactive scanning, some Responding Members rely on formal institutional processes such as requirements for regulatory impact assessments and empowerment by legislation to review regulations to be informed on regulatory developments.

Having been alerted to potential competition concerns, Members typically undertake some form of competition assessment and prioritisation before engaging in advocacy efforts.[33]

57% of Responding Members would engage GLEs in advocacy efforts if a proposed or existing regulation has some impact on competition.[34] In this respect, some Responding Members have used OECD's Competition Impact Assessment Checklist as a guide. Hence, Responding Members would engage in advocacy related to disruptive innovations if the proposed or existing regulation:

i. Limits the number or range of suppliers;
ii. Limits the suppliers' ability to compete;
iii. Reduces the suppliers' incentives to compete; and/or
iv. Limits the options and information available to consumers.

Some Responding Members adopt a more legal-centric approach and engage in government advocacy efforts if their assessments reveal that proposed or

[33] Responding Members who have not encountered regulations with competition concerns in respect of disruptive innovations have answered this question generically and stated that the same considerations will apply.
[34] Based on responses to question 9 of the survey, n=44. Question 9: What are the factors/circumstances that might trigger your agency to engage with GLEs in relation to disruptive innovations?

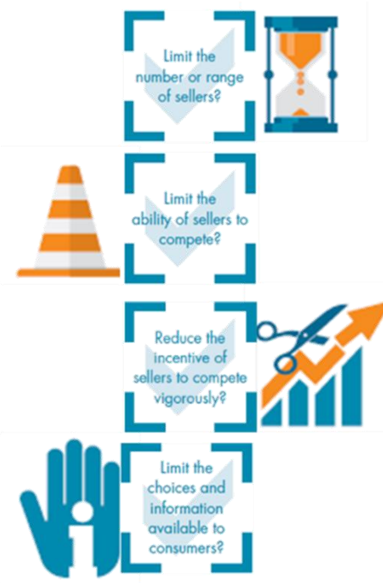
existing regulations have the potential to cause market participants to infringe competition law, e.g. abuse of a dominant position, foreclosure of entry, anti-competitive or prohibited agreements and even 'deceptive' market practices.

Besides potential economic and/or legal concerns identified through their assessment, there are other factors that Responding Members consider before engaging in advocacy efforts. For example, Responding Members may prioritise their engagement based on the extent of harm created by the proposed or existing regulations, resources available to the competition agencies, importance of the product or service in question, and probability of success in terms of Responding Members' ability to make useful contributions in delivering tangible benefits to consumers. Responding Members may also focus their advocacy efforts on issues which they have expertise and can use evidence to support their advocacy positions.

In addition to the above, other possible triggers for Responding Members to engage in advocacy efforts with GLEs include directions from Ministers and even opportunities arising from enforcement interventions by Responding Members. This reinforces the idea that advocacy and enforcement work can complement each other.

For example the French Autorité de la concurrence noted that following its intervention in the hotel booking sector, which highlighted opportunities and risk associated with disruption, it had been requested to contribute to parliamentary inquiries on the impact of disruptive innovation in the tourism sector.

Similarly, the Directorate-General for Competition of the European Commission's competition enforcement against the European Union association of banks in relation to payments led to new legislations that will give innovators in internet payments a legal basis and clear right to provide their services.[35]

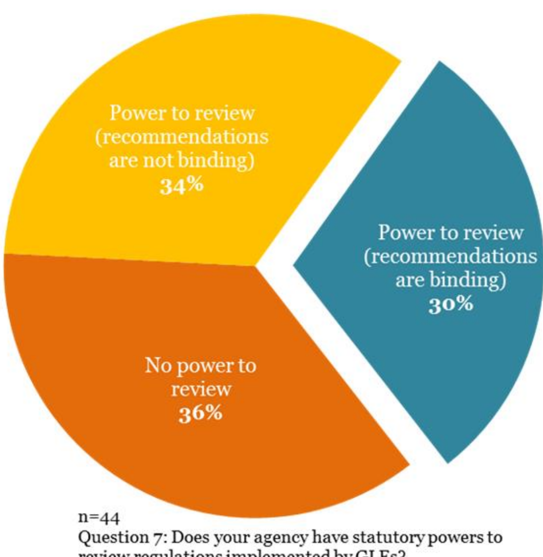


OECD Competition Assessment Toolkit Checklist
Based on responses to Question 9: What are the factors/circumstances that might trigger your agency to engage with GLEs in relation to disruptive innovations?

As another example, the Canadian Competition Bureau has in the past received a steady stream of complaints regarding a wide range of issues concerning the taxi industry, including would-be drivers being unable to obtain taxi plates, exclusive deals between airport authorities and taxi companies, predatory pricing in the form of flat rate charges and service complaints concerning waiting times and prices. This has allowed the Bureau to develop expertise in considering how the emergence of new technologies and innovation can impact competition and consumer protection and allowed the

[35] DG Competition's Case Study.

Bureau to contribute to the City of Toronto Taxicab Industry Review.[36]



Responding Members were also surveyed on whether they have statutory powers to review regulations implemented by GLEs. The responses are mixed. However, it is interesting to note that the degree of statutory power Responding Members possess had no significant bearing on the issues discussed in this section. Members adopt a variety of approaches in keeping themselves informed of new or proposed regulations by GLEs and the "leads" or "triggers" are fairly similar, e.g., complaints, ex-officio requests, maintaining close interactions with GLEs and active scanning and monitoring, even for those with formal statutory powers. More importantly, Responding Members will engage in advocacy efforts as long as they assess that there are legal or economic concerns, regardless of the degree of their statutory powers in reviewing regulations.

[36] Competition Bureau Canada Press Release: Submission by the Commissioner of Competition Provided to the City of Toronto Taxicab Industry, 18 February 2014.

Advocacy Objectives| "Avoid imposing regulations/laws that restrict competition more than necessary to address legitimate public policy objectives" is the most important objective in Responding Members' disruptive innovation-related government advocacy.

Many examples have been provided by Responding Members where competition agencies advocated for GLEs to **avoid imposing regulations/laws that restrict competition more than necessary to address legitimate public policy objectives**.

For example, the Australian Competition and Consumer Commission's (ACCC) 2011 submission to the Australian Federal Government's Convergence Review Committee in relation to the Media and Communications industry stated that,

> *"the challenge is to ensure that any necessary regulatory interventions promote the specific policy goals with minimal detraction from the competitive environment. Consistent with good public policy practice, the ACCC recommends that consideration be given to*

> *identifying the precise outcomes that are sought. This will enable regulation to be designed in such a way as to minimise any negative impacts on competition and consumer choice."* [37]

In the same submission, the ACCC added that,

> *"[it] recognises that the government may determine that it is appropriate to ban access to certain types of content (such as content that would be refused classification). However, the government may decide that outside of these narrow categories, it may be appropriate to ensure consumers have sufficient information about the characteristics of content services to make their own informed decisions about what to access."*[38]

As another example, in the case of the services provided by Transport Network Companies (TNCs) in France, the French Autorité de la concurrence issued an unfavourable opinion on the 2013 draft decree, stating that the 15-minute-delay requirement for chauffeur-driven passenger vehicles, which is not intended to be imposed on radio-taxis, would introduce a distortion of competition with severe negative consequences. The Autorité emphasised that the distortions to competition imposed by such measures on the pre-booking transport market were not counterbalanced by increased efficiency in the fight against fraud (i.e. illegal hailing). The Autorité proposed to reject the 15-minute-delay requirement or to consider

> *"a much wider range of exceptions, covering booking requests from clients already signed up to a chauffeur-driven passenger transport company, but also requests from hotels or event organisers, whatever their administrative nomenclature or classification, as long as they have valet-parking services or private parking facilities: such a drafting would considerably limit the distortion of competition caused by the current draft text"*.[39]

The US Federal Trade Commission (US FTC), in its letter to the District of Columbia Taxicab Commission (also in relation to TNCs), commented that a proposed requirement that a "sedan" have a curb weight of at least 3,200 pounds could impede competition by, for example, *"exclud[ing] certain lighter-weight, more fuel efficient, and more environmentally friendly vehicles from being used for sedan services."*[40]

In another example, the US FTC noted that a proposed $25,000 annual licence fee for TNCs, compared to a $500 annual licence fee for taxicab providers, could put TNCs at a competitive disadvantage and pose as a barrier to entry or expansion.[41]

[37] ACCC's submission to the Convergence Review Framing Paper, June 2011 at page 7.
[38] Ibid, at page 11.

[39] French Autorité de la concurrence Press Release: Private passenger cars with driver, 20 December 2013. The French Administrative Supreme Court (Conseil d'Etat) considered that the 15-minute-delay requirement in the 2013 draft decree was not justified in view of the constitutional principles of commercial and industrial freedom. It suspended the decree in February 2014, and eventually revoked it in December 2014. See French Autorité de la concurrence Case Study at part (h).
[40] Fed. Trade Comm'n Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013), at 5.
[41] Fed. Trade Comm'n Staff Letter to Alderman Brendan Reilly, Chicago City Council regarding Proposed Ordinance O2014-1367 (Apr. 15, 2014), at 5

9%
Ensure that consumer safety and interests are not harmed

25%
Highlight the impact of disruptive innovation on competition in affected markets that may require new or revised regulations/laws and/or monitoring

34%
Facilitate entry of disruptive innovation in order to promote competition in market(s) affected by the disruptive innovations

64%
Avoid imposing regulations/laws that restrict competition more than necessary to address legitimate public policy objectives

n=44
Ranking of objectives based on top priority selected by Responding Members

Question 3: What is(are) the objective(s) of your agency's government advocacy related to disruptive innovations in your market? Rank them by order of priority.

Similarly, in June 2015, the Federal Economic Competition Commission (COFECE) of Mexico issued an opinion on TNCs, stating that:

> *"if any regulation is to be enacted, it should be limited to accomplishing essential public policy objectives related to consumer security. Therefore the Commission did not support regulations regarding price setting or authorisation and/or registration of vehicles by imposing additional requirements such as licence plates."*[42]

"Facilitate entry of disruptive innovation in order to promote competition in market(s) affected by the disruptive innovation" was collectively ranked as the second most important objective. Responding Members generally advocated competition by emphasising that ***competition can be a solution or competition can contribute towards the same public policy objectives*** that the GLEs seek to achieve.

For example, the Australian Federal Government's Convergence Review Committee proposed that Australians should have access to a diversity of voices, views and information as one of the guiding principles of the Media and Communications industry review. In its submission, the Australian Competition and Consumer Commission (ACCC) explained that,

> *"businesses in a competitive market will work harder to meet the individual preferences of consumers, including for media services that meet the consumers' individual needs and present perspectives of interest to them. The development of vibrant and competitive emerging platforms is likely to assist in this regard. For example, there are likely to be increased opportunities in the future for smaller scale businesses operating on these platforms to*

[42] Overall, the proposal issued by Mexico City's government was compatible with COFECE's opinion. Specifically, regarding independent platforms, the resolutions gathered COFECE's recommendations by not limiting the number of units, which may only be determined by supply and demand. Also, they took into account the recommendations regarding associated benefits such as the identity of drivers, reduction in waiting times and improvement of services. See Mexico COFECE's Case Study.

> *deliver news and information of interest to local communities on a more cost effective basis than has previously been possible. At the same time, these platforms are also enabling consumers to access a wider range of national and international sources of news, opinion and entertainment than were previously available."*[43]

As another example, the Italian Competition Authority in its opinion issued to the Ministry of Internal Affairs regarding the applicability of the 1992 taxi regulations on TNCs, emphasised that,

> *"the benefits brought about by the development of apps-based mobility services like Uber, in terms of ease of use and access to mobility services, better coverage of the often unmet demand side thus reducing costs for users, and a more efficient use of the supply capacity. In addition, to the extent that private transport is less incentivised, these new services might result in a decongestion of urban traffic with improved supply conditions of the scheduled public transport services and circulation of private vehicles."*[44]

Similarly, in the Competition Bureau Canada's submission to the City of Toronto Taxicab Industry Review, it highlighted that,

> *"Taxis are important to certain segments of the population. Studies consistently show that particular groups that depend on door-to-door transportation, such as seniors, stay at home parents and the disabled, each account for a much higher share of taxi trips than their population share. In general, low-income groups are disproportionately higher users of taxi services than upper income groups. [...] The Bureau recommends that any regulations applied to new service methods and technologies in the taxi industry be designed to allow entry and competition. Consumers and taxi operators benefit from competition between traditional and new products and services, and from new methods of delivering these products and services."*[45]

The third most important objective highlighted by Responding Members is to **"highlight the impact of disruptive innovation on competition in affected markets that may require new or revised regulations/laws and/or monitoring"**.

Conventional wisdom suggests that this objective is critical from the perspective of the disruptive firms. However, regulatory review should also be viewed from the perspective of incumbents too. This position is aptly described by the German Monopolies Commission,[46] which noted in its report that,

[43] The Australian Competition and Consumer Commission's submission to the Convergence Review Framing Paper, June 2011 at page 9.

[44] Italian Competition Authority's Case Study at part (d).

[45] Competition Bureau Canada Press Release: Submission by the Commissor of Competition Provided to the City of Toronto Taxicab Industry, 18 February 2014.

[46] The German Monopolies Commission is an independent expert committee which advises the German government and legislature in the areas of competition policy-making, competition law, and regulation.

"existing regulations may be unjustifiably preventing providers with innovative business models from entering the market. By contrast, established business models may also not be competitive vis-à-vis new business models, or to only a restricted degree, because of the existing regulation."[47]

To achieve this objective, it may perhaps be more effective to draft new rules rather than adapt or amend existing rules which may result in a set of ill-fitting rules that do not work well in regulating both incumbents and disruptive firms.

In an article on TNCs, Commissioner John Pecman, (Competition Bureau Canada) wrote that,

"good public policy favours the public interest rather than any one company, individual or industry. We say: set new rules for all players. Do not impose existing taxi regulations on ridesharing services". [48]

"Regulations should be outcome-based, and regulators should not favour one company or business model over another."

In devising new or revised regulatory frameworks, Responding Members emphasised **"regulatory neutrality" - regulations should be outcome-based and regulators should not favour one company or business model over another.**[49] Outcome-based regulations are designed to focus on achieving specific public policy objectives (e.g. safety, consumer protection) rather than to control the inputs and outputs tightly and risk missing the bigger picture of achieving the end objectives. One should not mistake outcome based regulations as "picking winners", i.e., determining the competitive outcome.

Interestingly, regulatory neutrality need not involve identical regulations for traditional businesses and disruptive innovations such as the sharing economy, as long as the same effect is achieved from regulation.[50]

As an example, in the Italian Competition Authority's (ICA's) opinion issued to the Ministry of Internal Affairs, the ICA advocated a separate legislative definition for non-scheduled mobility services offered by apps like UberPop, i.e. online platforms connecting passengers with "non-professional" drivers. This would create a third type of provider of non-scheduled mobility services (the other two being licenced taxis and licenced rental cars with drivers). To satisfy basic requirements such as road safety and passenger security concerns, the ICA recommended a least invasive minimum regulation for the new type of service providers, which includes the set-up of a register for the platforms and identification of a set of requirements and obligations for the private 'non-professional' drivers. In addition, the

[47] German Monopolies Commission's Report, "Competition policy: The challenge of digital markets" at paragraph 542, page 122.
[48] John Pecman, Commissioner of Competition, Canadian Competition Bureau: Don't ban ride-sharing. Rethink regulation,26 November 2015.

[49] Competition Bureau Canada's Case Study at part (d).
[50] ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act" at page 21.

minimum regulation should not impose rigid limits to working hours for private 'non-professional' drivers, which may represent an implicit form of compensation for drivers of licenced taxis burdened with public service obligations. A more preferable solution would be explicit and transparent forms of compensation for these licenced drivers for their public service obligations, which in turn will allow private "non-professional" drivers to compete effectively with them.[51]

As another example, in Colombia, the Ministry of Transportation created a new 'luxury level' of taxi service. The luxury level vehicles must meet certain physical characteristics, such as having a Global Positioning System device, ABS brakes and air bags. The proposed regulation impedes particular vehicles from providing the individual transportation service. The Superintendence of Industry and Commerce (SIC) of Colombia explained to the Ministry of Transportation the importance of being flexible with respect to the transportation platforms in order to allow and promote competition and innovation.[52]

Regulatory neutrality should also be considered from the perspective of the incumbents. Disruptive firms typically face fewer regulations than incumbents and this may affect incumbents' ability to compete. The Australian Competition and Consumer Commission (ACCC)-commissioned report on the sharing economy cautioned that,

> *"It is conceivable that a lack of regulatory neutrality may strengthen traditional businesses' incentive to engage in anti-competitive conduct in order to maintain market share, for example, by colluding over sharing particular markets, or engaging in exclusive dealing..."*[53]

For example, the Competition Bureau Canada suggested in relation to TNCs,

> "*Where feasible, a level playing field should be reached by relaxing restrictions on taxis rather than imposing restrictions on new entrants.*"[54]

In addition to regulatory neutrality, it will serve the market well if **regulatory frameworks are sufficiently flexible** so as to be "future-proof" and "fit for purpose" in light of the pace of technological developments and disruption.

Regulatory schemes, to the extent that they are needed, should be flexible enough to accommodate new forms of competition.[55]

The US Federal Trade Commission's (US FTC) advocacy letters to various state legislators considering legislation on direct car sales by car manufacturers (i.e. not through a distribution model) are a case in point.[56] Many US states prohibit

[51] Italian Competition Authority's Case Study at part (e).

[52] Colombia Superintendence of Industry and Commerce's Case Study at parts (c) and (d).

[53] ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act" at page iii.

[54] Competition Bureau Canada Case Study at part (d).

[55] Edith Ramirez, Fed. Trade Comm'n, Keynote Remarks of FTC Chairwoman Edith Ramirez (Oct. 2, 2015).

[56] *See, e.g.*, Fed. Trade Comm'n, Staff Letter to Senator Darwin L. Booher, Missouri Senate regarding Senate Bill 268 (May 7, 2015), (advocacy commenting on a bill in the Michigan legislature exempting a category of vehicles from that state's prohibition on direct car sales by all manufacturers); Fed. Trade Comm'n, Staff Letter to Assemblyman Paul D. Moriarty, General Assembly of the State of New Jersey regarding Several Bills Pending in the New Jersey Legislature (May 16, 2014), (advocacy relating to a proposed partial repeal of New Jersey's prohibition on direct car sales by all manufacturers); Fed. Trade Comm'n, Staff Letter to Rep. Michael J. Colona, Missouri House of Representatives regarding House Bill No. 1124 (May 15, 2014), (advocacy concluding that the proposed legislation, that would have expanded

manufacturers from selling vehicles directly to consumers, requiring that new cars be sold only through franchised third-party dealers. This discourages new, innovative approaches to the sales of cars, inhibiting plans by some manufacturers to distribute their products using methods that do not include the network of franchised dealers. Some state legislators were in the process of considering exemptions or partial repeals to such prohibitions, while others were considering expanding the prohibitions. The US FTC did not suggest that new methods of automotive sales are necessarily superior to traditional methods; the determination should be made through competition and the competitive process. The US FTC emphasized that the weight of economic literature suggests that allowing firms in competitive marketplaces to decide how to distribute their products leads to better outcomes for consumers.[57] Accordingly, the US FTC emphasised that, absent countervailing public policy considerations, automobile manufacturers should be permitted to choose their distribution method(s) to be responsive to the desires of consumers.

"Protecting competition in markets ultimately benefits consumers."

In contrast, relatively fewer Responding Members chose "**ensure that consumer safety and interests are not harmed**" as one of the objectives. Unsurprisingly, proportionately more Responding Members with consumer protection mandate chose this as one of the objectives.

The Netherlands' Authority for Consumers and Markets (ACM) opined that,

> "*having competition enforcement and consumer protection combined within one agency gives the opportunity of a two-sided approach to new technologies. This is important because sometimes competition and privacy concerns can be conflicting. Advocating only the competition benefits or only potential consumer harm might give a too narrow-minded view on matters.*"

Some Responding Members also pointed out that protecting competition in markets ultimately benefits consumers.

Missouri's prohibition on direct-to-consumer sales, requiring all new motor vehicles in the state to be sold through independent dealers, would render consumers unable to choose how and from whom they want to purchase their cars).

[57] *See, e.g.*, Francine Lafontaine & Margaret Slade, *Exclusive Contracts and Vertical Restraints: Empirical Evidence and Public Policy*, in HANDBOOK OF ANTITRUST ECONOMICS (Paolo Buccirossi, ed., 2008); James C. Cooper *et al.*, *Vertical Antitrust Policy as a Problem of Inference*, 23 INT'L J. INDUS. ORG. 639-64 (2005).

At a Glance: Responding Members' ranking of Advocacy Objectives[58]

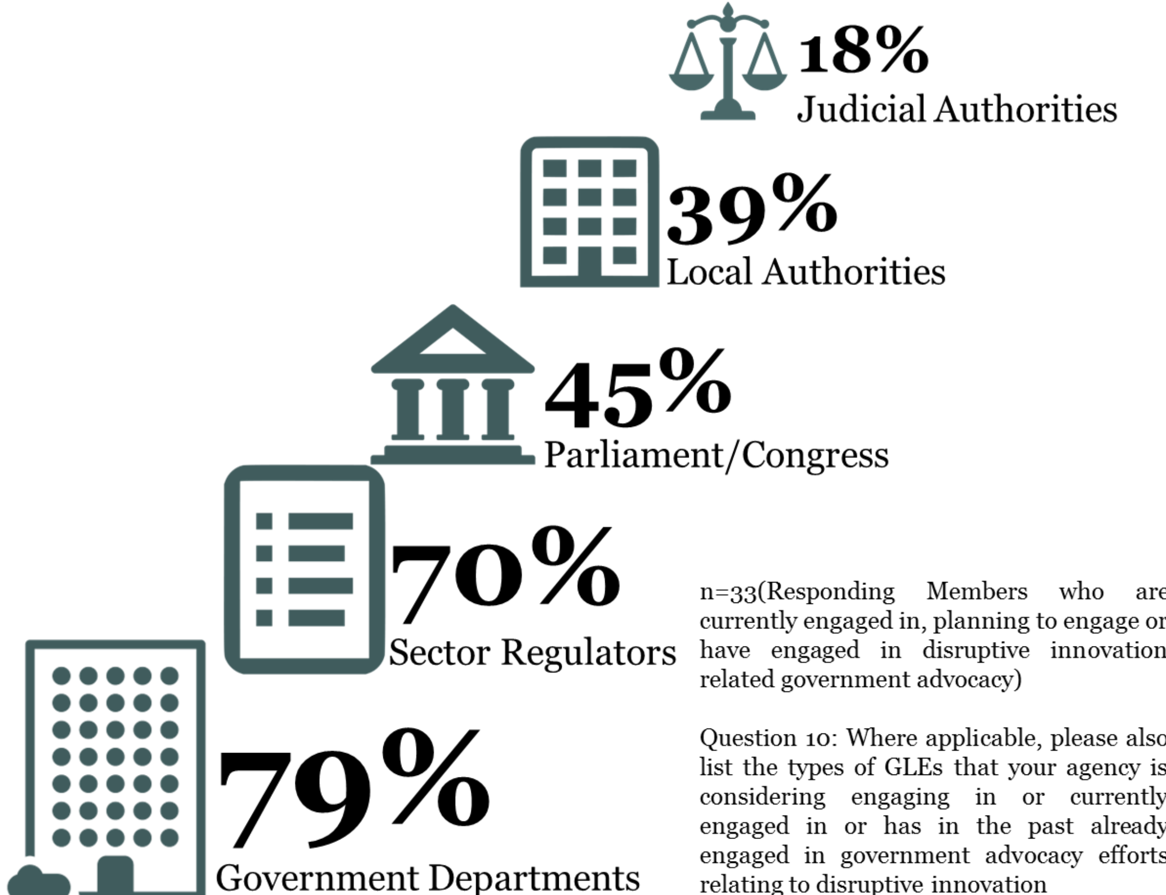
Objectives	Rank	No. of Responding Members (No. with consumer protection role)	Total Score
Avoid imposing regulations or laws that restrict competition more than necessary to address legitimate public policy objectives	1	28(8)	139
	2	7(2)	
	3	3(2)	
	4	0	
	Total	37(12)	
Facilitate entry of disruptive innovation in order to promote competition in market(s) affected by the disruptive innovations	1	15 (4)	97
	2	11 (6)	
	3	2(1)	
	4	0	
	Total	27(11)	
Highlight the impact of disruptive innovation on competition in affected markets that may require new or revised regulations/laws and/or monitoring	1	11(1)	83
	2	8(4)	
	3	6(3)	
	4	3(2)	
	Total	27(10)	
Ensure that consumer safety and interests are not harmed	1	4(2)	48
	2	6(4)	
	3	6(2)	
	4	2(2)	
	Total	18(10)	

[58]Based on responses to question 3 of the survey. Total responses do not add up to 43 as Responding Members can select more than one objective. Score is calculated based on the following: A rank of '1' is given a score of '4', rank '2' is given a score of '3', rank '3' is given a score of '2' and rank '4' is given a score of '1'.

Types of GLEs| Responding Members engage with all types of GLEs in their advocacy activities

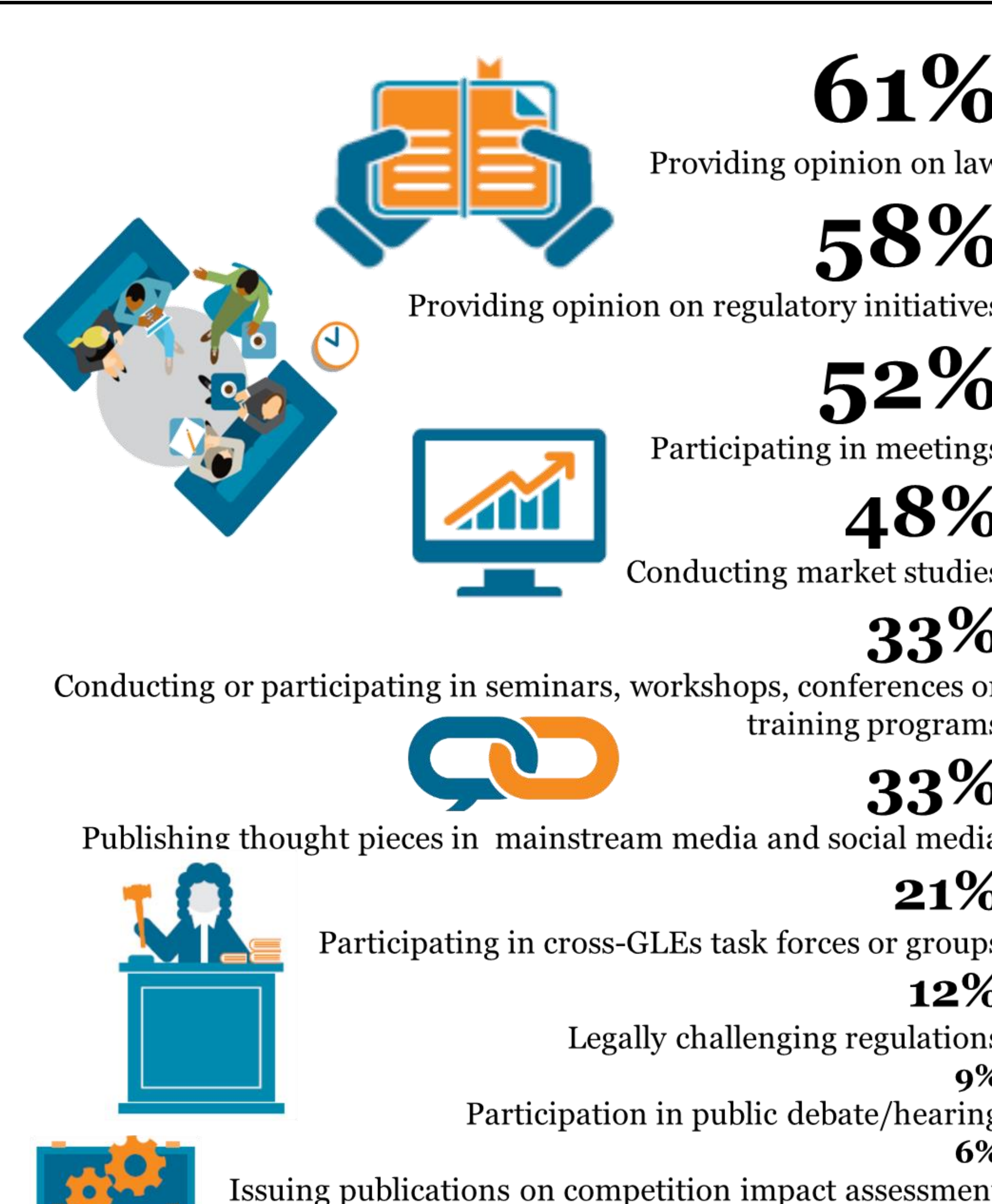
Perhaps due to the sector-specific nature of disruptive innovations that have appeared in the market so far, the most common group of **stakeholders engaged by Responding Members are government departments and sector regulators**, with 79% and 70% of Responding Members having engaged or considering engaging them thus far respectively. As policies for some sectors reside with local authorities in some jurisdictions, over 39% of Responding Members have also engaged them. 45% of Responding Members have also engaged Parliament/Congress, reflecting the national attention that some of these disruptive innovations have attracted.

A wide range of GLEs were similarly featured in Responding Members' Case Studies on Transport Network Companies. More importantly, the GLEs that Responding Members have engaged with are not limited to the transport authorities but include the judicial authorities, parliaments and local authorities. This highlights that government advocacy efforts by Responding Members in relation to disruptive innovations are seldom limited to just the relevant sectoral regulator and may well require coordination across the many GLEs.



n=33(Responding Members who are currently engaged in, planning to engage or have engaged in disruptive innovation related government advocacy)

Question 10: Where applicable, please also list the types of GLEs that your agency is considering engaging in or currently engaged in or has in the past already engaged in government advocacy efforts relating to disruptive innovation



n=33 (Responding Members who are currently engaged in, planning to engage or have engaged in disruptive innovation related government advocacy)

Question 13. Based on your response to question 12, what are the government advocacy tools that are most commonly used by your agency when advocating competition considerations in relation to disruptive innovations to GLEs? In particular, which advocacy tool (s) is (are) more effective?

Advocacy Tools| Issuing opinions to GLEs; participating in meetings with GLEs; and conducting market studies are more commonly used and considered to be more effective for disruptive innovation-related government advocacy

Responding Members were surveyed on the types of government advocacy tools that are commonly used and which were more effective for disruptive innovation-related government advocacy.[59]

Issuing Opinions to GLEs. Members engage GLEs formally through the issuance of opinions on current and proposed laws and regulatory initiatives.

Responding Members may rely on public channels such as public consultation on proposed regulations as this assures them of a forum to communicate their views to GLEs, in particular, the risks to competition from regulatory policies. For example, the US Federal Trade Commission (US FTC) provided comments to the District of Columbia Taxicab Commission with regard to proposed rules concerning taxicabs and public vehicles for hire in 2013.[60]

Responding Members also issue opinions privately to GLEs as formal public engagements may put a strain on working relationships between the competition authority and GLEs, especially in the case of unfavourable opinions that put pressure on GLEs to either follow the competition authority's recommendations or to strongly refute them.

Meetings with GLEs. Responding Members opined that meetings with GLEs are particularly useful for influencing thinking as they are good collaborative platforms where Responding Members can listen in and participate in policy debate; advocate competition matters; and understand public policy considerations and non-competition related concerns that underlie GLEs' regulatory intervention efforts. For example, Japanese government agencies have dealt with disruptive innovations as a topic at several intra-governmental meetings, and the Japan Fair Trade Commission (JFTC) is monitoring the discussion.

Responding Members noted that the informal and private interactions at such meetings are particularly effective advocacy tools as they are less likely to lead to inter-agency tensions. These meetings also build relationships of trust and the competition agency's reputation as a credible source of expertise in competition matters. Responding Members opined that when subsequent competition and regulatory matters arise, they can be resolved quickly by working directly with the relevant GLEs "recruited" via staff-level contact.

[59] Please see Special Feature: Government Advocacy Tools for the discussion on the list of all advocacy tools used by Responding Members.

[60] US FTC's comments to District of Columbia Taxicab Commission "Second Proposed Rulemakings Regarding Chapters 12, 14 and 16 of Title 31".

Responding Members added that they gain an acute understanding of the GLEs' motivations for intervening in markets affected by disruptive innovations through these meetings. Information like these are also used to sharpen Responding Members' advocacy messages and alternative policy suggestions to GLEs.

While meetings with GLEs are convened on an ad-hoc basis to deal with a specific regulatory issue, Responding Members also participate in meetings with other GLEs as part of formal working groups that meet more regularly to debate competition matters. For example, the Competition Commission of Pakistan formed the Competition Consultative Group, an informal think tank which consists of a small, select body comprising 15 eminent persons from various regulatory authorities in Pakistan. The Group convenes quarterly to discuss and deliberate on issues pertaining to competition.[61]

Market Studies. These focused research studies help build competition expertise within the competition agency; enhance understanding of markets affected by disruptive innovations; and help determine if existing regulations and competition law can be applied in affected markets. The Australian Competition and Consumer Commission (ACCC) commissioned a report on "the Sharing Economy and the Competition and Consumer Act" in 2015 to identify the key themes in the sharing economy and how competition concerns may arise in the future.[62] This report noted that,

> *"At present, sharing economy operations may not fully comply with existing laws. As laws and regulations were designed with the traditional economy in mind, there are instances where their application remains uncertain, including in the areas of taxation, insurance and employment law."*[63]

In another example, the Brazilian Administrative Council for Economic Defense's (CADE) Department of Economic Studies undertook a study which assessed the implications of rideshare platforms on both the market for individual transport and urban planning in Brazil. The study, which was published as a working paper in September 2015, found that TNCs' services offer a viable solution to market failures such as asymmetric information in the transport sector as well as urban problems such as traffic congestions.

Findings from market studies form the basis of the competition agency's efforts to engage with GLEs, such as motivating for regulatory review or responding to GLEs' requests for views on regulations concerning disruptive innovations.

[61] Pakistan The Competition Consultative Group.

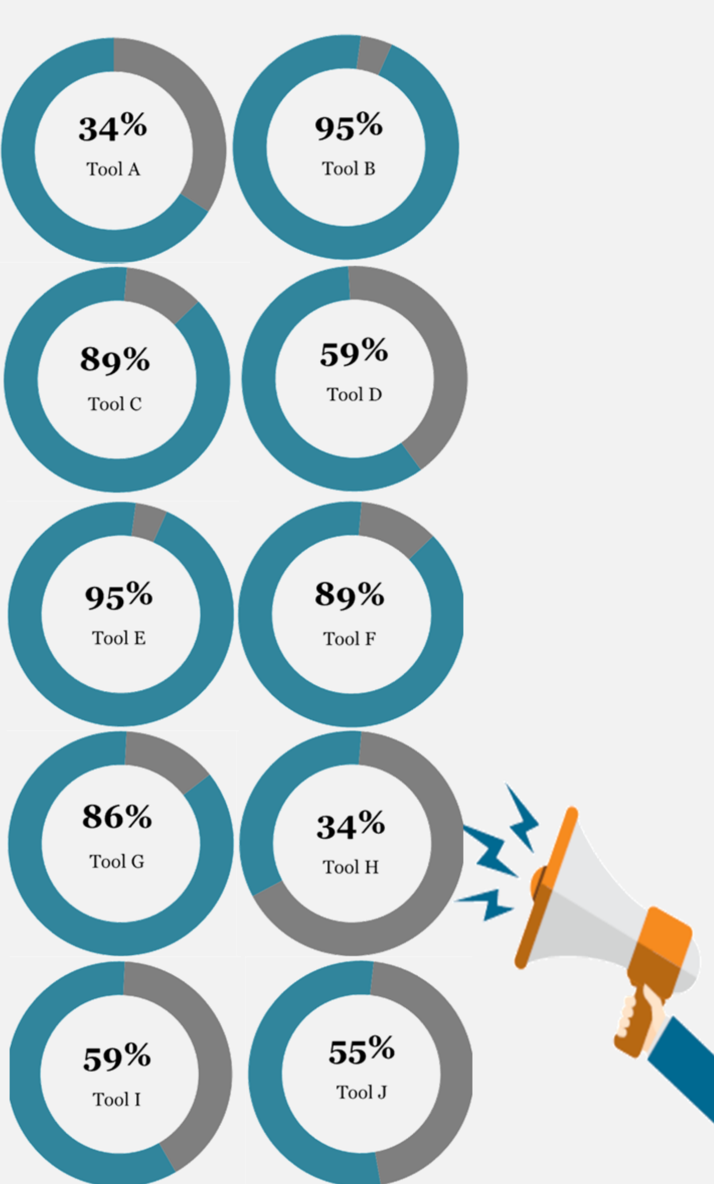
[62] ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act".

[63] Ibid, Executive summary at page ii.

Special Feature: Government Advocacy Tools

The following advocacy tools were suggested in the survey:

(a) Legally challenging and proposing review of existing or new regulations;
(b) Providing formal opinions, comments and advice on current or proposed laws to GLEs;
(c) Providing formal opinions, comments and advice on current or proposed regulatory initiatives to GLEs;
(d) Participating in cross-GLEs task forces or groups;
(e) Participating in meetings, discussions, or consultations with other GLEs;
(f) Conducting market studies or other research projects and issuing formal reports;
(g) Conducting or participating in seminars, workshops, conferences or training programs for GLEs;
(h) Conducting outreach sessions for GLEs;
(i) Issuing guidelines or other explanatory publications on competition impact assessment for GLEs; and
(j) Publishing "thought pieces" in the media or on informal channels like social media platforms.



n=44
Question 12: Please list the government advocacy tools used by your agency.

Among these tools, we found that most Responding Members adopt formal advocacy approach while supplementing such efforts with informal collaborative and unilateral tools. The most used advocacy tools used are (b), (c), (e), (f) and (g).

Tool (a) "Legally challenging and/or proposing review of existing or new regulations" generally refers to formal engagements with GLEs, where Responding Members have statutory powers to review regulations/law and provide a binding opinion to GLEs.

Tools (b) and (c) "Providing formal opinions, comments and advice on current or proposed regulatory initiatives /laws to GLEs" can be either collaborative or unilateral but generally involve formal engagements. Responding Members who do not have such formal powers nonetheless provide their opinion to GLEs to advocate that GLEs take into account competition considerations. For example, Germany's Bundeskartellamt submits its view biannually to the Bundestag (i.e., the Government) on selected aspects of regulation and include considerations on possible revision of relevant laws/regulations in light of its experience with enforcing competition law.

The Competition Commission of India's (CCI) (Competition Assessment of Legislations and Bills) Guidelines 2015 also illustrate this.[64] Section C of the CCI's Guidelines note that:

> *"While the number of legislations / bills to be assessed in a year would depend on the resources with the Commission, legislations / bills identified by the following three sources would be considered for assessment from competition perspective:*
>
> *i. The Advocacy Division of the Commission will continuously scan the economic legislations enacted in the preceding one year and the economic bills pending or coming up before the Parliament or any State Legislature and identify legislations/ bills, which may potentially have adverse effect on competition, for assessment;*
>
> *ii. Any Government Agency, including regulators, may refer any legislation / bill to the Commission for competition assessment; and any legislation / bill for assessment;*
>
> *iii. The Commission may identify any legislation /bill for assessment."*

The CCI noted in its submission that it is

> *"proactively or on reference making competitive assessment of various economic regulation, legislations or rules to ensure promotion of competition."*

It is also observed that, like the CCI, Responding Members welcome GLEs to refer their policies for competition assessment. This is closely linked to tools (d) and (e) discussed below, where Responding Members participate in working groups or discussions with GLEs on their policies.

Tools (d) and (e) "Participating in cross-GLEs task forces or groups; in meetings, discussions, or consultations with other GLEs" are initiatives of a more collaborative nature and can be informal and/or formal in nature.

An example of a formal engagement is the Socio-Economic Impact Assessment System (SEIAS) in South Africa which was approved by the South African Cabinet in 2015. All Cabinet Memoranda seeking approval for new, reviewed and amended draft policies, Bills or regulations must

[64] CCI (Competition Assessment of Legislations and Bills) Guidelines, 2015.

include an impact assessment that has been quality assured by the SEIAS Unit. Policies and Regulations (whether new, reviewed or amended) that are internally signed by Ministers should also be subjected to SEIAS.[65] The South African Competition Commission (SACC) can ensure that the promotion of competition is considered by GLEs through the SEIAS.

The UK CMA participates in the UK Competition Network – an alliance with all UK regulators that have a specific role of supporting and enabling competition within their sectors.[66] Collaborations between GLEs and the UK CMA have arisen from this Network. For example, the UK CMA is leading a policy project to examine the scope for increasing competition in passenger rail services in the UK and is working with the Office of Rail Regulation (ORR) to draw on its sector expertise. Round table meetings in the context of this policy project will be held jointly by the UK CMA and the ORR.[67]

These "committees" may also be organised informally. An example of an informal engagement is the CCS's Community of Practice for Competition and Economic Regulations (COPCOMER). COPCOMER is an inter-agency platform where CCS, sector competition regulators and specific GLEs share recommended practices and experiences on competition and regulatory matters. CCS, as a member of the COPCOMER secretariat, facilitates regular activities at COPCOMER, encouraging sector competition regulators and GLEs to adopt effective regulatory and competition policies based on local experiences and international best practices.[68]

Tool (f) "Conducting market studies or other research projects and issuing formal reports". Market studies are used as a general advocacy tool as they appeal to a broad base of stakeholders, including GLEs. Findings from these market studies are usually published on the competition agency's website and are shared formally or informally at meetings or workshops. Responding Members reflected that they may collaborate with GLEs or conduct these studies on their own. Examples of market studies in the context of government advocacy and disruptive innovations were discussed earlier.

Tools (g) and (h) "Conducting or participating in seminars, workshops, conferences or training programs for GLEs; and Conducting outreach sessions for GLEs", like market studies, are collaborative and broad-based advocacy initiatives aimed at raising general awareness. The Bundeskartellamt, for example, organised the 10th International Conference on Competition in 2001 focusing on "Competition in the New Economy: The Internet – the new driving force" to discuss the changes to the economy and regulations caused by the Internet.[69]

More recently, the US FTC hosted a "Sharing Economy" workshop which discussed "sharing economy platform" issues involving economics, competition and consumer protection, facing regulators, consumers, and industry

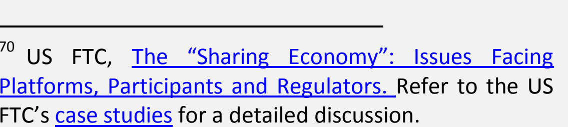
[65] SEIAS Website: The implementation of SEIAS is overseen by an Interdepartmental Steering Committee made up of Senior Officials of the Presidency (Cabinet Office), Department of Planning Monitoring and Evaluation, Economic Development Department, National Treasury, Department of Trade and Industry, Department of Environmental Affairs, Department of Labour, Department of Public Service and Administration, Department of Social Development, State Security and the Chief State Law Advisors.
[66] UK Competition Network.
[67] Press release from the UK CMA and the ORR, CMA to examine scope for greater rail competition for passengers, 22 January 2015.
[68] CCS COPCOMER.
[69] Proceedings of the 10th International Conference on Competition Berlin 2001.

participants. The workshop considered if existing regulatory frameworks are responsive to sharing economy business models, while maintaining appropriate consumer protection. It also examined how regulatory options may affect competition and consumers.[70]

Tool (i) "Issuing guidelines or other explanatory publications on competition impact assessment for GLEs" While most Responding Members have described their guidelines as non-binding guidance on GLEs, some Responding Members have formally integrated competition impact assessment concepts into GLEs' policymaking processes and decisions. For example, in Finland, the Ministry of Justice published the Guidelines on Impact Assessment in Legislative Drafting which require that the effects on competition are taken into account. In particular, the Guidelines state that "impact assessment must include the identification of whether the proposal prevents, restricts or distorts competition between businesses".[71] As another example, another Member has also adopted guidelines for competition assessment which contains general criteria on whether policies will lead to restriction of competition in markets, for GLEs' reference.

Tool (j) "Publishing 'thought pieces' in the media or on informal channels like social media platforms" is not commonly used for targeted government advocacy as it appeals to a wide-range of audience. An example of a targeted government advocacy initiative in relation to disruptive innovations can be found in Canada. The Canadian Competition Bureau publishes the "Competition Advocate" periodically, offering its views on industries that may benefit from increased competition. The Bureau has argued for a review of regulations following the emergence of disruptive innovations in the taxi industry:

> *"The Bureau is aware that many local municipalities have raised concerns that providers of digital dispatch services, as well as the drivers that use these services, may not be in compliance with local regulations and licensing requirements that govern transportation service providers. For example, the cities of Montreal, Calgary and Vancouver recently disallowed ridesharing services, and other municipalities including the cities of Ottawa and Toronto have taken enforcement action against providers of digital dispatch services. The Bureau believes municipalities should consider whether prohibitions on digital dispatch services and ridesharing applications are necessary and explore whether less restrictive regulations could adequately address their concerns."*[72]



[70] US FTC, The "Sharing Economy": Issues Facing Platforms, Participants and Regulators. Refer to the US FTC's case studies for a detailed discussion.

[71] Page 21 of Guidelines: Impact Assessment in Legislative Drafting.

[72] CCB, The Competition Advocate: Taxi industry's emerging digital dispatch services.

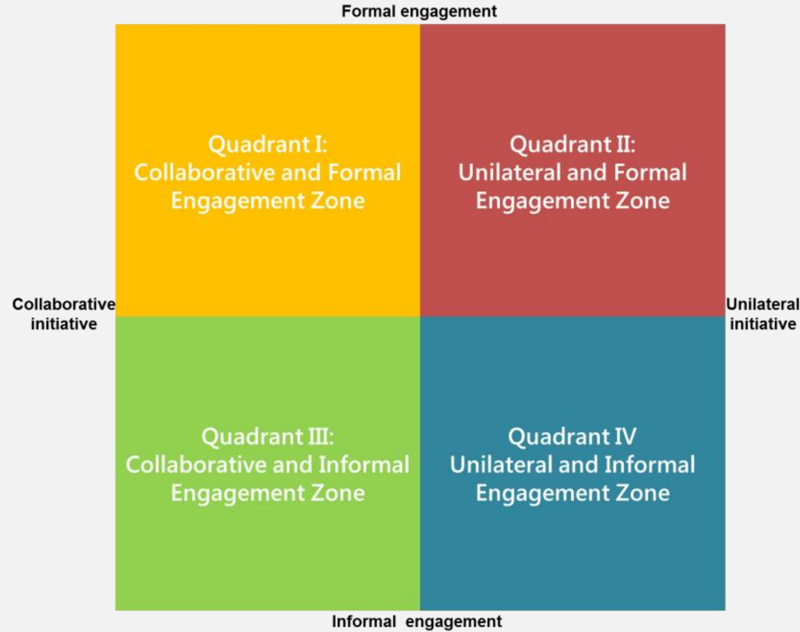
Perceptual Map. We further differentiate these advocacy tools by two dimensions:

- formal/informal and
- unilateral/collaborative.

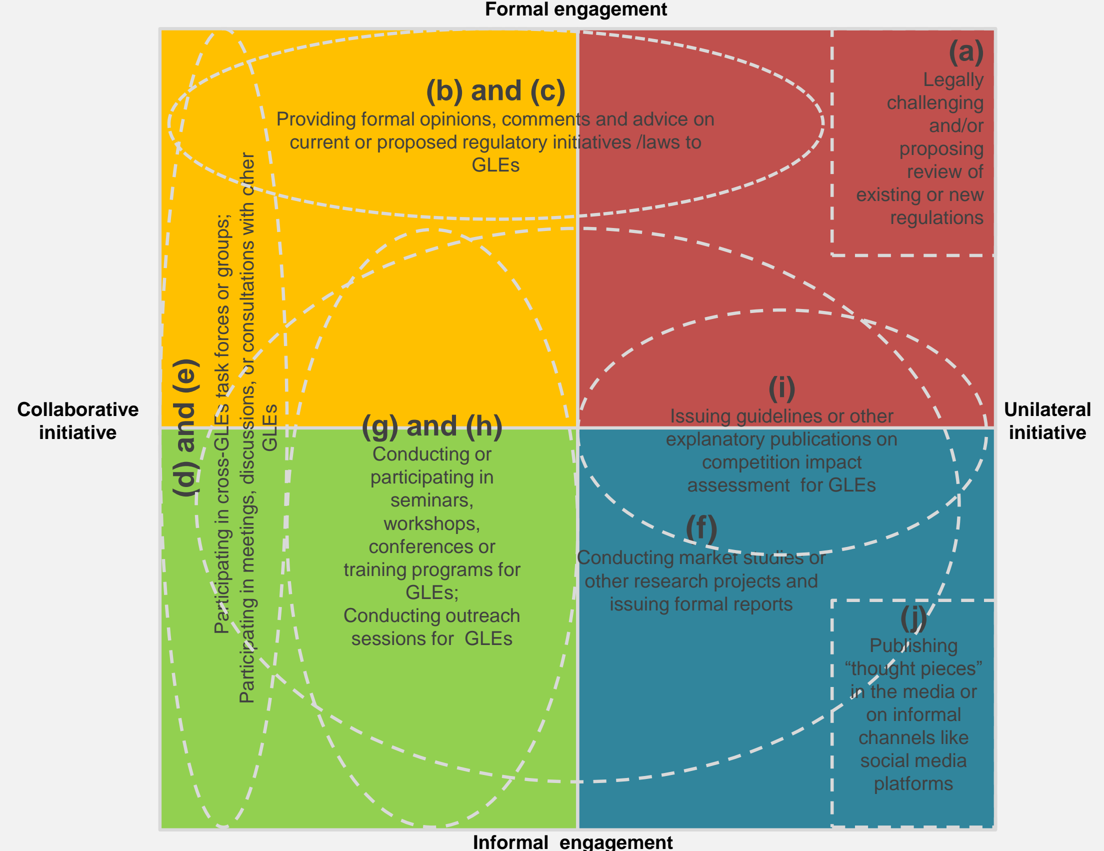
Formal engagements are characterised by advocacy efforts that are targeted at GLEs through channels where the competition agency's views are registered officially with the GLEs. Informal engagements are characterised by advocacy efforts that are not necessarily targeted at GLEs and the competition agency's views are not registered officially with GLEs.

Unilateral initiatives are characterised by advocacy efforts that are initiated by the competition agency. Collaborative initiatives are characterised by advocacy efforts that work through collaboration between competition agency and GLEs.

We plot these advocacy tools on the perceptual map based on descriptions of the tools above.



At a Glance: Perceptual Map of Advocacy Tools



THREE KEY CHALLENGES AND HOW TO OVERCOME THEM

Responding Members highlighted that the challenges raised by government advocacy in relation to disruptive innovations are generally no different from those concerning non-disruptive innovations matters. The French Autorité de la concurrence offered a good summary of this,

> *"the root concern is always the displacement of incumbents, whether it arises from disruption, incremental competition or the opening of new markets increasing out–of-market competitive pressures."*

That said, we identified three key challenges Responding Members face when engaging in disruptive innovation-related government advocacy. In this section, we discuss these challenges and offer some solutions based on Responding Members' submissions on how they overcame these challenges.

Challenge 1: GLEs may not regularly consider or assess the impact of their proposed policies on market competition.

GLEs may have to balance a wide variety of public policy considerations and as such, may consider competition as a secondary concern or one among many. Even if GLEs make an attempt to consider competition issues, they may only do so at a late stage of policy making as competition remains as a secondary concern; and they may not have sufficient expertise to make a thorough competition assessment. The Philippines Department of Justice (Office for Competition) noted that this may be explained in part by the fact that GLEs give "heavy weight to consumer welfare issues compared to the impact of regulations to competition". In other circumstances, GLEs fail to deliberate over competition issues as they often do not have oversight over competition issues.

Further, by deferring the consideration of competition impact to a late stage of policy making, this presents problems for the competition agency too. First, the competition agency is under challenging time pressure to make an assessment of disruptive innovations and the impact of regulations in affected markets.

The Competition Bureau Canada highlighted in its Case Study on Taxi Regulations and Transport Network Companies (TNCs) that:

> *"As several GLEs were in the midst of formal regulatory processes, the Bureau was subject to the GLEs' timing. It was important, and challenging, to meet the deadlines imposed by GLEs to ensure that the Bureau's submissions would be available to the relevant GLE with sufficient time for that GLE to incorporate the Bureau's views in its process."*

This timing problem further compounds another challenge that Responding Members face - they do not have enough information on new or emerging disruptive innovations to provide GLEs with detailed advice.[73]

Further, late requests from GLEs can put a strain on working relationships between the GLEs and the competition agency. For example, advice from the competition agency recommending a policy "U-turn" or substantive changes to the proposed policy may be ignored by GLEs or may trigger significant push-back as there is insufficient time to consider competition issues and other policy alternatives. GLEs may also feel embarrassed to be seen to have missed an important consideration when designing policies.

Solutions: Proactively explain the importance of competition to GLEs. Many Responding Members mooted the idea of proactive engagement with GLEs, at both formal and informal levels,[74] on the importance of considering competition issues during policy making. Responding Members shared that their messages are typically aimed at:

(i) helping GLEs understand the competition process;
(ii) highlighting the benefits of competitive process; and
(iii) how competition may be used to achieve GLEs' policy objectives.

The Israel Antitrust Authority offered an example on how competition may be used to achieve other policy objectives. It suggested that,

> *"...enhancing disruptive innovation in the field of electronic payments can assist in fighting the shadow economy as many of these instruments are identifiable and traceable (though there may be other unique and challenging risks to account for)."*

Apart from bringing about greater ease of transaction between consumers and businesses, the government can also use payment transfers and transaction histories recorded by new electronic payment technologies to track illicit economic activities that were previously "under the radar" and not declared for tax.

Encourage GLEs to consider competition issues throughout the policymaking process. This is summarised by the Norwegian Competition Authority which reflected that,

> *"meetings with affected parties during analysis and after advocacy recommendations have been presented, is a must."*

Responding Members considered it useful to engage GLEs early in the policymaking process so that they can listen in and participate in early policy debate and advocate that GLEs consider competition matters. Early engagement can prevent the roll out of ill-designed policies that are

[73] We discuss this in Challenge 2 below.
[74] See earlier discussion for examples of formal engagement tools like providing formal opinions to GLE, conducting market studies; and examples of informal engagement tools like meetings with GLEs.

anti-competitive; and ensure that competition matters are duly considered to minimise any negative competitive impact.

"After" advocacy engagement with GLEs is equally important, as Responding Members can determine "first-hand" the impact of their advocacy efforts. This goes towards Responding Members' institutional learning on key advocacy success factors that can be replicated and advocacy pitfalls to be avoided in the future to secure success. Responding Members are also able to keep the conversation "open" with GLEs so that policies can be revisited should competition concerns arise in the future.

Institutional safeguards to ensure that GLEs consider competition assessment. Institutional safeguards, which "hard-wire" competition assessment into policymaking, ensure that GLEs give due consideration to competition issues.

For example, the UK Government's strategic steer for the UK Competition and Markets Authority (UK CMA) encourages the UK CMA to *"remove unnecessary regulatory burdens on businesses wherever possible"*. Specifically, the strategic steer suggested the following roles for the UK CMA:

"…

- *using its powers to make recommendations on the impact on competition of legislative proposals and to challenge any rules and regulations that may act as a barrier;*
- *working with local authorities to help ensure that local interventions do not have a harmful impact on competition. The CMA should assist local authorities – especially those that, over the course of the Parliament, receive further devolved powers – to understand competition law and challenge them to consider how competition can help to get better market outcomes in local areas.*
- *Partnering with economic regulators to use effective competition tools to promote changes in markets rather than prescriptive licensing conditions and regulatory requirements;*
- *building a strong dialogue with sectoral regulators using the UK Competition Network to ensure that the overall competition regime is coordinated and regulatory practices complement each other; …"*[75]

Some Responding Members without statutory powers to impose binding recommendations on GLEs have worked creatively through other channels to achieve similar outcomes. In Australia, a Regulation Impact Statement (RIS) must be submitted to the Office of Best Practice Regulation (OBPR) before a federal legislation can be introduced to the Parliament. The OBPR will consider the impact of the proposed legislation, including any potential anti-competitive effects. Although the Australian Competition and Consumer Commission (ACCC) has no formal role in the RIS process to comment on the impact of a proposal on competition, it is often

[75] Government's response to the Consultation on the Strategic Steer to the Competition and Markets Authority, Annex A, December 2015.

consulted directly by GLEs on competition issues.

Responding Members can also issue competition impact assessment toolkits and checklists to help promote the consideration of competition issues as a recommended practice to GLEs.

Challenge 2: Lack of data and extensive studies on disruptive innovations.

Responding Members reflected that they are unable to advocate competition considerations effectively to GLEs without good information. This is because they are unable to:

(i) accurately identify the competition issues in the market;
(ii) demonstrate the economic benefits of increased competition between disruptive firms and incumbents; and
(iii) recommend the right competition and regulatory policy approach to GLEs.

The characteristics of the products and services offered by disruptive firms and their competition impact on the affected markets may be more difficult to analyse because of their novelty. Members added that lack of data makes the inherent complexity of predicting the effects of regulations on future market behaviour even tougher. Further, GLEs are unable to provide enough information on the disruptive innovation in question that can assist in the competition agency's assessment. In other circumstances, GLEs may approach the competition agency on a confidential basis as their proposed polices are not in the public domain. In such situations, there are limited opportunities to seek direct feedback and collect information from stakeholders e.g. incumbents and disruptive firms in the affected markets to make a proper competition assessment.

As an aside, Responding Members who have tried to search for resources from overseas jurisdictions indicated a lack of established competition and regulatory experience on disruptive innovations. While this is to be expected, it is only a matter of time that the literature in this area develops and this special report is a step in that direction.

Solutions: Empirical assessment is important and relevant albeit that data collection is difficult. The Finnish Competition and Consumer Authority's (FCCA) view on this is instructive,

> *"When we talk about market failures for example, it should be remembered that e.g. due to the market actors' inevitably insufficient information and limited rationality, all markets ultimately operate inadequately compared to the ideal models of literature.*
>
> *In other words, in trying to aim at better regulation, institutions will have to be developed in an imperfect world, abandoning ideal models. Because of this, the position of empirical analysis is of utmost importance in examining the grounds and impacts of regulation."*[76]

Empirical evidence play an important role in supporting advocacy efforts as competition agencies can use them to

[76] FCCA's publication on "Smart regulation – well-functioning markets".

quantify the potential cost that arise from the "loss of competition". For example, the US Federal Trade Commission (US FTC) focuses its advocacy on issues where it has expertise and data is available to conduct empirical assessments. The UK Office of Fair Trading (a predecessor of the UK CMA) report on the evaluation of its competition advocacy efforts also noted that,

> *"Supporting advice with empirical research is a powerful way of conveying the potentially negative effects of some regulatory interventions."* [77]

That said, the usefulness of empirical assessments has to be balanced against the timeliness of the advocacy efforts. Given that empirical assessment takes considerable time, forward planning is crucial in building up the database to conduct empirical assessments.

Plan and collect information in advance. Responding Members suggest surveying the horizon for potential issues and collecting information on markets where intervention may be required in future. For example, the Panama Authority for the Protection of Consumer and Defence of Competition suggested that competition agencies "*monitor market developments through market surveys on various products and services [i.e. disruptive innovations].*"

A variety of ways to collect such information was suggested. The US FTC reflected that,

> "*conducting workshops, sectoral studies, and other policy research helps the FTC to identify and stay abreast of issues in their incipiency and provide information that the agency can use to support future advocacy. This enables the FTC to respond quickly in time-sensitive situations such as invitations to comment on pending legislation or regulations.*"

The DG Competition's e-Commerce inquiry is another example. As part of the inquiry, the DG Competition is contacting businesses and associations in all 28 EU member states to collect data and information on the functioning of e-commerce markets so as to identify possible competition concerns.[78]

Rely on information collected as part of competition enforcement work. Other work that a competition agency is working on can potentially help prepare for the next advocacy effort. Responding Members have relied on information collected as part of competition enforcement case work (for example merger assessments, market inquiries and investigations) when engaging in government advocacy, subject to appropriate confidentiality and use of information rules.

The ACCC used information collected as part of its assessment of the Foxtel-Ten

[77] See paragraphs 1.30 and 8.14 of the Evaluation of OFT Competition Advocacy Report, 2010.

[78] See EU E-Commerce Sector Inquiry Site. The promotion of a competitive business environment in the e-commerce sector is deemed by the Commission as a crucial tool for a fair development of those markets affected by disruptive innovation. The e-commerce sector market (where many cases of disruptive businesses can be found) constitutes an important example of sector in which competition promotion, and direct enforcement, have been considered by the Commission as strategic means for the creation of a Digital Single Market - identified as a key priority by President Junker in July 2014 (see also, A Digital Market for Europe: Commission sets out 16 initiatives to make it happen, May 2015).

transactions to advocate for review of the '2 out of 3 rule' and the '75% reach rule' under the Australia Broadcasting Services Act.[79] The ACCC pointed out that the rule is potentially limiting competition and efficient investment in the Australian media industry.[80]

Similarly, the DG Competition's competition proceedings into the standardisation process for payments over the internet undertaken by the European Payments Council in 2011, led to its proposal to revise the Payment Services Directive in 2013. Agreement amongst the member states was reached in May 2015.[81]

The UK CMA also relied on its predecessor, the UK Office of Fair Trading's market study into taxis and private hire vehicles in 2003 and its merger inquiry into the private hire vehicle market in Sheffield to formulate its comments to the Transport for London proposed regulations for TNCs and private hire vehicles.[82]

Work with GLEs to collect information. Responding Members do not have to "go it alone" at collecting data. As GLEs have regulatory oversight of sectors affected by disruptive innovations, Competition agencies should consider working with or encouraging GLEs to collect information, and consider existing academic work or other available studies on the topic.

The French Autorité de la concurrence, in its issuance of an unfavourable opinion on a draft decree on private passenger cars with driver, suggested the French government introduce *"a statistical monitoring and investigation tool concerning the activity of taxis … aimed at measuring the supply and demand of taxis, particularly in Paris, in order to more efficiently document the impact studies that provide evidence needed for any change made to this profession's regulations…"*[83]

Lastly, the problems arising from the lack of good data is further compounded by the third challenge – the political pressures facing GLEs and the competition agency.

Challenge 3: Political pressures faced by GLEs and the competition agency.

Responding Members reflected that disruptive innovation is an area that is particularly susceptible to defensive behaviour and aggressive lobbying by incumbents. Disruptive innovations can rapidly erode the first mover advantages of incumbents, threatening their market power or even existence, which is why the reactions from incumbents are particularly strong and vocal.

Lobbying by incumbents in the taxi industry against TNCs is an example that is often cited. A Member noted that,

> *"the biggest challenge faced was to produce a competition advocacy opinion on a controversial topic, given the strikes made by taxi drivers affected by this innovation."*

Political pressures may constrain the GLEs' ability to liberalise sectors, especially those that are under heavy

[79] The reach rule stipulates that no free-to-air broadcaster may control a licence serving more than 75% of the Australian population. See ACCC's Case Study at part (c).

[80] ACCC Media Release "ACCC to not oppose Foxtel and Ten acquisition".

[81] DG Competition, Case Study

[82] Competition and Markets Authority response to Transport for London's private hire regulations proposals, paragraph 4 and footnote 2, 2 December 2015.

[83] Autorité de la concurrence Press Release 2013 Private passenger cars with driver.

regulations before, to allow disruptive innovations to enter and compete legitimately. Incumbents may lobby GLEs for favourable regulations or influence them not to take into account the recommendations made by the competition agency. Further, Responding Members noted that they are not immune from the lobbying efforts of incumbents.

Solutions: **Remind decision makers to be "competition-minded" when designing policies.** The concept of "competition-mindedness" is multi-faceted. An obvious facet is the "benefits of competition". The Mexican Federal Economic Competition Commission suggests that competition agencies focus their advocacy efforts in highlighting the benefits of the disruptive innovation and how it can actually improve competition favouring both consumers and businesses.

A related facet of "competition-mindedness" relates to highlighting the "costs to competition". The Jamaica Fair Trading Commission suggests competition agencies begin advocacy at the earliest possible time, that is, as soon as they identify a competition issue or potential harm.

Another facet of "competition-mindedness" considers whether competition can be used to achieve policy objectives. Both the Mexican Federal Economic Competition Commission and the Norwegian Competition Authority explained that they address such challenges through meetings with decision makers, making clear how important goals behind regulations can still be achieved while still allowing for disruptive innovations.

The idea here is to remind GLEs to be "competition minded" in the face of lobbying by incumbents, rather than to advocate that GLEs discount incumbents' views. The latter is unlikely to be an effective approach given that it is important that the views of all relevant stakeholders are taken into consideration by GLEs as part of their policymaking process, and incumbents are the key stakeholders who should be consulted.

Target advocacy at key decision makers. Responding Members also suggest engaging with key decision makers to overcome this challenge, with some members noting the possible benefits of engaging at senior levels.

The Netherlands' Authority for Consumers and Markets (ACM) opined that even though political pressure may be a typical challenge, it was very helpful that its interest and the Ministry of Economic Affairs' interests are very much aligned. For example, Minister (Economic Affairs) Henk Kamp had sent a letter to the Netherland's lower house of parliament noting that current rules and regulations are often based on old manufacturing techniques and sales channels, and the government may unwittingly stand in the way of disruptive firms and economic growth. Airbnb and TNCs services provided by Uber were cited as examples of how current legislations cause "uncertainties" as to the legitimacy of disruptive firms' operations.[84] Minister Kamp had also made a similar point in his addresses to various ministers in the EU responsible for competitiveness:

> *"Growth comes through innovation... And it comes from entrepreneurs bringing innovations onto the market. We, member states, the European*

[84] NL Times, [Government wants to better regulate sharing economy](), 20 July 2015.

Parliament and the European Commission, must guarantee the two most vital preconditions for this: a strong market and clear legislation… We have to make our new legislation future-proof."[85]

"We have to ensure that our laws are better attuned to the pace and range of innovation. More and more we're seeing mismatches between existing legislation and new innovations. And too often, innovation loses out."[86]

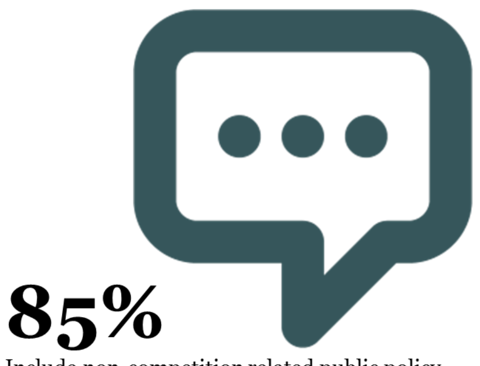
At a Glance: Challenges and Solutions

Challenges	Solutions
GLEs may not typically consider or assess the impact of their proposed policies on competition.	1. Proactively explain the importance of competition to GLEs. 2. Encourage GLEs to consider competition issues throughout policymaking process. 3. Institutional safeguards to ensure that GLEs consider competition assessment.
Lack of data and extensive studies on disruptive innovations	1. Empirical assessment is still important and relevant albeit that data collection is difficult. 2. Plan and collect information in advance. 3. Rely on information collected as part of competition enforcement work. 4. Work with GLEs to collect information.
Political pressures faced by GLEs and the competition agency	1. Remind decision makers to be "competition-minded" (i.e. benefits of competition, costs to competition and whether competition can be used to achieve policy objectives) when designing policies. 2. Target advocacy at key decision makers

[85] Speech by Minister Henk Kamp, Informal Meeting of Ministers Responsible for Competitiveness: A competitive and innovation Single Market for Digital & Services, 28 January 2016.
[86] Speech by Minister Henk Kamp, Informal Meeting of Ministers Responsible for Competitiveness: Connecting Opportunities and Digitising EU Business, 27 January 2016.

Discussion: Should ICN members consider non-competition public policy objectives as part of their disruptive innovation-related government advocacy efforts?

Readers may have noticed an obvious omission from the list of challenges above - GLEs may discount the competition agency's advice because of the competition agency's apparent lack of expertise in the assessment of non-competition related public policy considerations. This raises the question, should ICN members take into account non-competition related public policy considerations when engaging in government advocacy? To answer that question, we surveyed ICN members on whether they take into account non-competition related public policy considerations; what they consider; and the reasons for doing so.



85%
Include non-competition related public policy consideration in advocacy messages

n=33 (Responding Members who are currently engaged in, planning to engage or have engaged in disruptive innovation related government advocacy)
Question 16: Does your agency take into account non-competition public policy considerations when advocating for GLEs to consider the competition concerns raised by regulations governing disruptive innovations?

Survey Findings

85% of Responding Members indicated that they do so, of which 36% of them have some form of consumer protection mandate.

What are the typical non-competition related public policy considerations your agency takes into account?

The typical considerations highlighted by Responding Members are: employment, public safety, consumer protection, product quality and standards. Responding Members added that the importance of non-competition policy objectives is dependent on the sector or industry in question. For example, health and safety concerns might command greater attention in industries such as healthcare as compared to fashion.

More specifically, Responding Members who have engaged in government advocacy with GLEs on TNCs in transport markets identified public considerations such as consumer safety, general consumer interest, service quality, comfort and accessibility to service.[87]

[87] It is important to note that the survey did not explore in detail the meaning that Responding Members attached to the phrase "take into account" and how they might balance such consideration of non-competition factors with their area of expertise, competition. Responding Members can have a range of responses from simply recognizing the non-competition justifications offered and countering them with

Why does your agency consider them?

Responding Members highlighted that **these considerations are important**. For example, the Korea Fair Trade Commission (which is also a whole of economy consumer protection regulator) opined that public considerations like public safety and consumer protection are important as they maximise consumer welfare. The KFTC takes these public considerations into account when advocating for GLEs to consider competition concerns.

Responding Members with consumer protection mandate do so because **consumer-related non-competition public policy considerations fall under their purview**. The Netherlands Authority for Consumers and Markets (ACM) considers consumer protection because it is one of their statutory tasks.[88] The ACM opined that,

> *"Having competition enforcement and consumer protection combined within one agency gives the opportunity for a two-sided approach to new technologies. This is important because sometimes competition and privacy concerns can be conflicting. Advocating only the competition benefits or only potential consumer harm might give a too narrow-minded view on matters."*

However, non-competition issues such as employment or health are typically considered by other government departments.

Responding Members also noted that their **competition legislations provide for a role for them to consider issues that go beyond competition**. For example, in South Africa, the Competition Act is written in a manner that explicitly acknowledges the importance of public interest and therefore provides a role for the consideration of factors that go beyond the boundaries of competition.

Responding Members also have **to assess these non-competition public policy considerations** because of the unique characteristics of their economies and the construct of their competition mandate in relation to other government policies. The Jamaica Fair Trading Commission considers consumer protection and employment issues because of the nature of their consumers (unaware in general) and relatively low employment rate in Jamaica. The South African Competition Commission operates within the broader South African Government's policy environment, which also prioritises inter alia issues of employment, the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive and the ability of national industries to compete in international markets. As such, their advocacy efforts need to recognise these considerations.

Why does your agency not consider them?

On the other hand, other Responding Members noted that they can only consider competition concerns because they do not have the legal mandate to consider other factors. They are therefore cautious to not venture outside of the scope of their mandate.

competition justifications to full-scale re-assessment and rebuttal of the legitimacy of such arguments. The subsequent survey responses suggest that agencies focus on pro-competitive counterarguments.

[88] However, non-competition issues such as employment or health are typically considered by other government departments.

Other Responding Members added that they are not best suited to consider non-competition related considerations as part of their assessment and recommendations to GLEs, given their lack of expertise in those areas. For example, the US Federal Trade Commission (US FTC) Chairwoman Edith Ramirez noted that,

> *"[while non-competition related public considerations] may be appropriate policy objectives and worthy goals overall ... integrating their consideration into a competition analysis ... can lead to poor outcomes to the detriment of both businesses and consumers... competition agencies are designed to be experts in competition laws and are generally ill-equipped to undertake an analysis of non-competition public interest factors."*[89]

Include non-competition related public policy consideration in competition assessment

n=33 (Responding Members who are currently engaged in, planning to engage or have engaged in disruptive innovation related government advocacy)

Question 16: Does your agency take into account non-competition public policy considerations when advocating for GLEs to consider the competition concerns raised by regulations governing disruptive innovations?

[89] Core Competition Agency Principles: Lessons Learned at the FTC, Keynote Address by FTC Chairwoman Edith Ramirez May 22 2014 at paragraph 7.

Some Members bridge the gap of not considering non-competition related public policy objectives by advocating that GLEs:

(i) consider the cost to competition when making trade-offs to achieve other public policy objectives;
(ii) carefully scrutinise any purported justifications for restricting competition;
(iii) impose restrictions on competition that are no greater than required to achieve public policy objectives; and
(iv) consider how vigorous competition can serve to enhance, rather than undermine public policy objectives.

With these results in mind, we now turn to discussing the issue of whether Responding Members should consider GLEs' non-competition related public policy considerations as part of government advocacy. We tackle this question in two parts - whether Responding Members should take into account these considerations as:

(i) part of competition analysis in determining the advocacy message to GLEs; and
(ii) part of their advocacy message to GLEs on disruptive innovations.

In Competition Analysis

With regard to (i), it is difficult to make a recommendation as to whether competition agencies should take into consideration non-competition related public policy considerations given that they have different mandates as well as varying levels of expertise in assessing these considerations. However, the **general rule** is clear: competition agencies should not integrate these

considerations into competition analyses if they do not have the expertise to do so, and should be transparent when doing so. An inappropriate or misguided advice can lead to sub-par outcomes, hurting not only businesses, consumers and the economy as a whole, but also the reputation of the competition agency. The US FTC's position on this is instructive:

> "*the FTC respects the role of GLEs that have been elected or appointed to address a regulatory issue. It therefore limits its advocacy to explaining the potential cost of a regulation or policy on competition and ultimately on consumers, but leaves the final decision to GLEs to determine if a policy action is worth the potential cost.*"

In another example, in working with the Land Transport Authority (LTA) on its review of Taxi Regulations and TNCs in Singapore, CCS recognised that there were other public policy considerations such as consumer protection and service standards, and accepted that LTA was best placed to balance these different considerations, competition being one of them.[90]

In Advocacy Message

With regard to (ii), ICN members may wish to take into account these non-competition related public policy considerations in their advocacy messages for the following reasons.

Competition agency and GLEs work towards the same ultimate objective. It is important to keep in mind when encouraging GLEs to consider the "costs" to competition, the underlying driver is that competitive outcomes ultimately benefit consumers, businesses and the economy.

Even though GLEs do not often wear the "competition" hat, their policy mandates similarly seek to ensure that consumers are well-protected and businesses have a conducive environment to operate in so that they in turn can offer quality services at competitive prices. The typical non-competition related public policy objectives behind enacting new regulations for disruptive innovations, i.e., consumer protection, safety and employment rights, illustrate this.

Further, there may not always be a one-to-one trade-off, i.e., trading off competition with non-competition related public policy objectives. Responding Members highlighted that **GLEs do not necessarily have to choose between their policy objectives and competition**.

In the context of consumer protection and product quality, competition can serve to enhance, rather than undermine, the quality of products and services available to consumers. The Colombia's Superintendence of Industry and Commerce (SIC) noted in its Case Study on TNCs that,

> "*safety, free access, general interest, quality and comfort did not enter necessarily into conflict with a pro-competitive goal.*"

The point is perhaps best represented by the illustration on the next page; both the competition agency's and GLEs' policy mandates are geared towards the same objectives. The competition agency and GLEs cannot operate in silos. Collaboration is needed to achieve an outcome that is beneficial for consumers, businesses and the economy.

[90] Competition Commission of Singapore Case Study at part (e).

Competition can help to achieve non-competition related public policy objectives. Competition may sometimes achieve non-competition related public policy objectives in part or wholly. The ACCC's commissioned report on the sharing economy noted that features of services offered by disruptive firms can in fact achieve consumer protection outcomes,

> *"Platforms tend to adopt self-imposed rules and reputational mechanism to address many of the concerns around consumer outcomes, in particular outcomes, related to information asymmetries and personal harm. If these mechanisms are successful, they may obviate the need for formal regulation, or may lead to some form of self-regulation being the preferred outcome. Self-imposed consumer protection mechanism can be classified into two groups: (i) enforced quality: standards or requirements that platforms impose on their members including history checks, qualifications, licences and minimum equipment standards; and (ii) reputational quality: ratings and review mechanisms that allow both sides of the platform to establish a reputation as a signal of quality to future counterparties."*[91]

We also briefly discussed this point earlier in an example raised by the Israel Antitrust Authority, where competition arising from disruptive firms offering electronic payments services can assist in fighting the shadow economy. That said, competition agencies should be minded to the fact that competition or competition policy is seldom the panacea for GLEs' regulatory challenges.

"Speak the same language" as GLEs. Understanding GLEs' policy objectives helps to establish a good common ground between the competition agency and the GLE. ICN members are better placed to inform GLEs on whether competition or market driven tools, in place of regulation, can achieve these other non-competition public policy objectives. For example, if GLEs are incentivised to regulate TNCs to ensure quality service standards, competition agencies can motivate GLEs to consider if TNCs' existing passenger feedback and rating system for their drivers can achieve the same objectives. Further, this understanding also helps the competition agency identify and offer less restrictive to competition policy alternatives that GLEs can consider.

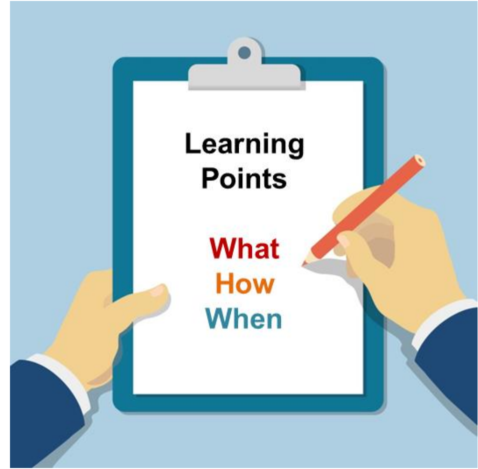
The Korea Fair Trade Commission noted that,

> *"it is our belief that successful competition advocacy activities require shared understanding on the issue between regulatory authorities and competition authorities through sufficient consultation."*

Lastly, acknowledging GLEs' public objectives in advocacy messages goes towards building good relations between the competition agency and GLEs, laying good foundation for future advocacy efforts.

[91] ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act" at pages vi.

LEARNING POINTS FOR GOOD DISRUPTIVE INNOVATION-RELATED GOVERNMENT ADVOCACY



Apart from challenges and solutions, we also sought "learning points" from Members with regard to effective government advocacy with respect to disruptive innovations.

The learning points offered by Responding Members are distilled neatly into three broad themes suggested by French Autorité de la concurrence: "*effective or successful government advocacy, whether directed at disruptive innovations or not, boils down to three basic questions:* ***What? How? When?***"

'What' refers to the content of the advocacy message to GLEs

As a first step, Responding Members should determine the objectives for engaging with GLEs as they dictate the content and the direction of the advocacy message.

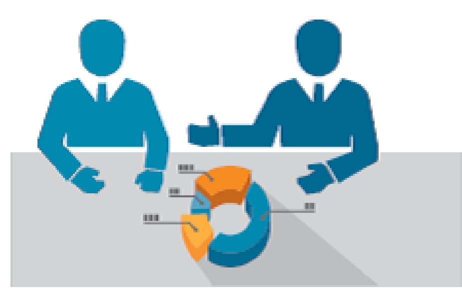
Engage GLEs with clearly defined competition objectives. We have discussed at lengths Responding Members' objectives when advocating to GLEs on matters related to disruptive innovations. Specific examples were also discussed within this section. For ease of reference, we have summarised the five common advocacy objectives raised by Responding Members (for brevity, examples are documented in the footnotes):

- **Regulatory neutrality**: Regulations should be outcome-based and regulations should not favour one company or business model over another, e.g., incumbents versus disruptive firms;[92]
- **"Future proof" regulations:** Regulations should be designed to allow for flexibility and adaptability in response to new and innovative methods of competition;[93]
- **Adopt "Pro-competition" regulations:** Regulations should promote competition;[94]
- **Consider the "costs to competition":** GLEs should consider the "costs to competition"

[92] For example, see ACCC commissioned report by Deloitte Access Economics (2015) on "The sharing economy and the Competition and Consumer Act" at pages iii, 21 and 22.
[93] For example, see Steve Weissman 2015, "Pardon the Interruption, Competition and Disruptive Business Models" Remarks at the 32nd Annual Antitrust and Consumer Protection Seminar, page 17.
[94] For examples, see Competition Commission of Singapore's Case Study response to question part (d) and ACCC Media Release "ACCC to not oppose Foxtel and Ten acquisition".

when applying policymaking decision tools like cost-benefit analysis;[95] and

- **Design "least restrictive to competition" alternative**: Having considered the costs to competition, GLEs should narrowly tailor regulations such that they do not restrict competition more than what is necessary to address legitimate public policy considerations.[96]



These objectives are not mutually exclusive. The US FTC's letter to the General Counsel of the District of Columbia Taxicab Commission is an example of an advocacy opinion where these objectives are clearly communicated.[97]

> *"III. A Regulatory Framework Should be Responsive to New Methods of Competition, While Maintaining Appropriate, Reasonably Tailored Consumer Protections*
>
> *A forward-looking regulatory framework should allow new and innovative forms of competition to enter the marketplace unless regulation is necessary to achieve some countervailing pro-competitive or other benefit, such as protecting the public from significant harm. Consumers benefit from competition between traditional and new products and services, and from new methods of delivering services. Regulations therefore need to be reviewed and revised periodically to facilitate and encourage the emergence of new forms of competition...*
>
> *... staff respectfully suggests that DCTC carefully consider the potential direct and indirect impact of its proposed regulations on competition. We believe that unwarranted restrictions on competition should be avoided, and any restrictions on competition that are implemented should be no broader than necessary to address legitimate subjects of regulation, such as safety and consumer protection, and narrowly crafted to minimize any potential anticompetitive impact."*

"Do your homework." Responding Members agreed that advocacy efforts should be underpinned by sufficient knowledge of the disruptive innovation, the competitive dynamics in the affected sector(s) concerned, GLEs' proposed regulatory response and the motivations behind it.

The competition agency's background knowledge forms the basic building blocks of a solid qualitative and quantitative competition impact assessment of the proposed regulatory response.[98] For example, the Colombia's Superintendence

[95] For example, see Fed. Trade Comm'n Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013), pages 5 to 7.

[96] For example, see US FTC's Case Study 1 on Transportation and Automotive Distribution.

[97] US Federal Trade Commission Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013), at pages 3 and 4.

[98] See also Challenge 2 for channels where Members have relied on to collect such information.

of Industry and Commerce, the Competition Commission of Singapore and Brazil's Council for Economic Defense (CADE) all embarked on market studies in the transport market before engaging with GLEs on regulations for TNCs.

Instead of waiting for the Ministry of Transportation to send its proposed decree on TNCs for the Colombia's Superintendence of Industry and Commerce's (SIC's) comments, SIC decided to proactively study TNCs, the transport market in Colombia and the current regulatory framework.[99]

Responding Members also used these market studies to examine the effectiveness and the impact of regulations, and from that, scope their advocacy objective(s). For example, apart from studying the potential benefits brought about TNCs, the Competition Commission of Singapore also examined the possible regulatory barriers to entry that TNCs face in order to be clear about the desired pro-competitive outcome that it wanted to achieve from its advocacy efforts.[100]

Lastly, findings from market studies may even inform a wider group of GLEs in the future. Brazil CADE's findings from its study on disruptive innovation in the market for passenger transport provided good reference and benchmarks for the working group on transport regulations within the local government of the city of São Paulo. The CADE noted that the São Paulo working group's draft of its transport regulation may even inform future efforts of other Brazilian local governments to enforce competition in their respective passenger transport market. [101]

[99] Colombia Superintendence of Industry and Commerce's Case Study at part (d).
[100] Competition Commission of Singapore's Case Study at part (f).
[101] Brazil CADE's Case Study at part (h).

Tell a compelling narrative. Responding Members' submissions highlight a few core ingredients for a compelling narrative:

(i) an insightful description of the disruptive innovation concerned and how it benefits consumers;
(ii) the foreseeable benefits to stakeholders like consumers and businesses, should GLEs adopt a pro-competition regulatory approach; and
(iii) pragmatic and workable solutions that GLEs can consider when designing policies.

We present examples from Responding Members' advocacy efforts with regard to TNCs to illustrate the three points above.

The Italian Competition Authority, in its opinion to the Ministry of Internal Affairs regarding the applicability of the 1992 taxi regulations on Uber service, demonstrated that it has "done its homework" on TNCs and could articulate what TNCs are and TNCs' benefits to consumers:

> *"...the benefits brought about by the development of apps-based mobility services like Uber, in terms of ease of use and access to mobility services, better coverage of the often unmet demand side thus reducing costs for users, and a more efficient use of the supply capacity. In addition, to the extent that private transport is less incentivised, these new services might result in a decongestion of urban traffic with improved supply conditions of the scheduled public transport services and circulation of private vehicles."*[102]

[102] Italian Competition Authority's Case Study at part (d)

Commissioner John Pecman's (Competition Bureau Canada) views on TNCs aptly illustrate point (ii) on how consumers can benefit from pro-competition policies in the taxi industry:

> *"The arrival of ride - sharing services presents an important opportunity for regulators—an opportunity to inject increased competition into the taxi industry by creating a single, level playing field for all. Consumers would benefit from competitive prices on a variety of innovative choices, while all service providers would have an equal chance to compete."* [103]

The example from France illustrates point (iii) on offering pragmatic and workable solutions to GLEs. We discussed earlier the French Autorité de la concurrence's unfavourable opinion on a draft decree on private passenger cars with driver. Whilst it issued an unfavourable opinion, it offered three actionable recommendations to the government and the Conseil d'Etat:

"…

- *either to reject the amendment, or to look again at the solution currently under consideration but give the time-lapse obligation a much wider range of exceptions;*
- *to allow taxis more freedom with regard to pricing on the prior-booking market; and/or*
- *to introduce a statistical monitoring and investigation tool concerning the activity of taxis".*"[104]

[103] Quote from John Pecman, Commissioner of Competition. CCB's Media Release 26 Nov 2015 Competition Bureau calls on regulators to modernize taxi industry regulations.

[104] Autorité de la concurrence Press Release 2013 Private passenger cars with driver.

'How' refers to how government advocacy should be conducted

It is impossible to prescribe the advocacy tool(s) that competition agencies should deploy when engaging in government advocacy, given the wide range of considerations that each of them will have to deal with.[105] We offer a few guiding principles on how best to select the appropriate advocacy tool(s).

Different strokes for different folks and circumstances. Responding Members have approached their disruptive innovation-related government advocacy by creatively using an assortment of advocacy tools. There are indeed no "hard or fast" rules. Competition agencies should take a flexible approach combining different approaches (e.g. formal and informal platforms; collaborative and unilateral engagements) towards government advocacy, having considered the circumstances and GLEs involved and the intended advocacy outcome.

The advocacy approach should also be informed by a good understanding of GLEs' *modus operandi*. For example, legislative making bodies typically invite stakeholder views through public consultation. That said, competition agencies can and should explore other advocacy avenues, especially if multiple

[105] Read also to our earlier discussion on the advocacy tools that Members use for disruptive innovation-related government advocacy.

GLEs are likely to be concerned about the same issues.

For example, the Italian Ministry of Internal Affairs consulted with government agencies on the applicability of the 1992 taxi regulation on Uber Services, following a ban imposed by the Tribunal of Milan in 2015. Apart from providing an opinion to the Ministry, the Italian Competition Authority Chairman spoke on the same topic before the Lower and Upper House of Parliament. He also participated at a Parliamentary Committee hearings, and other related conferences and meetings.[106]

Competition agencies should also consider if the advocacy engagement "net" should be cast wider to secure advocacy success.

For example, apart from responding to the Transport for London's (TFL's) consultation on regulations for private hire vehicles, the UK CMA's chief executive also wrote an opinion piece for the *Financial Times* where he argued how many of TFL's proposals would restrict competition. The article made wider points about responses to disruptive innovation and he noted that,

> "*we all need to be bold enough to challenge, if necessary, the arguments of incumbents who stand to lose from disruptive change.*"

The story was picked up by various other news outlets, including local television news and national newspapers. Some observers noted that it was unusual to see one regulator (UK CMA) publicly disagree with another (TfL) in this way. There was also a reaction from TfL, where the TfL said it was "*fully supportive of new technology and business models that widen choice for Londoners.*"[107]

The UK CMA's experience provides a useful perspective in terms of the selection of advocacy tools that are fit for purpose,

> "*informal advocacy work may be particularly effective in influencing departmental thinking, preventing roll out of ill-advised policies…. at very early stages of GLEs' policy thinking. Formal public responses may help maintain credibility as an independent competition authority, strengthen the hand of pro-competition advisers and put pressure on government to follow an approach that takes due account of competition considerations. They can also be useful where other GLEs in UK or internationally are considering related markets or issues to act as a guidance or to set out the CMA's view on the relevant competition considerations.*"

Be open-minded and collaborative. It is easy to adopt a "us" versus "them" mind-set especially when faced with having to argue against a proposed regulation which is clearly anti-competitive and seemingly ill-informed.

A collaborative mind-set when engaging in government advocacy with GLEs is however more likely to yield a positive outcome. Like the competition agency, GLEs are similarly working towards achieving good outcomes for consumers, businesses and the economy. Advocacy messages that demonstrate an appreciation of the challenges faced by the GLEs are more likely to resonate with the GLEs and get their buy-in.

[106] Italian Competition Authority's Case Study at parts (d) to (f).

[107] See the UK Competition and Markets Authority's Case Study for more details.

Adopting the mentality that "if it ain't broken, don't fix it" and discouraging GLEs from taking on regulatory review and reform in the wake of disruptive innovations is likely to be counterproductive. Regulatory review and reform can in fact serve to enhance competition. Stephen Weissman, a former Deputy Director at the US FTC commented that:

> *"Often, the existing regulations governing the traditional industry (e.g., taxicabs or hotels) have been in place for decades without much change. In our [US FTC] advocacy letters, we often encourage policymakers to periodically review and, if necessary, revise their regulatory schemes to facilitate and encourage the emergence of new forms of competition that would benefit consumers."*[108]

A similar point was also noted in a report commissioned by the Competition Commission of Singapore on *"E-commerce and its impact on competition policy and law in Singapore."* The report highlighted how e-commerce has disrupted traditional retail business models in Singapore and intensified competition amongst retailers. This has led to lower prices, increased choices and better services. The report recommended "*a role for competition advocacy to promote policies that enable the adoption of e-commerce amongst consumers and businesses through increasing trust and confidence.*" [109]

Be a credible source of expertise on competition matters. Responding Members reflected that advocacy is most effective when GLEs see the competition agency as a credible source of expertise on competition matters and in turn build a relation of trust with them. A strong reputation also maximises the persuasiveness of the competition agency's advocacy.

Having sufficient knowledge of the issue at hand (e.g. the disruptive innovation, the competitive dynamics in the affected sectors concerned, GLEs' proposed regulatory response and the motivations behind it) is an important first step that should be completed by the competition agency before engaging in government advocacy. Such knowledge forms the foundation of any advocacy effort.[110]

Further, to establish the competition agency as a credible source of competition expertise, both formal and informal advocacy engagements are important. While formal advocacy engagements are useful to tackle the competition concerns arising from proposed or existing regulatory policies, informal advocacy engagements (which tend to be less public than formal advocacy engagements) are also helpful as they are less likely to lead to tensions between the competition agency and GLEs. The Competition Commission of Pakistan recommended a mix of both. It observed that *"personal relationships play an important role in materializing advocacy efforts and engaging GLEs. Formal agreements for collaboration, such as MOUs are also helpful for attaining success."*

Similarly, the Vietnam Competition Authority has developed close and frequent interactions with GLEs, and thus does not face considerable problems in getting GLEs to understand competition issues.

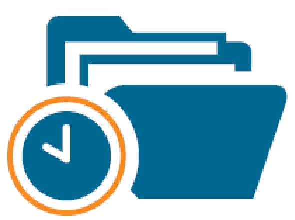
[108] Stephen Weissman, Fed. Trade Comm'n, Pardon the Interruption: Competition and Disruptive Business Models.

[109] See Section 5 of the "E-Commerce and its impact on competition policy and law in Singapore" report.

[110] Refer to our discussion on "Do your homework" above.

Lastly, every interaction with GLEs counts. Apart from government advocacy efforts, the competition agency's enforcement efforts also provide opportunities for interaction and building a relationship of trust with GLEs. For example, as part of merger assessment, competition agencies frequently seek the views of GLEs on the state of competition within a relevant market and the possible regulatory barriers to entry and expansion. Such interactions allow GLEs to become familiar with the competition agencies and their work. Handling such interactions professionally helps to build the credibility of the competition agencies and over time build trust and goodwill.

'When' refers to the timing of delivering the advocacy to GLEs.



Provide timely advice. Advice to GLEs should be timely in order to ensure that GLEs have enough time to consider the competition agency's views during their regulatory review process. We discussed earlier why competition agencies should endeavour to provide competition advice to GLEs at an early stage of policymaking to avoid straining relationships with GLEs.[111]

External factors such as incumbents lobbying regulators and media coverage on protests against disruptive firms may further put pressure on GLEs' regulatory review process and timelines. Timely advice from the competition agency for these "hot-button" issues not only captures the attention of the key decision makers, but goes further towards establishing the reputation of the competition agency as a competent and credible source of expertise on competition matters.

For example, an Italian MP, prompted by protests of taxi drivers in Milan and Rome, had asked the Italian Competition Authority (ICA) to deliver an opinion on whether an existing regulation on taxi services should apply to TNCs like Uber. The ICA decided to respond to the invitation of the MP in the form of a more comprehensive report, released in July 2014, containing advocacy recommendations in numerous sectors, including energy, communications, banking and insurance, transport and professional services, which would be used by the Italian government as a starting point for drafting of the Annual Law for Competition.[112]

Strike when the iron is hot. Responding Members also observed that advocacy works better under certain circumstances. For example, the French Autorité de la concurrence observed that *"[its] recommendations are promptly followed if they benefit from a favourable political context."* The French Autorité de la concurrence added that,

> *"agencies should deliver timely opinion in consideration of political and economic cycles as certain time periods are favourable than others to gain momentum and secure changes or structural reforms."*

[111] Refer to our discussion on Challenge 1 above.

[112] According to a law enacted in 2009, every year the Government is asked to present to the Parliament a liberalization bill (Annual Law for Competition), taking into account the opinions and the recommendations delivered by the ICA in the previous years. See also Italian Competition Authority's Case Study at part (d).

The Netherlands Authority for Consumers and Markets (ACM) also shared similar experience. The ACM noted that,

> *"the Minister himself often advocates for fewer barriers to entry for innovative firms, such as Uber and Airbnb. The Ministry recently launched a campaign for several existing laws to be made 'future proof.'"*

Take a long-term perspective of government advocacy and work with patience. This quote was extracted from the Swedish Competition Authority's submission. The Swedish Competition Authority also opined that it is important for competition agencies to follow up on previous advocacy efforts with GLEs. Although this learning point applies generally to all types of government advocacy, the need to take a long-term perspective of government advocacy and disruptive innovation makes this learning point even more applicable.

We discussed earlier how the novelty and characteristics of the products and services offered by disruptive firms and their competition impact on the affected markets are not easily understood. We also discussed how regulations should be made "future proof" to allow for flexibility and adaptation in response to new and innovative methods of competition. As such, interactions with GLEs on regulatory approaches towards disruptive innovations cannot and should not be seen as a short term "one-off" interaction.

The ACCC advocacy in the media sector is a good Case Study in point. From its public consultation submissions to the Productivity Commission in 1999 to more recently its media release on the Foxtel/Ten acquisition and Chairman Rod Sim's speech on media law reform in 2015, the ACCC's advocacy has taken place over a significant period from 1999 to 2015 through different means covering different stages of development in the Australian media sector.

Competition agencies are encouraged to take on a long term view of government advocacy when GLEs choose not to take onboard their recommendations at the first instance. The French Autorité de la concurrence's long term view on government advocacy is particularly instructive:

> *"If an agency's recommendations are not implemented or at least not expeditiously, advocacy to GLEs can still instil good practices in the regulatory process, contribute to shape the public debate and disseminate a culture of competition …… except a few cases that are hotly debated, being heard is question of time. Changing minds and instilling changes take time. Recommendations must therefore be 'digested' first. Their implementation can therefore come at a later stage, when time is ripe."*

At a Glance: Learning Points for Good Disruptive Innovations-related Government Advocacy

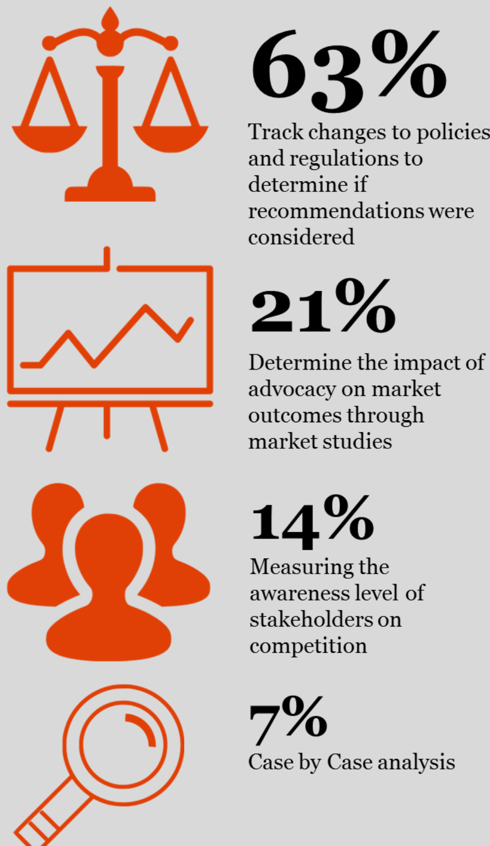
What	How	When
Content of the advocacy message to GLEs	Conducting government advocacy	Timing of government advocacy

Key Points

What	How	When
• Engage GLEs with clearly defined competition objectives • Do your homework • Tell a compelling narrative	• Different strokes for different folks and circumstances • Be open-minded and collaborative • Be a credible source of expertise on competition matters	• Provide timely advice • Strike when the iron is hot • Take a long-term perspective of government advocacy and work with patience

Special Feature: Measuring Success

The learning points collated in this report are suggestions to achieve positive outcomes in relation to government advocacy. This special feature identifies 4 common metrics that Responding Members measure advocacy success.



n=44
Question 4: How does your agency determine if your government advocacy efforts are successful? Is there any specific measure or criteria used?

To determine whether their advocacy efforts have been successful, 63% of Responding Members keep track of policies and regulations they advised GLEs on and whether their recommendations were considered by the GLEs.

Metric 1: Track changes to policies and regulations to determine if recommendations were considered. Responding Members like the Taiwan Fair Trade Commission and the Belgian Competition Authority determine advocacy success based on whether GLEs consider or accept their recommendations. Some Responding Members track on an ad-hoc basis while others at regular intervals, the outcomes of their recommendations on proposed legislations. For example, the Italian Competition Authority(ICA) regularly monitors the outcome of its recommendations addressed to GLEs through the Office for Legislation Screening & Analysis. The Office produces every six months updates on the evolution of the outcome of ICA's recommendations issued in the preceding 24 months and if GLEs complied with its recommendations.

Similarly, the US FTC staff also track the percentage of competition advocacy matters filed with GLEs, including federal and state legislatures, agencies, or courts, that were successful, in whole or in part. That said, the Swedish Competition Authority (SCA) noted that "*it is however difficult to comment on causality, since the SCA is usually not alone in criticizing government proposals which potentially jeopardise competition.*"

Metric 2: Determine the impact of advocacy on market outcomes. Responding Members also adopt an

outcome-based approach in monitoring developments in the markets to evaluate if pro-competition outcomes had been achieved as a result. This can be in the form of monitoring through public sources of information or market studies. For example, the Competition Commission of Mauritius assessed the effectiveness of its advocacy efforts in the cement market through monitoring of price evolution and the entry of players into the market, after its recommendations in its cement market study were implemented by the government. The former UK Office of Fair Trading also commissioned a general study to assess the effectiveness of advocacy interventions (including examining the extent to which advocacy advice and recommendations were accepted by policymakers) and to estimate the impact of advocacy interventions on consumers.

Instead of "going it alone", competition agencies can also consider partnering GLEs to measure impact of policy initiatives on market outcomes, where competition is an important consideration of the policy initiative. For example, the European Commission's "Fitness Check", a comprehensive evaluation of a policy area, identifies how several related legislative acts have contributed (or otherwise) to the attainment of policy objectives. It noted that Fitness Checks can identify policy overlaps, inconsistencies, synergies and cumulative impacts of regulation.[113]

Metric 3: Measuring GLEs' awareness of competition principles. More generally, Responding Members also track awareness levels of competition principles but this would naturally extend across all forms of advocacy and enforcement work. This typically takes the form of a general stakeholder perception survey to which GLEs are a stakeholder group.

Metric 4: Case by case analysis e.g. soliciting for feedback on quality and usefulness of recommendations. Other Responding Members have structured follow-up mechanisms with GLEs, e.g. surveys, to solicit feedback on the usefulness of their advice, if the recommendations were adopted and the reasons for not adopting the advice as the case may be. For example, US FTC staff will send advocacy recipients a survey designed to gauge the usefulness of the agency's advocacy comments and amicus briefs. "Usefulness" is assessed by the survey recipient.

"Tracking advocacy outcomes can help competition agencies track their progress and adjust their methods for future advocacy."

Competition agencies can consider adopting some of the suggested approaches above, to determine the key success factors and pitfalls. This institutional "learning on the job" experience will enhance the effectiveness of future advocacy efforts. In summary, the Responding Members' experiences illustrate that changing minds and instilling change takes time as GLEs need time to review and understand advocacy recommendations before their buy-in can be obtained. Advocacy efforts that seem "unsuccessful" now still go towards instilling good practices, contributes to the public debate and creates a culture of competition amongst GLEs.

[113] Refer to the EC's website on Fitness Check.

CONCLUDING THOUGHTS…

There appears to be general consensus that disruptive innovation is part and parcel of the process of creative destruction in a market economy and will continue to shape and influence developments in different parts of the market. Even Responding Members who do not think that disruptive innovations are prevalent in their economies today are keen to keep a watching brief as the proliferation of disruptive innovations in their economies is an eventuality.

Disruptive innovations have not generally altered the manner in which Responding Members conducted government advocacy. For example, the ways in which Responding Members become aware of the competition concerns arising from disruptive innovations and related regulations, and the tools adopted, are similar to government advocacy in other areas. However, there are also aspects of disruptive innovations which are unique and may present specific challenges to competition agencies. For example, disruptive innovations dramatically impacts the incumbents and we have seen examples of strong lobbying which increase the political pressure on GLEs to react in ways which might impede consumers, businesses and the economy from enjoying the full benefits of such disruptive innovations. The speed at which disruptive innovations impact markets also mean that competition agencies have to be even more proactive in terms of studying and understanding the impact of disruptive innovations on markets and the wider economy.

ICN Members can therefore learn from each other's experience given that the regulatory and competition issues are raised by the same types of disruptive innovations. The Hong Kong Competition Commission rightly suggested that,

> *"As many of the disruptive technologies are raising the same issues in many jurisdictions, perhaps some template lines that could be used in advocacy efforts would be of assistance, and would save authorities from "reinventing the wheel".*

For example, in the UK Competition and Markets Authority's response to Transport for London's consultation on proposed regulations for private hire vehicles, it referred to the previous work carried out by the French Autorité de la concurrence in respect of the 15 minute wait time proposed by the French government in 2013.[114]

This project is a step in that direction and we do hope that this report and Responding Members' Case Studies have contributed to ICN members' understanding of government advocacy and disruptive innovation; and provided some ideas to guide ICN members' next advocacy engagements with GLEs.[115]

■ICN Special Project Team 2016

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[114] UK Competition and Markets Authority, Case Study.
[115] For more work products on advocacy, refer to the ICN AWG website.

CASE STUDIES ON TRANSPORT NETWORK COMPANIES

GLEs involved

The GLEs featured in the case studies on Transport Network Companies (TNCs) are not limited to the relevant transport authorities; they also include the judicial authorities, parliaments and local authorities. Indeed, advocacy efforts by Responding Members in relation to disruptive innovations like TNCs are seldom limited to just the relevant sectoral regulator but requires coordination across multiple GLEs.

GLEs' responses

Responses from GLEs were mixed. Some responded to the entry of TNCs by implementing regulations that restricts competition while others react with pro-competition measures. For the former, the most extreme and commonly seen reaction would be the banning of disruptive innovations (Brazil and Canada), followed by the imposition of some form of existing regulations that may not be suitable for TNCs (Canada and the United Kingdom). In some cases, GLEs have also considered new regulations for TNCs(France and Singapore).

On the other hand, some GLEs recognised the benefits brought along by disruptive innovations (Mexico) and proposed regulations to facilitate the entry of disruptive innovation while taking into account non-competition policy considerations at the same time (Canada, Singapore and United States).

Although not all jurisdictions have completed their assessment on how best to regulate (or not to regulate) disruptive innovations in the transport industry, it is evident that some GLEs are starting to take a more holistic approach in understanding the disruptive innovation in question as well as the pros and cons associated with different regulation approaches that can be used (Brazil).

Public Policy Considerations

Some Responding Members took into account public policy considerations such as road safety, passenger security and service standards when advocating for GLEs to consider competition concerns raised by regulations governing disruptive innovations. (France, Italy, Mexico and Singapore).

Some Responding Members took the view that while non-competition public policy considerations are outside their expertise, they are not necessarily in conflict with pro-competition goals (Canada and Colombia) and therefore do not need to be considered separately.

Advocacy Objectives

Responding Members were mainly concerned with promoting competition and innovation through facilitating entry by disruptive innovations (France and Italy). More specifically, when advocating to GLEs, the two main objectives Responding Members typically focused on were: advocating for regulations that are no more than necessary to achieve non-

competition public policy goals and to achieve a level playing field by relaxing regulatory restrictions on incumbents rather than adding new ones (Canada, Mexico, Singapore, United Kingdom and United States).

Challenges

The journey to successful advocacy is not an easy one; it is often plagued with challenges.

Firstly, the very nature of disruptive innovation is a big challenge faced by Responding Members when advocating for GLEs to consider competition issues in their proposed regulations. As TNCs' offer new forms of transport services, where their features are not immediately easy to grasp and comprehend, this makes it difficult for Responding Members and GLEs to clearly determine the benefits TNCs bring about and assess how best to regulate (or not regulate) them. (Brazil)

GLEs may also lack the necessary appreciation of competition principles and how they can bring about benefits, making it more difficult for Responding Members to obtain their buy-in on the importance of giving due consideration to competition matters when designing regulations for TNCs. (Colombia)

Time sensitivity is another hurdle faced by Responding Members. Some Responding Members had found it challenging to meet the deadlines imposed by GLEs such that there was sufficient time for that GLE to incorporate the competition opinions and advice into its policy/regulation formation process (Canada).

Finally, public and political pressure can also be a significant challenge for GLEs given the controversy surrounding TNCs and the far-reaching impact they have on different stakeholders (Colombia, Italy and Mexico).

Outcomes

Most Responding Members considered themselves to be somewhat successful in their advocacy efforts with GLEs on regulatory approach towards TNCs (Colombia, France, Mexico, Singapore, United Kingdom and United States).

There are also on-going advocacy efforts in relation to disruptive innovation in Brazil, Canada and Italy at the moment with pending outcomes. Do watch out for them!

Brazilian Administrative Council for Economic Defense (CADE)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

This case study presents the concerns related to the entrance of car rides applications, specifically Uber, in Brazil. This disruptive innovation affected the passenger car transportation market. Being tightly regulated and locally legislated, this market is a complex field where to introduce disruptive innovations. The reaction of incumbents, such as taxi drivers unions, were the most conservative. Local GLEs, on the other side, enacted distinct norms and presented different points of view on the matter.

"Considering the pressure exerted by the taxi drivers union to ban car ride applications, especially Uber, the local legislative assembly passed a bill that forbade Uber in the city."

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

This specific case study focuses on the experience of the city of São Paulo. Considering the pressure exerted by the taxi drivers union to ban car ride applications, especially Uber, the local legislative assembly passed a bill that forbade Uber in the city. The local government, on the other hand, determined the implementation of a working group on the subject. The latter aims to provide inputs to the local government, so it can better understand the matter and decide on whether it will sanction the bill or not.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

In the case of approval of the bill passed by São Paulo's legislative assembly, Uber would be banned from the municipal market. The executive government of the city of São Paulo, inspired by CADE's previous study on disruptive innovation on the market of passengers transportation, implemented a working group in order to evaluate Uber's impact on the sector. Besides CADE's study, the local government also discussed with the agency's analysts issues related to the market and its regulation. The result of this cooperation has been the elaboration of a new norm, which is under public consultation since then.

"The executive government of the city of São Paulo, inspired by CADE's previous study on disruptive innovation on the market of passengers' transportation, implemented a working group in order to evaluate Uber's impact on the sector."

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

CADE has the attribution to analyse concerns related to competition issues. In this sense, the agency may manifest an opinion that might be considered by GLEs on their own matters. Similarly, the agency's Economic Studies Department has the competence to elaborate market studies, whereas CADE's Legal Office may be requested to issue legal opinions. Furthermore, GLEs might invite CADE to express its opinion about a norm under

elaboration whenever related to competition enforcement.

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

Even though other public policies might also be touched upon when presenting the context of competition issues, the approaches and tools used by the authority to advocate competition (including those related to disruptive innovations) among GLEs are always considered under a competition perspective. For instance, although CADE's working paper on rideshare applications, published in September 2015, analysed some aspects of urban planning, public safety and public transportation policies, it only did so to the extent that such considerations related to competitive matters. Indeed, Brazil has sector regulatory agencies and the attributions and competencies of which are well defined. In this context, CADE is able to focus its work exclusively on competition issues.

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

In the specific case under analysis, CADE used as advocacy tools its study on the market of passengers' transportation, as well as benchmarks and experience-sharing with the experts of the working group from the government of the city of São Paulo.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

The challenges encountered by CADE when advocating the need to consider competition issues related to disruptive innovation are indeed identical to the ones related to non-disruptive innovations. More specifically, it consists of getting stakeholders to understand the competitive process and its benefits. On the other hand, this might be considered specially challenging in the case of disruptive innovation, since it is a relatively recent discussion subject to CADE and the agency's reflections on the matter are still a work in progress.

"...this might be considered specially challenging in the case of disruptive innovation, since it is a relatively recent discussion subject to CADE and the agency's reflections on the matter are still a work in progress."

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

CADE's input on the issues related to car ride applications has been crucial to the local government of the city of São Paulo. Indeed, the agency's market study benchmarked the local government working group. The draft of a new local regulation has been under public consultation thus far, and it may inform the effort of other Brazilian local governments to enforce competition on this sector in the future.

Sources: Documentos de Trabalho 001/15 and Documentos de Trabalho 003/15

Competition Bureau Canada (CBC)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

Traditionally a tightly controlled business, the taxi industry is facing new competitive threats by ride-sharing services that operate outside existing regulations. Advances in technology have led to innovative platforms and software applications to pair drivers with fares. Drivers using these applications are typically those that do not hold taxi licences. Instead, they operate using their own vehicles outside of existing taxi regulations. Providers of these ride-sharing applications, which include companies such as Uber and Lyft, are sometimes referred to as Transportation Network Companies (TNCs).

Entry by TNCs into municipalities can represent a meaningful source of competitive pressure on traditional taxi operators. Regulations stymie the taxi industry's ability to respond to these pressures. If the industry is provided the opportunity and flexibility to adjust its operations, entry by TNCs is likely to provide considerable benefits to consumers, including on dimensions of competition such as:

Me Pricing: TNCs offer rates that can be substantially lower than the regulated rates imposed by municipal governments. Taxi drivers in several cities have reported that they are experiencing difficulties attracting consumers due to the low rates charged by Uber drivers. In response, Toronto (Ontario) reduced the regulated base fare for a taxi ride from $4.25 to $3.25 to help traditional taxis compete with Uber drivers. TNCs may also significantly increase prices during periods of high demand, such as evenings and weekends, special events or adverse weather conditions. "Surge pricing" is economically efficient, as it ensures availability by encouraging more drivers to work when they are needed.

" Regulations stymie the taxi industry's ability to respond to these pressures. If the industry is provided the opportunity and flexibility to adjust its operations, entry by TNCs is likely to provide considerable benefits to consumers."

Availability: TNCs may reduce waiting times for consumers compared to traditional taxis due to a number of factors. These include an increase in the availability of vehicles for hire, improved dispatching systems, and possibly greater incentives for TNC drivers to provide prompt service to ensure that they receive high ratings from passengers. In Toronto, taxis provide service with an average waiting time of nine minutes. In contrast, passengers can expect a ride from an Uber vehicle within four minutes. Similarly, passengers in Ottawa (Ontario) will typically wait between five and fifteen minutes for a traditional taxi, but only 3.7 minutes for an Uber driver.

Convenience: The software applications used by TNCs offer a number of convenient features to consumers, including the ability to see what vehicles are available in their local area and track a vehicle in real-time once a ride has been requested. Consumers also appreciate the automatic payment method employed by TNCs, rather than having to manually pay through cash or payment card.

Quality of service: Consumers perceive TNC drivers as offering a higher quality of customer service than traditional taxi

drivers. TNC drivers may have incentives to provide good service to ensure that they receive good ratings from passengers, as bad ratings may result in fewer rides requested or even removal from the TNC network. The number of taxi complaints received from consumers has decreased in some areas following entry by TNCs, suggesting that competitive pressure from TNCs give taxi drivers incentives to improve the quality of their services.

Traditional taxi companies have responded to these innovative offerings by introducing their own software applications that include many of the functions offered by TNCs. For example, Toronto taxi companies such as City Taxi and Beck Taxi have been developing new applications to compete with Uber. Even the threat of possible future entry by TNCs may provide taxi service providers with an incentive to develop more innovative product offerings. Although regulations in Vancouver (British Columbia) prevent the operation of TNCs, four taxi companies have nevertheless jointly launched a software application that allows passengers to request and track taxis, pay with their credit card and rate their driver.

"Traditional taxi companies have responded to these innovative offerings by introducing their own software applications that include many of the functions offered by TNCs.... Even the threat of possible future entry by TNCs may provide taxi service providers with an incentive to develop more innovative product offerings."

Taxi companies and drivers have also worked to improve the quality of their offerings, providing cleaner vehicles and more timely and courteous service. They are, however, limited in their ability to compete with TNCs on price, as they must charge prescribed rates set by regulation.

Increased competition from TNCs is also reflected in falling values for taxi plates in municipalities that have faced entry by TNCs. For example, taxi plate values have reportedly fallen in Toronto from a high of CDN$360,000 in 2012 to CDN$188,235 in 2014. This represents a significant loss of value to taxi plate owners.

For a more detailed discussion of these issues, including sources for the figures provided, please refer to the Competition Bureau's white paper, "Modernizing regulation in the Canadian taxi industry"

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

Municipal and provincial GLEs throughout Canada, including most major Canadian cities, are involved. Regulators cited concerns about public safety and consumer protection, as ride-sharing applications were perceived to not carry sufficient insurance or require adequate background checks for drivers. GLEs have also expressed concern about the provision of adequate numbers of accessible vehicles and the issue of compensation for holders of existing taxi licences, who stand to lose significant value if ride-sharing applications successfully enter the industry.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

GLEs have had a number of responses, from banning ride-sharing applications (Vancouver) to trying to enforce existing taxi bylaws against TNCs and their drivers (Ottawa, Toronto, Montreal (Québec)). Several cities have also proposed bylaws that would regulate ride-sharing

applications and allow them to operate in the taxi industry, subject to certain rules (Waterloo (Ontario), Edmonton (Alberta)). As these regulations are not yet finalized, it is difficult to assess their impact on competition.

"…. GLEs should not favour one company or business model over another. In the absence of legitimate policy reasons to do otherwise, GLEs should apply the same rules to ride-sharing applications and the existing taxi industry. Where feasible, a level playing field should be reached by relaxing restrictions on taxis rather than imposing restrictions on new entrants."

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

There are two main themes of the Bureau's intervention:

1. GLEs should rely on market forces to the greatest extent possible, and regulate no more than necessary to achieve legitimate policy goals (including in relation to consumer protection and safety). As prohibition is the most restrictive regulatory option available, and the least desirable response, from the Bureau's perspective. In the alternative, the Bureau supports GLEs' efforts to develop regulations that would allow ride-sharing applications to operate within their jurisdiction.

2. GLEs should not favour one company or business model over another. In the absence of legitimate policy reasons to do otherwise, GLEs should apply the same rules to ride-sharing applications and the existing taxi industry. Where feasible, a level playing field should be reached by relaxing restrictions on taxis rather than imposing restrictions on new entrants.

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

No, these considerations fall outside the Bureau's area of expertise; however, the Bureau acknowledges that regulators have legitimate policy goals to balance with competition. We advocate, however, that GLEs adopt regulations that achieve those goals in a way that has a minimal impact on competition.

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

We used formal regulatory interventions. These were chosen as these municipalities have or had formal review processes underway. This ensures that the Bureau has an appropriate forum to present its views to regulators and other stakeholders.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

As several GLEs were in the midst of formal regulatory processes, the Bureau was subject to the GLEs' timing. It was important, and challenging, to meet the deadlines imposed by GLEs to ensure that the Bureau's submissions would be available to the relevant GLE with sufficient time for that GLE to incorporate the Bureau's views in its process.

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?
Outcome is unknown as efforts are still ongoing.

Sources: Competition Bureau white paper: "Modernizing regulation in the Canadian taxi industry"; Op-ed: "Don't ban ride-sharing. Rethink regulation"; Submission by the Commissioner of Competition Provided to the City of Toronto Taxicab Industry Review and The Competition Advocate article: "Taxi industry's emerging digital dispatch services".

Colombia Superintendence of Industry and Commerce (SIC)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.
The disruptive innovation studied referred to Transportation Network Companies (in Colombia UBER), which use digital networks in order to connect drivers with passengers, matching supply with demand. Through a Smartphone application, passengers can look for the closest driver, and when a driver accepts to offer the service, the platform sends each party the main information of the other one. Once the service is finished, the Transportation Network Company sends a receipt to the rider, which includes a fare breakdown. Passengers pay exclusively using their credit cards, and there is an efficient auto regulation scheme, by means of which each of the parties can rank the other anonymously, and this evaluation generates consequences in case of bad results.

This type of platforms can eliminate, or at least reduce, market failures caused by information asymmetry, poor coordination and excess of regulation. The specific example in Colombia is Uber.

The market affected is the transportation market, specifically urban individual transportation. This disruptive innovation affects the transportation market because it competes with traditional taxis, who have considered Uber to be illegal and have protested looking for the prohibition of that Transportation Network Company.

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.
The GLE involved was the Ministry of Transportation, which proposed a decree that would regulate the taxi service, creating a "luxury level", which would complement the existing service, renamed as the "basic level". On the recitals of the proposed regulation, the Ministry mentioned several principles, such as the prioritization of safety, free access, general interest, quality

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?
In November 2015, the Ministry of Transportation issued regulation 2297/15 creating a new level of service, called "luxury level", while the existing one will be named "basic level". The luxury level will be offered through digital platforms, will be paid exclusively by electronic means, and will have a minimum fare higher to that of the basic level. As well, the luxury level will have better comfort, accessibility and operational conditions than the basic one, and will be provided exclusively in specific type of vehicles.

Every company interested in providing the taxi service will have to obtain a permit and to meet some requirements. For their part, the luxury level vehicles must meet certain physical characteristics, such as having a Global Positioning System (GPS) device, ABS brakes and airbags. The proposed regulation impedes particular vehicles to provide the individual transportation service.

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

The SIC, as the competition authority in Colombia, concentrates its efforts in trying to promote competition in every single sector of the economy, and explained to the Ministry of Transportation the importance of being flexible with respect to the transportation platforms in order to allow and promote competition and innovation.

"The SIC ... explained to the Ministry of Transportation the importance of being flexible with respect to the transportation platforms in order to allow and promote competition and innovation."

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

The considerations made by the Ministry of Transportation related to safety, free access, general interest, quality and comfort did not enter necessarily into conflict with a pro-competitive goal, so it was no needed to assess them in a particular way. Nevertheless, the SIC identified specific provisions included in the regulation that restricted competition more than necessary and set a barrier to entry of disruptive innovations.

"...instead of just waiting for the regulator to send the proposed decree and then starting the study of the regulation, the SIC had an active role, which consisted in studying the market and the disruptive innovation in advance, in order to be in time once the proposed regulation was sent."

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

The advocacy tool used by the SIC was issuing a competition advocacy opinion, which was rendered on November 26, 2015. The SIC chose this tool because it was the competition advocacy mechanism provided by article 7 of Law 1340, 2009, which is the Competition Law in Colombia.

Regarding this particular case, instead of just waiting for the regulator to send the proposed decree and then starting the study of the regulation, the SIC had an active role, which consisted in studying the market and the disruptive innovation in advance, in order to be in time once the proposed regulation was sent.

The SIC analysed the current regulatory framework in order to study the achievements and market failures. Afterwards, the SIC studied the Transportation Network scheme, and the impact it has had around the world. The SIC then commented on the projected regulation.

The SIC also used its international relationship with other Competition Authorities around the world, to obtain

information related to the development of Transportation Network Companies in those other countries, as well as the regulations issued.

"The SIC also used its international relationship with other Competition Authorities around the world, to obtain information related to the development of Transportation Network Companies in those other countries, as well as the regulations issued."

g. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

The SIC concluded that the creation of a new luxury service was pro-competitive because it increases the alternatives available to consumers in the market. However, the SIC identified provisions within the regulation that created barriers to entry, both to supply and demand, and recommended to reconsider such restrictions. Specifically, the main concern was that such barriers could undermine the pro-competitive goal pursued by the regulation.

The National Government enacted the final regulation without incorporating the recommendations of the SIC. Nevertheless, the reasons supporting the departure were included in the recitals of the administrative regulation.

Sources: Advocacy Opinion

French Autorité de la concurrence

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

In France, the supply of chauffeur-driven passenger transport services has increased rapidly these past years, particularly in the Paris Ile-de-France area, where it has brought an answer to the unfulfilled demands of consumers. In this context, the Autorité has been asked by the government to give its opinion on draft decrees aimed at regulating this new means of passenger transport with the view of protecting the monopoly of taxis on the hailing market.

In Paris, more than 17000 taxi licences have been issued by the police department. Taxis have a de jure monopoly on the hailing market (namely picking up customers off the street). By contrast, on the pre booking market, they are in competition with chauffeur-driven cars, motorbike taxis, as well as ambulances transporting patients. In a context where demand exceeds supply at certain times, particularly in the Paris region, an additional supply of passenger transport has recently developed in the form of chauffeur-driven cars (numerous companies such as UBER have emerged). This was made possible thanks to a relaxation of the rules in 2009 alongside with the development of the use of smart phones. This new supply is likely to rebalance the supply and demand of passenger transport and bring diversity into the market. In fact, chauffeur-driven car companies differentiate on price and quality through their offer of specific services. In June 2013, 5284 chauffeur driven car companies were registered (of which almost 50% are in the Paris Ile-de-

France area), which represented more than 9800 vehicles and almost 11000 drivers employed at the time.

"The government introduced various proposed measures among which a 15-minute-delay requirement between the time of booking a chauffeur-driven car (CDC) and the time of picking up the passenger (2013 draft decree) and an obligation for the CDC to return to its base or remain at an authorized parking lot once the passenger is dropped off (2014 draft decree)."

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

The minister of Economy voluntarily referred the two draft decrees to the Autorité. The measures proposed in both draft decrees were allegedly grounded on policing concerns (facilitating traffic flow).

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

The government introduced various proposed measures among which a 15-minute-delay requirement between the time of booking a chauffeur-driven car (CDC) and the time of picking up the passenger (2013 draft decree) and an obligation for the CDC to return to its base or remain at an authorized parking lot once the passenger is dropped off (2014 draft decree). Instead of using alternative measures to counter and discourage illegal hailing, the government intended to implement measures distorting competition by protecting the hailing market under taxis' monopoly and impeding CDCs' activity in the adjacent pre booking market (a market for which taxis do not hold a monopoly).

The Autorité underlined that the distortions of competition inferred by the proposed measures on the pre booking market, which is open to competition, were not counterbalanced by an increased efficiency in the fight against fraud (i.e. illegal hailing, which results from the taxis' monopoly) and were even counterproductive in light of the aim of facilitating traffic flow (as vehicles available nearby would then be obliged to drive around empty until the 15 minutes had elapsed).

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

The foremost objectives of the Autorité, when referred a draft regulation, are to assess the existence of restrictions to competition, their scope and intensity, as well as the degree to which these restrictions are both necessary and commensurate with the alleged public interest considerations. In the present case, as the link between the measures and the alleged public interests was either lacking or the resulting restrictions grossly disproportionate, the objective of the Autorité was essentially to bring the government to reconsider its measures. However, the Autorité completed its findings by advocating proactive measures aimed at modernizing the taxi profession and allowing it to compete on an equal footing on the "pre booking" market, especially by allowing taxis to provide fixed rates – rather than metered rates – for certain popular routes, such as those linking the city centre to the main Paris airports.

"The Autorité underlined that the distortions of competition inferred by the proposed measures on the pre booking market, which is open to competition, were not counterbalanced by an increased efficiency in the fight against fraud (i.e. illegal hailing, which results from the taxis' monopoly) and were even counterproductive in light of the aim of facilitating traffic flow (as vehicles available nearby would then be obliged to drive around empty until the 15 minutes had elapsed)."

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

In its opinions, the Autorité reviewed the adequacy and proportionality of public interest considerations underpinning the proposed government measures (please see response to question c above).

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

The Autorité examined the two draft decrees upon the voluntary referral of the minister of Economy. The recommendations issued by the Autorité are materialized in an opinion. Both opinions at stake have been published on the Autorité's website, as well as press releases.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

The main challenge was to deter the government's strong temptation to implement measures distorting competition and impeding CDC activity on the pre booking market by suggesting the adoption of alternative measures. Another challenge was linked to the fact that the public debate was somewhat affected by the confusion between two types of services provided by the main CDC service provider, Uber, one operating legally under the 2009 law mentioned above, the other under the guise of a car-sharing service (Uber Pop). The latter service was ultimately withdrawn by Uber.

"...the Autorité completed its findings by advocating proactive measures aimed at modernizing the taxi profession and allowing it to compete on an equal footing on the "pre booking" market, especially by allowing taxis to provide fixed rates – rather than metered rates – for certain popular routes, such as those linking the city centre to the main Paris airports."

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

The French Administrative Supreme Court (Conseil d'Etat) considered that the 15-minute-delay requirement in the 2013 draft decree was not justified in view of the constitutional principles of commercial and industrial freedom. It suspended the decree in February 2014, and eventually revoked it in December 2014.

The Autorité published an opinion in June 2015 in favor of government measures

introducing fixed fees for taxi trips between Paris' airports and its city center, as well as for taxi trips preceding a booked customer pick-up. The Autorité encourages such an approach which, without affecting the development of CDCs, could be considered as part of a global plan to review regulations concerning taxis, making them more competitive, and reducing barriers to entry.

Sources: Press release of the 2013 opinion, Press release of the 2014 opinion and Press release of the 2015 opinion.

Italian Competition Authority (ICA)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

The disruptive innovation concerns the non-scheduled passenger transport sector. In order to understand the content of the ICA advocacy intervention, it is useful to recall the main features of the existing transport regulation.

The Italian taxi public service is highly regulated (in particular by law no. 21/1992) with severe limits on availability of taxi licences, regulated itineraries and timetables and requirements such as an insurance scheme for passengers. Moreover, in order to obtain a licence, pursuant to the strict Italian regulation, taxi drivers do also face significant fixed costs which entail long depreciation periods.

"The Italian taxi public service is highly regulated ... with severe limits on availability of taxi licences, regulated itineraries and timetables ... in order to obtain a licence, ... taxi drivers do also face significant fixed costs which entail long depreciation periods."

In Italy, Uber has started to offer services of private car hire through its apps in February 2013 and three municipalities have been so far affected (Milan, Rome and Florence). In Italy Uber has developed three services: UberBlack and UberVan which involve professional drivers with the latter offering 6-passenger vehicles; and Uberpop which allows a private non-professional driver to offer a ride.

As of December 2015, Uber was active with 100 drivers in Florence and around 1,000 drivers in each of the cities of Rome and Milan.

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

Prompted by the protests of taxi drivers in Milan and Rome, on May 20, 2014, an Italian MP asked the ICA to deliver an opinion on whether, and to what extent, the law no. 21/1992 regulating the non-scheduled public transport services (taxi services) would apply to Uber services.

The ICA decided to address the invitation of the MP in the context of a more comprehensive report, released in July 2014, containing advocacy recommendations in numerous sectors which would be used by the Government as a starting point for drafting of the Annual Law for Competition.

In 2015, the legality of Uber services was challenged by taxi associations before the civil judges in Milan on the grounds that the app-based services constitute unfair competition (civil law matter).

The judges have banned UberPop service deeming that it creates unfair competition

in that Uber (i) provides an irregular taxi service (i.e., without licence) and (ii) takes economic advantage of such privileged condition on the market to the detriment of regular taxi drivers. In fact, in light of the regulation they are subject to and the high fixed costs they suffer, taxi drivers would not be able to offer prices competitive with the ones offered by unlicenced "Pop" drivers. In the course of the proceedings, the Authority for Transport Regulator delivered an opinion to the Parliament and the Government, which was considered by the judges in the pending case.

"...in light of the regulation they are subject to and the high fixed costs they suffer, taxi drivers would not be able to offer prices competitive with the ones offered by unlicenced Uber "Pop" drivers."

The Tribunal decision has spurred a debate at national level among members of the Parliament and Government. In July 2015, the Ministry of Internal Affairs, concerned by the road safety and passenger security issues raised by the Uber-like services, decided to gather the opinions of the various government departments and agencies on whether the law n. 21/1992 regulating the non-scheduled public transport services would apply to Uber services. Following a request from the Ministry of Internal Affairs, in September 2015 the ICA sent a formal opinion related to the transport services like Uber.

In November 2015, in the course of the second revision of the Draft Annual Law for Competition, the Upper House of the Parliament has opened a discussion on the non-scheduled public transport sector (which was not considered until then in the Draft Law), calling for hearings interested stakeholders including the representatives of Uber Italy, the taxi associations, the transport regulator and the ICA. As of December 2015, this discussion is still on-going.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

The Italian GLEs have not taken a formal stand about innovative passenger transport services yet. See response above.

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

In its first advocacy intervention, the ICA focused its attention on the competitive discrimination between taxi and similar services offered by other professional licenced drivers, regardless of whether these services were offered through an app (like UberBlack service) or not. In particular, according to the ICA, the current regulation forces non-taxi professional drivers to return to their garage before offering a new ride to customers. The ICA highlighted that this restriction is all the more unjustified and anachronistic in light of the opportunities offered by online platforms between customers and drivers.

This intervention was made in the context of the ICA comprehensive advocacy report, which was released in July 2014 to the Government for the purpose of the Annual Law for Competition. The report contained proposals for various sectors of the Italian economy. However, in the Draft Law presented to the Parliament, the Government decided not to tackle the non-scheduled public transport sector.

The second intervention occurred one year later, in September 2015, when the Ministry of Internal Affairs asked the ICA

(and other government departments and agencies) for an opinion on the applicability of the 1992 taxi regulation on Uber services, after they were banned by the Tribunal of Milan in July 2015. In 2015, in the course of the second revision of the Draft Annual Law for Competition, the ICA chairman appeared before the Lower and Upper House of the Parliament.

The ICA's opinion issued in September 2015 is articulated in two parts:

- a section devoted to the description of the pro-competitive effects arising from the entry on the market of new online platforms matching supply and demand for mobility (especially the apps Uber) in the non-scheduled passenger transport sector;
- a second part on the applicability of the existing regulatory framework to the services provided by the platform Uber.

In the first part of its opinion, the ICA emphasized the benefits brought about by the development of apps based mobility services like Uber, in terms of ease of use and access to mobility services, better coverage of the often unmet demand side thus reducing costs for users, a more efficient use of the supply capacity. In addition, to the extent that private transport is less incentivised, these new services might result in a decongestion of urban traffic with improved supply conditions of the scheduled public transport services and circulation of private vehicles.

According to the ICA, these benefits, and the public interests underlying them, should more than justify a more evolutionary interpretation of the existing regulatory framework regarding non-scheduled transport of persons.

In relation to services like UberBlack (rented car services run by professional drivers), the ICA reiterated its position already expressed when it submitted its July 2014 report for the purpose of the annual law for competition. The current regulation forces non-taxi professional drivers to return to their garage before offering a new ride to customers. The ICA highlighted that this restriction, which dates back 23 years, is all the more unjustified, not functional and proportional to any requirement of general public interest, and anachronistic in light of the opportunities offered by online platforms between customers and professional drivers. Therefore, the ICA stated the inapplicability of this restriction.

With regard to services run by non-professional drivers like UberPop services, the ICA emphasized that given the "highly innovative" nature, this service by definition does not fall within the scope of the existing regulation: in other words, the ICA stated that the existing framework does not apply to UberPop services. The ICA views UberPop as an "evolutionary innovation" of the radio taxi service allowed by the advancement of technology. The innovation of UberPop is so high as to make it a new service which cannot find a place in the current normative framework dated back to 1992.

For these reasons, the ICA called for a new legislative intervention to regulate, in the least invasive manner possible, these types of services (see response to question below). A similar move has been advocated by the transport regulator in a recent hearing in front of Parliament.

"The ICA views UberPop as an 'evolutionary innovation' of the radio taxi service allowed by the advancement of technology. The innovation of UberPop is so high as

to make it a new service which cannot find a place in the current normative framework dated back to 1992. ...the ICA has advocated for the need to adopt a minimal regulation of this type of services, in order to balance the different interests at stake, all worthy of protection: competition, road safety and passenger security"

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

As mentioned in the above response, the ICA intervened in several occasions to advance its proposal to revise the law of 1992, with the objective of favouring the entry and expansion of innovative services like Uber but at the same time ensuring that these new services satisfy basic requirements related to concerns like road safety and passenger security.

The ICA advocated a legislative definition for the non-scheduled mobility services offered by apps like UberPop: a third type of providers of such services (the other two are licenced taxis and licenced rental cars with drivers, NCC in the Italian acronym). The position of the Authority can be summarised as follows. In relation to the services connecting the demand for mobility and non-professional drivers, offered by online platforms such as UberPop, the Italian Competition Authority has advocated for the need to adopt a minimal regulation of this type of services, in order to balance the different interests at stake, all worthy of protection: competition, road safety and passenger security, by defining into the legislation a "third type" providers of non-scheduled mobility services (in addition to taxis and the NCC), i.e., online platforms connecting passengers with drivers not professionals.

The ICA recommended a minimum regulation, the least invasive, which includes the set-up of a Register for the platforms and the identification of a set of requirements and obligations for the non-professional drivers.

In his hearings before the Senate in November 2015, the ICA Chairman outlined the necessity to avoid regulatory solutions that, while officially recognising these new services, establish, in fact, restrictions to their operations, thus limiting their competitive effects. For example, the minimum regulation should not provide rigid limits to working hours for non-professional drivers, which may represent an implicit form of compensation for the drivers burdened with public service obligations (i.e., the drivers of licenced taxis). A more preferable solution would contemplate no working hour restrictions for non-professional drivers of the platforms, compensated by explicit and transparent forms of compensation for drivers entrusted of public service obligations.

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

Formal opinion to the Parliament and Government, hearing of the Chairman before the Parliamentary Committee, participation of the Chairman to conferences and meetings.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

The main challenges stem from the very nature of disruptive innovations. First, they enable new products and services whose features are not immediately easy to understand. Second, the question as to whether the existing regulatory framework is applicable generates uncertainty, makes regulation obsolete and creates tension between regulation and competition policy. For instance, in the case of Uber, regulation requires traditional taxi drivers to buy insurance that is much more expensive than what ordinary drivers have to pay, and to maintain their vehicles to a certain standard.

Third, disruptive innovations are capable to attack and erode established market positions at a much faster pace and, as a result, they will attract fierce opposition from incumbents who will promptly organise a strong lobbying activity. For instance, services like Uber inevitably affect the value of the taxi licences which, given the limited number of permits, have represented a considerable entry cost for existing licence holders. Therefore, incumbents have strong incentives to lobby for new regulations that block entry of disruptive innovators. Taxi associations have protested in several cities around the world, including in Italy and they have asked to meet the ICA chairman in November 2015.

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

The ICA's advocacy efforts concerning non-scheduled passenger transport sector are still on-going. Therefore, it is not possible at this stage to foresee their possible outcomes.

Sources: Opinion to the Home Office Ministry for the Supreme Administrative Court and Hearing before the Committee Industry, Commerce and Tourism.

Mexico Federal Economic Competition Commission (COFECE)

On June 4th 2015, COFECE issued an opinion regarding the impact Network Transportation Services (TNCs) have upon the competition process. As for many countries around the world, transportation in Mexico City is a collective necessity, therefore the entrance of this type of disruptive companies could lead to an increase in the options for consumers and incentivize competition with traditional transportation services.

COFECE found that in collective public transportation services, particularly taxis, there were at least two problems which would cause distortions in detriment to consumers:

1) **Information Asymmetries**: lack of information about reliability, security, predictability of pricing and quality of services. This reduced the incentives for innovation and improvement as consumers are somewhat at the mercy of the service.
2) **Coordination issues:** both consumers and drivers are uncertain about the pick-up times, leading to effects on supply, demand and efficient use of vehicles.

"These (transport network) platforms have allowed security; elimination of route deviations; fares that depend on supply and demand conditions in real time; quality; and the ability to know the availability of service and waiting time."

In contrast, Transportation Network Companies (TNCs) facilitate agreements among consumers and drivers through two different platforms:

i) complementary, connecting consumers with regulated/traditional taxis, and
ii) independent, connecting consumers with drivers offering private services.

These platforms have allowed:

i) security, since consumers know the driver's information prior to boarding,
ii) elimination of deviations, as routes are automatically planned,
iii) fares that depend on supply and demand conditions in real time,
iv) quality, since consumers can rate the driver's performance; and
v) the ability to know, in real time, the availability of service and waiting times.

Furthermore, in Mexico, the demand of these services was identified within segments of the population with access to credit cards and smart phones, creating a new base of consumers that migrated from traditional taxi services to TNCs.

After reviewing international experience and comparing it to the Mexican scenario, COFECE's assessment found that TNCs competition implications were:

1) **Correction of market failures:** The self-regulating model is efficient and transparent, TNCs offer solutions to market failures, yielding benefits to consumer welfare.
2) **Innovation:** the conjunction of technological advancements contribute to consumer welfare as they offer an increased amount of services and/or address the unmet needs.
3) **Efficiencies from using networks:** TNCs have incentives to grow, yielding efficiencies in lowering transaction costs. Likewise, consumers benefit from several TNCs in the market, by simultaneous using and switching amongst the options.

Since Mexico's regulatory framework did not recognise this category of transportation service, COFECE issued an opinion recommending its recognition. Moreover, the Commission stated that if any regulation was to be enacted, it should be limited to accomplishing essential public policy objectives related to consumer security. Therefore, the Commission did not support regulations regarding price setting or authorization and/or registration of vehicles by imposing additional requirements such as licence plates or medallions.

"Since Mexico's regulatory framework did not recognise this category of transportation services, COFECE issued an opinion recommending its recognition.... (and) stated that if any regulation was to be enacted, it should be limited to accomplishing essential public policy objectives related to consumer security."

In response, and after a series of different public debates among the interested parties, experts and institutions, on July 15th Mexico City's Department of Transportation issued two resolutions to regulate registration and operation of TNCs. The regulations coincided with COFECE's general view and contained the recommendations stated on its opinion, differentiating traditional transportation services from TNCs.

Overall, the proposal issued by Mexico City's government was compatible with COFECE's opinion. Specifically, regarding independent platforms, the resolutions gathered COFECE's recommendations by not limiting the number of units, which may only be determined by supply and demand. Also, they took into account the recommendations regarding associated benefits such as identity of drivers, reduction in waiting times and improvement of the services.

COFECE's opinion reached other local governments in Mexico. On August 22nd, the Legislature from the State of Puebla passed amendments to the Transportation Law to regulate registration and operation of TNCs. The bill, specifically referenced the Commission's opinion and defined a new category of transport called "Executive Service" which coincides with TNCs through independent platforms defined by COFECE. Moreover, the law stated that "executive service vehicles are those private cars that are not bound to being granted concessions, permits or authorizations by the Department of Transportation and are used by private parties for transporting persons and which are registered as TNCs"

Even though a group a taxi drivers in Mexico City lodged a constitutional challenge (known in Mexico as Amparo Judgment), a District Court denied the motion on September 21st, pursuant to the following considerations: a) the resolutions issued by the Department of Transportation have a valid purpose, b) TNCs are private transportation services and may not be considered as publically offered because their vehicles have no physical distinctions from regular automobiles and their services are requested through platforms were pick-up places are clearly defined, and c) the Department of Transportation does not have an obligation to observe the same requirement as those demanded for taxis because these concern public transportation services.

"Overall, the proposal issued by Mexico City's government was compatible with COFECE's opinion. ... not limiting the number of units, which may only be determined by supply and demand. Also, they took into account the recommendations regarding associated benefits such as identity of drivers, reduction in waiting times and improvement of the services."

The cases of Mexico City and the State of Puebla are an example of how opinions issued by COFECE can advocate for the entrance of new services provided by disruptive technologies such as the one offered by TNCs. For the Commission, this effort was very successful as competition was preserved, while benefiting consumers with more transportation options and giving incentives to traditional services to innovate and compete.

Competition Commission of Singapore (CCS)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

The disruptive innovation that the Competition Commission of Singapore would like to highlight through this case study is Third-Party Taxi Booking Mobile Applications (third-party apps) which affected the market for taxi bookings services/Taxi Call booking services market.

"...while these third-party apps bring about benefits to consumers and taxi

drivers, they bring challenges to taxi companies as they may not be able to meet the call booking standards set by the Land Transport Authority for their own call centres or apps, e.g. in terms of the proportion of calls served, if its drivers are diverted away to service bookings from third-party apps instead."

Before the entry of third-party apps, to book a taxi, commuters can choose to call any of the six taxi operators, or book online through the taxi operators' respective mobile applications, for a fee. In the last couple of years, commuters can also choose to book a taxi through third-party apps.
Unlike taxi booking apps owned by taxi companies, these third-party apps do not restrict their coverage to taxis owned by a particular company, allowing it the ability to better match commuter demand to the overall supply of taxis on the roads. This increases the chance of a commuter getting an empty taxi that is close by, thus reducing the problem of mismatched taxi supply and commuters' demand. They also enable taxi drivers to get bookings from other sources besides their own taxi company. These third-party booking apps provide an additional choice for commuters to get a taxi and hence, increase competition in the market for taxi bookings.

However, while these third-party apps bring about benefits to consumers and taxi drivers, they bring challenges to taxi companies as they may not be able to meet the call booking standards set by the Land Transport Authority (LTA) for their own call centres or apps, e.g. in terms of the proportion of calls served, if its drivers are diverted away to service bookings from third-party apps instead.

Nonetheless, the increase in competition for call booking services appears to have motivated improvements and innovations of the third-party and taxi companies' apps alike. For example, the apps are becoming more user-friendly through better interfaces. Further, it is now possible for passengers to input their credit card details on some of these apps to automatically make payment for each taxi trip.

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

In relation to the CCS's case study on government advocacy effort regarding third-party apps, the GLE involved was the LTA. The LTA is responsible for the licensing of taxi companies and regulation of their service performance. Taxi companies are required to apply for Taxi Service operator's licence from the LTA.[116] Taxi companies are also required to comply with the Quality of Service standards (which cover availability of taxis during peak hours, public opinion surveys, waiting time at taxi stands etc.) code and audit requirements imposed by the LTA.[117] Taxi fares have been deregulated since 1988 to allow taxi companies in Singapore to set their own fares. This provides more flexibility for operators to price their services according to the cost of service provision and to better respond to changes in market conditions.[118]

Prior to the revised taxi regulations, the third-party apps were, unlike the licenced taxi companies, not licenced and hence not subjected to service standards or any

[116] http://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis/taxi-operators.html
[117] http://www.lta.gov.sg/content/ltaweb/en/public-transport/taxis/taxis-and-the-lta.html#1
[118] https://www.ptc.gov.sg/regulation/taxiFares.htm

other form of regulatory oversights. The lack of regulation for third-party apps presented possible challenges for the LTA to safeguard commuters' interests and address any potential complaints relating to over-charging or bad service.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

In view of growing market traction for such third-party apps and the resulting externalities brought about by it, the LTA responded by conducting a review on the adequacy of its taxi regulations. Given that the commercial practices of the taxi industry come under the purview of the competition law in Singapore, the LTA also sought advice from the CCS on its proposed revised set of taxi regulations and its impact on the market for taxi booking.

Before announcing its proposed regulatory framework [119] in Nov 2014, the LTA engaged CCS on the potential competition impact of the regulatory framework. CCS noted that some of LTA's proposals could potentially restrict the way that third party apps competed against the incumbent taxi operators. For example, it specified that taxi booking services cannot require commuters to specify their destinations before they can make bookings. It also imposed a fee cap on the booking fees chargeable by third-party apps.

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

The primary objective of CCS's government advocacy effort was to ensure that any regulations to manage the resulting externalities brought about by the third-party apps would allow disruptive innovations to compete on a level playing field without stifling the entry and growth of such apps unnecessarily. Ultimately, the desired outcome was to allow third-party apps to grow organically based on market forces in the Singapore market.

"...CCS sought to understand the policy considerations of LTA ... such as consumer protection and service standards. This (understanding) helped to make CCS's recommendations more practical and persuasive."

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

CCS sought to understand the policy considerations of LTA in relation to these third-party apps, such as consumer protection and service standards. This helped to contextualize CCS's recommendations, making them more practical and persuasive. Besides engaging LTA, CCS also undertook some additional efforts to understand perspectives of other stakeholders which may or may not be related to competition considerations. These also helped to complement CCS's and LTA's understanding:

i) CCS undertook a limited study to better understand the potential benefits these third-party apps can bring and the possible barriers to the entry they face so that CCS could be clear about the desired pro-competitive outcome

[119] LTA's Press Release: New Regulatory Framework for Third-Party Taxi Booking Services to Protect the Safety and Interest of Commuters, 21 November 2014

it seeks to achieve out of its advocacy efforts.

ii) CCS sought informal feedback from taxi drivers and passengers who generally welcomed the third-party apps as these apps provided more opportunities to receive passenger bookings for the former (particularly those belonging to smaller taxi companies), and lower booking fees and higher success rate of booking a taxi for the latter.

iii) CCS also sought inputs from a third-party app provider to understand its perspective and the challenges it faced operating in Singapore. One challenge raised was that, unlike taxi companies which have the right under their licence to set taxi fares and booking fees, it was unclear whether third-party apps have the right to set their own booking fees given their unlicenced status.

iv) CCS also engaged a taxi company to understand its views on third-party apps. The taxi company welcomed the opportunities for additional bookings that the third-party apps brought to its drivers; however, it was concerned the company would not be able to meet the call booking standards set by LTA, e.g. in terms of the proportion of calls served, if its drivers are diverted away to service bookings from third-party apps instead.

Using the “3P” advocacy strategy – to be proactive, purposeful and practical, the CCS worked hand-in-hand with the LTA to reach a common understanding on the need to embrace disruptive innovations that are beneficial to commuters and the taxi industry as a whole while having a carefully calibrated regulatory framework that can appropriately manage the resulting externalities brought about by such innovations to the benefits of commuters and the taxi industry as a whole.

CCS recognised the other considerations surrounding these third-party apps, such as consumer protection and service standards, and that LTA was best positioned to balance these different considerations, competition being one of them. CCS therefore determined that the best and most practical advocacy strategy is to take a balanced view and encouraged LTA, in its review, to take into account the possible benefits of third-party apps, the concerns raised by market players which hindered the entry of the apps and the possible approaches towards addressing these issues.

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

When advocating to LTA, CCS:

i) undertook a limited study to better understand the potential benefits these third-party apps can bring and the possible barriers to the entry they face so that CCS could be clear about the desired pro-competitive outcome it sought to achieve out of its advocacy efforts;

ii) sought informal feedback from industry stakeholders such as taxi drivers, passengers, third-party app providers and taxi companies to better understand the potential benefits these third-party apps and possible barriers to entry they faced so that CCS could be clear about the desired pro-competitive outcome it sought to achieve out of its advocacy efforts; and

iii) engaged LTA's top management to share on CCS's findings, recommendations and advice for LTA considerations as it took the view that LTA was best positioned to balance the different considerations (consumer protection, service standards and competition) in its review of taxi regulations.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

While the commercial practices of the taxi industry come under the purview of the competition law in Singapore, the LTA licences taxi companies and regulates their service performance. Therefore, a good working relationship and meaningful engagement facilitated by effective communications and a well thought strategy e.g., the "3P" strategy – to be proactive, purposeful and practice, were needed to communicate the concerns by both agencies before a mutually agreed solution can be devised.

"While the commercial practices of the taxi industry come under the purview of the competition law in Singapore, the LTA licences taxi companies and regulates their service performance. Therefore, a good working relationship and meaningful engagement facilitated by effective communications and a well thought strategy e.g., the "3P" strategy – to be proactive, purposeful and practice, were needed to communicate the concerns by both agencies before a mutually agreed solution can be devised."

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

CCS's advice and recommendation was partially adopted by the LTA. Under the revised taxi regulation, the third-party apps are required to apply for a certificate of registration every three years. Once registered, the third-party apps are required to dispatch only licenced taxis and drivers, and to uphold certain service standards to safeguard passenger interests. For example, the apps must disclose upfront all information on fare rates, surcharge and the fees payable for the journey. The apps must also make it optional for commuters to specify their destination before they make the booking. The apps must also provide basic customer support service, e.g. lost-and-found and customer service feedback. In addition, booking fees charged by the third-party apps cannot exceed the booking fees charged by the taxi company. Bidding and pre-trip tipping for taxi services will not be allowed to ensure that taxi services remain equally accessible to all.

While CCS considered that price regulation of third-party apps could restrict their commercial flexibility, CCS accepted LTA's considerations on why such a regulation is necessary. In CCS's view, the proposed set of regulations was pragmatic and market oriented at the same time.

In a recent survey by LTA, ease of taxi booking improved in 2015, with 91.3 per cent of those surveyed satisfied, compared to 88.6 per cent in 2014. This could be due

to the entry of third-party taxi booking services and efforts by taxi companies to improve their apps and call booking services.[120]

United Kingdom Competition and Markets Authority (UK CMA)

In the UK as in other countries, taxi markets have been disrupted by innovation from new providers, particularly those using apps for bookings.

About the market in London

In the UK, there are two market tiers: hackney carriages (aka black cabs or taxis) and private hire vehicles (aka minicabs). Price caps apply to the former tier but there is no price regulation on the latter. Hackney carriages may be hailed in the street but private hire vehicles (PHVs) must be pre-booked.

Both taxi drivers and PHV drivers must obtain a licence to operate. There are no quantitative caps in London. In order to obtain a London taxi licence drivers must complete 'The Knowledge', a highly demanding test of geographical familiarity and navigational skills. The process commonly takes a number of years to complete. PHV drivers must also undertake navigational testing but this is significantly less demanding.

The role of disruptive innovation

App-based PHV operators have disrupted the market through a business model where the operator acts as an intermediary between customers and individual PHV drivers. Among other things, this has the potential to allow PHV drivers to work more flexibly and thereby to increase the supply of PHVs overall. App-based operators may also use dynamic pricing models to respond to changes in supply and demand in real time. App-based operating models can also mean that passengers are able to book PHVs for near-immediate use, thus increasing the competitive pressure applied by PHVs on the taxi segment, which have the exclusive statutory right to pick up passengers hailing them in the street.

"The CMA has not generally responded to individual local authority consultations but in this case it was felt that, as well as the market affected being a significant one, there were broader issues about regulatory responses to disruptive innovation at stake, and a significant chance that an intervention relating to London would serve to act as a guide and influence to local authorities elsewhere in the UK."

New regulations proposed

Transport for London (TfL) is the local authority regulator for taxis and PHVs in London. In September 2015, TfL consulted on a series of potential new PHV regulations.[121] These included:

- A minimum five minute wait time between booking and commencing the journey;
- A prohibition on operators showing vehicles being immediately available for hire, either via an app or physically in the street;

[120] Channel News Asia, Satisfaction with taxis declines in 2015; commuters most dissatisfied with waiting times: LTA survey, March 14 2016

[121] According to TfL, their review of the existing regulations was taking place 'because of a number of developments within the private hire industry including advancements in new technology and an increase in the different ways people engage and share taxi and private hire services.'

- A prohibition on drivers working for more than one PHV operator at a time;
- All future changes to business models would have to be approved by TfL;
- Operators would be required to accept bookings up to seven days in advance.

The CMA's response

The CMA was concerned that a number of these proposals would affect entry, expansion or innovation in the private hire vehicle (PHV) market and that they could also harm competition between taxis and PHVs. The CMA was concerned that the proposed changes might not benefit consumers; rather that they could lead to services of a lower quality and/or higher prices for consumers. The CMA therefore decided to respond to TfL's consultation to highlight these concerns. The CMA's objectives were to encourage TfL to consider the competition implications of all their proposals and to discourage TfL from proceeding with those proposals that were most likely to harm competition. The CMA has not generally responded to individual local authority consultations but in this case it was felt that, as well as the market affected being a significant one, there were broader issues about regulatory responses to disruptive innovation at stake, and a significant chance that an intervention relating to London would serve to act as a guide and influence to local authorities elsewhere in the UK.

The CMA's response to TfL's consultation therefore focused on the proposals listed above and highlighted the ways in which the CMA considered these were likely to harm consumers. The CMA also referred to previous work carried out by the French *Autorité de la concurrence* in respect of the 15 minute wait time proposed by the French government in 2013.

"The CMA also referred to previous work carried out by the French Autorité de la concurrence in respect of the 15 minute wait time proposed by the French government in 2013."

Building on its previous assessment of the local market in Sheffield, the CMA suggested that TfL should recognise that taxis and PHVs often compete among themselves and with one another irrespective of the two-tier system of regulation. The CMA also said that given that technological innovation now allows consumers to book PHVs for near-immediate use, it believed that there would be value in a broader review of whether maintaining two different tiers – including a high level of regulation on black cabs – continues to serve consumers in light of recent changes to the market.

Publicity and reaction

As well as publishing its response online, the CMA's Chief Executive also wrote an opinion piece for the *Financial Times* in which he argued that that many of TfL's proposals 'would artificially restrict competition, curbing developments that stand to benefit the paying passenger'. The article also made wider points about responses to disruptive innovation, noting that 'we all need to be bold enough to challenge, if necessary, the arguments of incumbents who stand to lose from disruptive change.'

The story was picked up in various other outlets, including local television news and national newspapers. Coverage was generally positive or neutral. Some observers noted that it was unusual to see one 'regulator' publicly disagree with another in this way. There was also a

reaction from TfL, which said it was 'fully supportive of new technology and business models that widen choice for Londoners'.[122]

"More broadly, press coverage of the CMA's advocacy in this area has helped to make public the CMA's views on the wider debate about regulatory responses to disruptive innovation and therefore can act as a reference point even outside this sector."

Impact

Following the closure of the consultation, which received over 16,000 responses, TfL announced that it would not be taking forward a number of the proposals that concerned the CMA. These included the proposals to require a five minute wait time, to require pre-booking seven days in advance, to prohibit vehicles being shown as immediately available and to prohibit drivers from working for more than one operator. TfL stated that it still intended to require operators to notify it of changes to their operating models, but that it would no longer require them to wait for approval for those changes. TfL began a further regulatory impact assessment consultation ahead of final decisions to be taken in March 2016.

More broadly, press coverage of the CMA's advocacy in this area has helped to make public the CMA's views on the wider debate about regulatory responses to disruptive innovation and therefore can act as a reference point even outside this sector.

[122] The Daily Telegraph, Competition watchdog slams plans for crackdown on Uber in London, December 2 2015

OTHER CASE STUDIES ON DISRUPTIVE INNOVATIONS

Members also submitted other case studies on disruptive innovations in other, ranging from financial services and payment services (EU, Malaysia and Latvia), to energy (Turkey), media (Australia), real estate (United States) and car distribution (United States).

Australian Competition and Consumer Commission (ACCC)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

Online media versus "traditional" media channels

As is the case globally, increasingly Australians access media online. We now access overseas newspapers as easily as local publications; and now stream or otherwise gain access to endless content in written, audio or audiovisual form online. In view of rapid technological convergence in the media industry, for over 15 years the ACCC has been advocating that policy makers and regulators should aim for neutral treatment of different technologies through principles-based laws.

"In view of rapid technological convergence in the media industry, for over 15 years the ACCC has been advocating that policy makers and regulators should aim for neutral treatment of different technologies through principles-based laws."

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

The Australian Communications and Media Authority regulates media diversity and control under the Broadcasting Services Act 1992.

Australia's Broadcasting Services Act (BSA) regulates Australian media ownership in accordance with delivery platform. The regulations in question were designed to prevent media ownership in Australia becoming so concentrated that consumers were not able to access a diversity of media opinions. However the regulations were designed when geographic location was a more important determinant of access to various channels.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

Regulation that applies only to particular media platforms will always run the risk of being made obsolete as technology and consumer preferences change. There are

three main areas where the ACCC has identified scope for reform in view of changes in how Australians consume media:

"Two out of Three" Rule: The BSA contains a two out of three rule, which prevents anyone controlling a radio broadcasting licence, a television broadcasting licence and a newspaper in the same licence area. You can control two of these mediums but not all three.

What has the ACCC advocated?

This rule was introduced before the internet became a key source of media content for consumers. The ACCC has publicly questioned whether the two out of three rule is preventing the efficient delivery of content over multiple platforms, and suggested it be reviewed to see whether it is still relevant for the preservation of diversity: changing technology may have made the initial justification for the 2 out of 3 rule (from 30 years ago) redundant. Furthermore the two out of three rule may give some firms the impression that they can be protected from technological change.

"75% Reach" Rule: The BSA contains a 75 per cent reach rule, which stipulates that no free-to-air broadcaster may control a licence serving more than 75% of the Australian population.

What has the ACCC advocated?

The 'reach rule' has been undermined by the ability of commercial free-to-air television operators to stream their content nationally via the internet. Australia's Channel Seven has commenced doing just this by launching an app which streams all of Seven's channels on any device, anywhere in Australia. Channel Nine also recently announced it will start streaming all of its channels – via its 9Now platform – in 2016.

The ACCC has publicly pointed out that the reach rule is potentially limiting competition and efficient investment in the industry. For example in the recent Foxtel/Channel Ten transactions , the ACCC has observed that the reach rule may have limited the ability of existing shareholders of free-to-air networks and other broadcasters from investing, or increasing their investments, in Ten.

Anti-siphoning Regime: The anti-siphoning scheme was established to ensure the Australian public would continue to have access to important events on free-to-air TV: it seeks to prevent listed events (mostly sporting but also those of national and cultural significance) from being 'siphoned' by pay TV broadcasters.

What has the ACCC advocated?

For competition reasons, the ACCC has noted that some form of anti-siphoning regime continues to be required because Australia has, in essence, a near monopoly pay TV provider in Foxtel. The ACCC's concern is that, without the anti-siphoning regime, Foxtel could acquire exclusively all premium sport and reduce competition in the television viewing market. Access to this content drives viewers and so advertisers/subscriptions. While the anti-siphoning regime plays an important role now and should be kept in place, this may not always be the case. Hence the ACCC has advocated that if the pronounced international trend toward streaming live sport is replicated in Australia, particularly via paid subscription models, Australia's anti-siphoning regime may need revisiting. The ACCC is maintaining a watching brief on this issue.

"Regulation that applies only to particular media platforms will always run the risk of being made obsolete

as technology and consumer preferences change."

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

Generally the ACCC advocates that any regulation which can distort or impede competition, or restrict new services and/or market entrants, should be avoided. ACCC objectives in advocating media law reform are to ensure that regulation of media in Australia is fit for purpose in view of digital disruption of media distribution and consumption patterns; and to ensure that there is a level regulatory playing field for industry.

e. How did the ACCC conduct its advocacy?

ACCC advocacy on the above three issues has taken place over a significant period and deployed a number of means. Non-exhaustive examples include:

Public submissions

- 1999: The ACCC made a submission to the 1999 Productivity Commission inquiry into broadcasting .[123]
- 2009: The ACCC made a submission to a Federal Government discussion paper titled Sport on television: A review of the anti-siphoning scheme in the contemporary digital environment.[124]
- 2011: The ACCC made a submission to the Federal Government's Convergence Review Framing Paper .[125]
- 2012: The ACCC made a submission to the Convergence Review Interim Report . (The resultant Final Report made recommendations consistent with ACCC representations.[126]

Speeches

- 2015: In November ACCC Chairman Rod Sims commented on media law reform in a speech on promoting innovation through competition.[127]

Media releases

- 2015: The ACCC media release in relation to ACCC approval for the Foxtel/Ten transaction in October 2015 angled for appropriate reform .[128]

"ACCC advocacy on the above three issues has taken place over a significant period and deployed a number of means ACCC objectives in advocating media law reform are to ensure that regulation of media in Australia is fit for purpose in view of digital disruption of media distribution and consumption patterns; and to ensure that there is a level regulatory playing field for industry."

f. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

Concerning the two out of three rule, incumbents may resist reform where

[123] ACCC Media Release on Foxtel and Ten Acqusition
[124] ACCC's submission to the Broadcasting Inquiry
[125] ACCC's submission on the Convergence Review Framing Paper
[126] ACCC's submission to the Convergence Review Interim Report and the resultant Final report
[127] ACCC's Chairman Rod Sims' speech.
[128] ACCC Media Release on Foxtel and Ten Acqusition

regulation provides insulation from competition.

g. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

The Australian Government has announced a media reform package, proposed legislation to amend the BSA to abolish the '75% reach rule' and the '2 out of 3 rule' is currently before the Australian Parliament.

Directorate-General for Competition of the European Commission (DG Competition)

Introduction This paper looks at the EU experience with internet payments, because this is an area where:

- We have seen real innovation (not just in theory but in practice with one innovator - Ideal - having more than 50% market share in the Netherlands), and

- We have seen incumbents (banks) taking repeated and strong action to block the development of these innovators.

The Commission has therefore taken action to keep these innovators on the markets:

- Using its competition enforcement powers with a case against the EU association of banks dealing with payments; and

- Proposing legislation that has now been agreed to give these innovators a legal basis and a clear right to provide their services.

Internet Payments Easy, cheap and secure internet payments are essential for the Digital Single Market, and one of the main drivers for the single market as a whole for consumers.

The main means of internet payment in most countries in the EU is credit cards. They are widely available and widely used. But card payments over the internet are cumbersome, as you have to put in your card number etc. They are expensive to merchants (with traditionally very high interchange fees for card transactions over the internet and, in cases of fraud, the merchant is normally held liable for the whole amount of the transaction). They are very insecure with high levels of fraud, which the ECB estimated to represent about two-thirds of total card fraud in the EU, worth €800 million in 2014. There are also regular reports of data breaches in merchants, where credit card numbers are stolen from internet merchants. Finally, in some Member States many people do not have credit cards but only have debit cards which are not as widely accepted by internet merchants.

The main alternative to credit cards for internet payments in EU is PayPal. PayPal is easy to use once you are registered, and it is secure, not for technological reasons but because it acts as a three-party scheme and so has contracts with both the merchant and the consumer and can see the whole transaction. However, PayPal is expensive for merchants, typically even more expensive than credit cards, and it is not particularly widely used both because it is expensive for merchants and because many consumers are not registered with it.

Credit Transfers for Internet Payments Another means of making internet payments that is sometimes used and could be very interesting for merchants and consumers in the future is credit transfers from the consumer's internet bank. These have the great advantage that they are typically free, both for the consumer who can make a credit transfer from their internet bank for free and for the merchant who is not normally charged to receive a credit transfer. In particular, under the Single Euro Payment Area Credit Transfer system, the credit transfer system that operates throughout the Euro Area, there is no interchange fee (a bank-to-bank fee very common for example with card payments) for receiving credit transfers. They are secure, as they have the same system of security as the whole online banking system offered by the consumer's bank. However, they are cumbersome as the consumer must input their own bank account number (IBAN in the Euro Area), the merchant's account number, the amount, any reference number, and then authenticate the payment order (typically with their Personal Identification Number or PIN). Furthermore, the merchant receives the payment only after one day in the Euro Area, which means the merchant must wait to receive the payment, then reconcile the payment with the transaction and then complete the transaction. In some Member States, such as the UK, there is an instant payment system for credit transfers, but this is unusual.

Payment Initiation Services (PIS) Payment Initiation Service providers, or PIS, have developed in some Member States to offer internet payment services based on credit transfers. Their main task is to facilitate the use of credit transfers by helping the customer to make a payment order. When they come to pay on the merchant's website, the customer clicks on the PIS button and are directed to the PIS website. The PIS fill in most elements in the payment order such as the merchant's IBAN, the amount, the reference, etc, so that the consumer only has to add their IBAN, the name of their bank, and their authentication code. The PIS sends the payment order to the consumer's bank, and then normally, using the consumer's authentication code, checks that the consumer's bank (a) has received the payment order and (b) has sufficient funds on the account to cover the order. The PIS can then send the merchant a message confirming this and the merchant can then complete the transaction. All this takes place in a few seconds. The PIS is paid a fee by the merchant, which is typically well below the cost of receiving a credit card payment. Insurance is available to the merchant, but apparently it is not normally taken by the merchants as the level of fraud or non-payment for whatever reason appears to be very low. Merchants often offer their customers rebates or other benefits if they use PIS to encourage its take-up.

PIS can have strong relationships with banks or not. For example, Ideal in the Netherlands, Giropay in Germany, EPS in Austria, and MyBank primarily in Italy have strong links with the banks they work with. Sofort primarily in Germany and Trustly primarily in Sweden do not have links to the banks.

Another important distinction is the way in which PIS work. Most work as described above. These are called 'direct access PIS' as the PIS has direct access to the account of the consumer using their IBAN and authentication code. Examples include Sofort and Trustly, the bank-independent PIS, but also Giropay in Germany and EPS in Austria, which are bank-controlled. Two PIS are so-called 'indirect access PIS'. These are Ideal and MyBank. They work by directing the

customer to their own bank's website which then carries out the work and informs the PIS of the outcome. The PIS then informs the merchant as before.

The number of transactions and geographic reach of the main PIS active in the EU are summarised below.

Table – Overview of PIS solutions

Provider	**Number of transactions**	**Geographic reach (within EU)**
Ideal	180 million (2014)	NL
SOFORT	> 36 million (2014)	BE, CZ, DE, ES, FR, IT, HU, NL, AT, PL, SK, UK
Trustly	± 12 million (2014)	DK, EE, ES, IT, PL, FI, SE
Giropay	5.8 million (2010)	DE (and AT)
eps Online-Überweisung	2 million (2010)	AT (and DE)
PayU	1.2 million (2012, CZ only)	CZ, HU, PL, RO
MyBank	n.a.	IT

Sources: ECB and providers' websites and various other sources of publicly available information.

Competition Proceedings In September 2011 the European Commission opened competition proceedings into the standardisation process for payments over the internet ('e-payments') undertaken by the European Payments Council (EPC). The EPC is the coordination and decision-making body of the European banking industry for payments. The EPC was working on an "e-Payments Framework" that would allow different PIS to be inter-operable. For example, a German consumer could buy from a merchant in the Netherlands, with the consumer using Giropay and the merchant using Ideal. The Commission received information that the proposed e-Payments Framework would not allow PIS that were independent from banks to take part. The Commission's concern was that this would have the object or effect of excluding bank-independent PIS from the market.

"Payment Initiation Service providers, or PIS, have developed in some Member States to offer internet payment services based on credit transfers. Their main task is to facilitate the use of credit transfers by helping the customer to make a payment order… The Commission received information that the proposed e-Payments Framework would not allow PIS that were independent from banks to take part. The Commission's concern was that this would have the object or effect of excluding bank-independent PIS from the market."

The Commission investigated e-Payments Framework, which it analysed as a standardisation process under competition rules. Standardisation is normally considered pro-competitive, but in some cases it can exclude non-participants, which was the concern in this case. Excluding competitors in the online payments market could result in higher prices for web merchants and ultimately consumers. When opening proceedings, Joaquín Almunia Commission, Vice President in charge of Competition Policy, said: *"Use of the internet is increasing rapidly making the need for secure and efficient online payment solutions in the whole Single Euro Payments Area all the more pressing. I therefore welcome the work of the European Payments Council to develop standards in this area. In principle, standards promote inter-operability and competition, but we need*

to ensure that the standardisation process does not unnecessarily restrict opportunities for non-participants."[129]

Having investigated the case, the Commission services and the EPC discussed the possibility of resolving the Commission's concerns with commitments from the EPC that would have allowed the e-Payments Framework to go ahead but in such a way that it would not exclude bank-independent PIS. These discussions failed. Among the Commission's concerns was the possibility for banks to require PIS to conclude contracts with the bank before offering its services to the bank's customers.

The EPC therefore decided to stop its work on the e-Payments Framework, and the Commission closed its proceedings in June 2013. When closing the proceedings, the Commission said *"Internet payments are vital for the development of e-commerce and the good functioning of the EU internal market. The Commission, in close co-operation with national competition authorities, will therefore monitor this market closely to ensure healthy competition and a level playing field for all operators. In addition, following the Green Paper published on 11 January 2012, the Commission is considering proposing legislation to establish objective and non-discriminatory rules for all players active in the e-payments market. These rules would be aimed at ensuring that customers can make secure payments while ensuring that new players are not prevented from entering the market."*[130]

A number of National Competition Authorities (NCAs) are looking into this sector, including in particular the Bundeskartellamt in Germany. In proceedings against the German Banking Industry Committee, the Bundeskartellamt is examining to what extent the general terms and conditions of the banks and savings banks constitute an inadmissible restraint of competition vis-a-vis independent online payment services such as Sofortüberweisung.de.[131]

The Revision of the Payment Services Directive In July 2013 the Commission proposed a revision of the Payment Services Directive (PSD2), and political agreement was reached in May 2015[132]. The final text will be adopted formally in December 2015 and published in January 2016. It will then enter into force in January 2018.

"In July 2013 the Commission proposed a revision of the Payment Services Directive (PSD2)… One of the main changes proposed was to provide a clear legal basis for PIS, who will become Payment Institutions and be regulated by financial supervisors."

One of the main changes proposed was to provide a clear legal basis for PIS, who will become Payment Institutions and be regulated by financial supervisors. The PSD2 will also establish a mechanism by which the banks will provide the PIS, who must identify themselves to the bank, with the information they need on the initiation of the payment transaction. After a further 18 months to allow for the necessary changes, the PSD2 will establish clear rules on security for remote transactions, including in particular internet and mobile payments, which will in general require strong customer authentication. This means that a specific transaction number

[129] DG Competition Press Release: Antitrust: Commission opens investigation in e-payment market
[130] DG Competition Memo Antitrust: Commission closes investigation of EPC but continues monitoring online payments market
[131] Page 24 of the Bundeskartellamt Annual Report 2013
[132] Directive on Payment Services

(TAN) is prepared for each transaction, and depends on a number of its key elements such as the beneficiary and the amount. The TAN then serves as the authentication code for the payment order. In this way, if the payment order is intercepted and any key elements of the order are modified (e.g. beneficiary or amount) the TAN will not work and the payment will not be authorised. In practice, TANs are commonly used in a number of Member States in the EU. They are typically either sent to the customer (e.g. via a text message) or they are created by the customer using a special digital machine. In the future it is likely that there could be an app on a mobile phone to create a TAN.

The PSD2 also explicitly prohibits banks from requiring PIS to conclude contracts with them before providing the PIS with the information they require [133]. The Commission welcomes this provision, because if banks could require PIS to conclude contracts with them the banks would still be able to exclude PIS if they wanted to by refusing to sign the contract or imposing unreasonable conditions. Banks would also be able to try to ask for a fee as part of the contract, which could have a similar impact on competition to interchange fees that the Commission has found to be a restriction of competition for card payments[134].

Similar provisions are included for Account Information Service Providers (AIS) who summarise information about consumer's bank accounts and transactions, and Payment Instrument Issuers (PIIs) who issue payment instruments, such as payment cards.

The European Banking Authority has already started work on a number of draft Regulatory Technical Standards (RTS) that should be adopted by the Commission to set out the detailed rules of how this will work. These RTS will cover: a mechanism to allow banks and PIS to identify themselves to each other; a communication protocol by which the banks and PIS can communicate; and a set of questions and possible answers that would allow the PIS to receive the information they need. These draft RTS should be prepared by early 2018 and the Commission should adopt them formally shortly afterwards, provided that the drafts reflect properly the mandates in the PSD2.

"The Commission's experience with internet payments demonstrates that public authorities may need to monitor closely disruptive innovation to ensure that incumbents do not prevent the innovation from developing. In practice, this can mean public authorities taking action even though the market shares of the new entrants and the practical impact on the market of the measures taken by the industry appear relatively low. "

Conclusion The Commission's experience with internet payments demonstrates that public authorities may need to monitor closely disruptive innovation to ensure that incumbents do not prevent the innovation from developing. In practice, this can mean public authorities taking action even though the market shares of the new entrants and the practical impact on the market of the measures taken by the industry appear relatively low.

[133] Article 66(5) of the PSD2.

[134] See Court of Justice Press Release 122/14 of 11 September 2014 in case C-382/12P.

Latvian Competition Council (CC)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

At the end of the year 2013 the company "Rīgas karte LLC" (partly owned by local authority's owned public transport company "Rigas satiksme LLC") created a new SMS payment system "SMS Riga" for the car park services in Latvia's capital city Riga (using SMS or the internet). Additionally, the company "Rigas satiksme LLC" was planning to suspend cooperation with the private company "CityCredit LLC" – the provider of a similar SMS payment system Mobilly enabling SMS payments for the same car park services in Riga.

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

Riga City Council which owns the public transport company "Rigas satiksme LLC". The company "Rigas satiksme LLC" has established the company "Rigas karte LLC".

"If the contest is not organized, the consumers are deprived of the opportunity to receive the cheapest, the best and the most convenient services as the result of fair competition... private companies are no longer motivated to invest in the innovations, because they are deprived of the opportunity to apply these innovations."

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

The company "Rigas karte LLC" entered into the SMS payment system services market and distorted the competition in this market.

The public transport company "Rigas satiksme LLC" without the contest selected its partly owned daughter company "Rigas karte LLC" as the service provider.

If the contest is not organized, the consumers are deprived of the opportunity to receive the cheapest, the best and the most convenient services as the result of fair competition. In turn, the private companies are no longer motivated to invest in the innovations, because they are deprived of the opportunity to apply these innovations.

If the state or the local authority (or its owned company) establishes the company in the market, where the consumer needs are successfully satisfied by private companies, the market balance is disturbed, because the local authority's owned company's administrative resources may provide competitive advantages to their daughter companies.

Although Riga City Council explained its position, however, the cooperation contract between the public transport company "Rigas satiksme LLC" and its daughter company "Rigas karte LLC" was not terminated. Also the company "Rigas satiksme LLC" limited the ability of the private company "CityCredit LLC" to inform the customers about the services provided by its SMS payment system Mobilly.

Public person's entry into market, as well as the risks, that the commercial activities may be supported later (using local

authority's owned company's financial resources), would reduce other market participants' incentives to invest, therefore weakening the competition in the market in long term and causing harm to the consumers.

Moreover, the local authorities have the duty to create a favourable business environment so that the competition could emerge, creating the incentives for the innovations, the economic growth and making benefits for the consumers.

"If the state or the local authority (or its owned company) establishes the company in the market, where the consumer needs are successfully satisfied by private companies, the market balance is disturbed, because the local authority's owned company's administrative resources may provide competitive advantages to their daughter companies."

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

When the Latvian Competition Council (CC) receives a complaint from the market participant or any other information regarding possible competitive issues CC examines this complaint (the information) and evaluates the available information and the legislative acts.

If necessary, a meeting may be organized with the market participant and/or the representatives of the involved GLE in order to discuss and look for the most appropriate solution for the competitive issues. Additionally, CC also may send the letter to the involved GLE with recommendations how to solve the competitive issues.

Finally, CC is entitled to provide the parliament, the government and other institutions with the opinions about the impact of the draft legislation and other documents on the competition.

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

CC takes into account the public opinion on the CC's activities. In CC's opinion, in the SMS Riga case there were no other public considerations/justifications that might have an impact on our assessment.

"CC sent a letter of 30 January 2014 to the Ministry of Environmental Protection and Regional Development with the recommendations how to solve the competition issues…These advocacy tools were chosen because the existing Latvia's national regulation does not determine CC's powers to perform more binding actions against the public persons (outside competition Law)."

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

In SMS Riga case CC sent a letter of 30 January 2014 to the Ministry of Environmental Protection and Regional Development with the recommendations how to solve the competition issues.

These advocacy tools were chosen because the existing Latvia's national regulation does not determine CC's powers to perform more binding actions against the public persons (outside competition Law).

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?
Lack of the specific knowledge in the sectors and markets affected by the disruptive innovations. It is also almost impossible to predict and calculate the economic benefits of the proposed regulation amendments related to the disruptive innovations.

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

Currently SMS Riga case is still in process.

At the moment the CC's recommendations are not taken into consideration.
Sources: Article 1, Article 2 and Article 3.

Malaysia Competition Commission (MyCC)

a. Please describe the disruptive innovation, the affected market(s) and how it was affected by the disruptive innovation.

The MyCC had previously in 2014 received a complaint in relation to an alleged foreclosure of the market for selling of health insurance coverage to foreign students by Education Malaysia Global Services (EMGS). EMGS is wholly owned subsidiary of the Malaysia Ministry of Education authorised to process Student Pass Applications for international students who wish to study at private higher education institutions in Peninsular Malaysia.

In 2008, the Malaysia Department of Higher Education required all foreign students to have medical insurance cover from approved insurers which foreign students were required to purchase from their respective education institutions directly.

In 2013, the EMGS was established as the one-stop centre to process the student pass of all international students studying in private institutions in Malaysia. Prioritizing customer service and transparency in its operations, EMGS has introduced value added services, mobile and online applications that provide convenience and support transparency and new initiatives for operational efficiency. All towards providing convenient, fast and professional services to global students who choose Malaysia to live, study and grow[135]

"The Malaysia Ministry of Education published Guideline on Health Examinations and Insurance Coverage whereby private learning institutions are free to appoint any insurance firms, and or agents of their choice to provide insurance coverage for its foreign students so long as the firms and or agents are registered with the Ministry and the insurance packages provided are in line with the Ministry's criteria."

Market foreclosure is an exclusion that results when a downstream buyer is denied access to an upstream supplier (caused from an upstream foreclosure) or when an upstream supplier is denied access to a downstream buyer. In this situation, the students are the 'downstream buyers' denied access to other suppliers of health insurance by EMGS as the 'upstream supplier'. Such a

[135] See Education Malaysia Website.

foreclosure appears to be anti-competitive and infringes the Competition Act 2010 [Act 712].

b. Identify the GLEs involved and describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

The Malaysia Ministry of Education. The GLE published Guideline on Health Examinations and Insurance Coverage, that as part of its new policy.

c. How did the GLEs in your jurisdiction respond to the disruptive innovation?

The Malaysia Ministry of Education published Guideline on Health Examinations and Insurance Coverage whereby private learning institutions are free to appoint any insurance firms, and or agents of their choice to provide insurance coverage for its foreign students so long as the firms and or agents are registered with the Ministry and the insurance packages provided are in line with the Ministry's criteria.

d. Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

The MyCC together with the relevant parties involved, including the Malaysia Ministry of Education and EMGS, have taken positive steps to conduct consultation sessions in order to ensure that foreign students are given the choice to choose their preferred service provider when seeking to buy insurance coverage. This is the spirit of promoting competition in the industry.

e. Did your agency take into account public considerations when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these considerations treated within your assessment?

The MyCC had received a complaint in relation to an alleged foreclosure of the market for selling of health insurance coverage to foreign students by Education Malaysia Global Services (EMGS).

f. What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

Participating in meetings, discussions, or consultations with GLEs. Not all cases are dealt with through a full investigative process.

g. What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

Political pressures.

h. What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

Recommendation made was adopted fully by the GLEs.

Sources: MyCC Media Release on MoE Guidelines for Health Insurance

Turkish Competition Authority (TCA)

Our law entitles our Authority to conduct sector inquiries where structural competition issues are prevalent.

Energy is one such industry with decades-long state ownership and lack of innovation in many segments. Currently, however, with smart meters and smart grids, retail electricity markets are being transformed. Traditionally vertically-integrated structure is being diluted and new markets are being created in retail energy services as there is in telecommunications. In order for retail energy markets to be disrupted, smart meters and grids as well as innovative activity in distributed generation and storage have to be enhanced. Consumer privacy and data protection need also be ensured because with smart grids there will be two-way communication and consumer data will be critical for incumbents' and new entrants' market power. In this respect, in our sector inquiry (2013 May-2015 November) we narrated the importance of this new market creation, diffusion of smart meters and how incumbents may try to block new entry and artificially raise the costs of deployment of smart technologies. We found out that electricity prices would considerably fall as well as costly new investments in generation and transmission would have been avoided once competition is promoted in the retail segment with new technologies.

"...in our sector inquiry ... we narrated the importance of this new market creation, diffusion of smart meters and how incumbents may try to block new entry and artificially raise the costs of deployment of smart technologies."

We have shared our findings and opinions with relevant governmental bodies, academia and other stakeholders. Currently, many new regulations have been put in place to promote competition in retail electricity markets but there is a way to go still and our efforts are continuing.

Source: Report

United States Federal Trade Commission (US FTC)

In addition to its enforcement authority, the FTC carries out its competition and consumer protection mission through research and advocacy. It conducts studies, hosts workshops, and provides comments to state and local governments about the benefits of policies that account for and promote competition. In general, the FTC advocates that competition should be restricted only where necessary to achieve a legitimate, countervailing public benefit, such as protecting consumers from harm.

Below, the FTC describes several matters involving disruptive innovation on which it has engaged GLEs in various ways. The case studies do not aim to list every matter in which the FTC has engaged in advocacy in this area; instead the case studies are provided to highlight the varying approaches and tools available to the FTC under its competition and consumer protection authority.

Case Study No. 1: Transportation Regulation and Automotive Distribution

The FTC routinely provides written comments to regulators urging consideration of the competitive

implications of regulations and regulatory proposals. While regulatory authority in the area of transportation and automotive distribution rests with state and local bodies, the FTC, through its advocacy, encourages regulators to take competition values into account and to determine whether the proposed regulation may impede competition unnecessarily. The FTC consistently urges the regulators to avoid imposing restraints that may impair competition in a way that is greater than necessary to address legitimate public interest concerns.

"...these (FTC) letters have recognised that regulation might properly focus on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, and compliance with other applicable laws. They also stated that any regulation of smartphone applications in this area should focus primarily on these issues as well as other consumer protection issues, such as privacy, data security, and the prevention of identity theft."

Most relevant transportation regulations in the U.S. operate at the state and local levels. This includes regulations relating to passenger motor vehicle transportation services, which traditionally have been heavily regulated by U.S. states and municipalities. In the past few years, however, this marketplace has been disrupted by new smartphone-based platforms that enable drivers and consumers to arrange and pay for transportation in new ways. These new applications may be more responsive to consumer demand, may promote a more efficient allocation of resources to consumers, and may reduce consumers' transaction costs. Such new platforms have raised challenges to existing regulatory frameworks and, as a result, some U.S. state and local regulators have responded by revising their rules governing passenger motor vehicle transportation services.

Competition for motor vehicle transportation services occurs on a variety of dimensions, including price, availability, timeliness, convenience, quality, vehicle type, payment mechanism, and other amenities. At the request of a state or local regulator, the FTC has provided its views on proposed transportation regulations by certain jurisdictions.[136] These letters emphasize that unwarranted restrictions on competition should be avoided and that any restrictions on competition should be no broader than necessary to address legitimate subjects of regulation, such as safety and consumer protection, and narrowly crafted to minimize any potential anticompetitive impact. For example, in its letter to the District of Columbia Taxicab Commission, FTC staff commented that a proposed requirement that a "sedan" have a curb weight of at

[136] FTC advocacy letters are issued by staff and do not necessarily represent the views of the FTC or of any individual commissioner. The Commission, however, votes to authorize staff to submit these comments. See, e.g., Fed. Trade Comm'n Staff Letter to Alderman Brendan Reilly, Chicago City Council regarding Proposed Ordinance O2014-1367 (Apr. 15, 2014); Fed. Trade Comm'n Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013); Fed. Trade Comm'n Staff Letter to Colorado Public Utilities Commission regarding Docket No. 13R-0009TR (Mar. 6, 2013), which discuss in more detail material that responds to the questions posed in the survey.

least 3,200 pounds could impede competition by, for example, "*exclud[ing] certain lighter-weight, more fuel efficient, and more environmentally friendly vehicles from being used for sedan services.*"[137] Another staff comment noted that a proposed $25,000 annual licence fee for "transportation network providers" (e.g., companies that allow consumers to arrange transportation using software applications), compared to a $500 annual licence fee for taxicab providers, could put transportation network providers at a competitive disadvantage and serve as a barrier to entry or expansion. [138] Accordingly, these letters have recognised that regulation might properly focus on ensuring qualified drivers, safe and clean vehicles, sufficient liability insurance, transparency of fare information, and compliance with other applicable laws. They also stated that any regulation of smartphone applications in this area should focus primarily on these issues as well as other consumer protection issues, such as privacy, data security, and the prevention of identity theft.

FTC staff have conducted similar advocacy in the area of automotive distribution. In the U.S. auto industry, emerging sales methods are disrupting the long-standing distribution model, which involves auto manufacturers selling their products through networks of franchised third-party dealers that also provide warranty and other services for auto purchasers. In many U.S. states, statutory regimes are no longer limited to regulating the franchise relationship between manufacturers and dealers, but include prohibitions on manufacturers' direct sale of vehicles to consumers. These prohibitions require that new cars be sold only through franchised third-party dealers, discouraging new, innovative approaches to the sale of automobiles.[139] Such blanket prohibitions on direct sales in most U.S. states has inhibited plans by at least two new auto manufacturers, Tesla and Elio, to distribute their products using methods that do not include the network of franchised dealers.

"FTC staff recently submitted a number of advocacy letters to various state legislators considering legislation on direct car sales. In these letters, FTC staff did not suggest that new methods of automotive sales are necessarily superior to traditional methods; rather staff suggested that the determination should be made through competition and the competitive process."

FTC staff recently submitted a number of advocacy letters to various state legislators considering legislation on direct car sales.[140] In these letters, FTC staff did not

[137] Fed. Trade Comm'n Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013), at 5.

[138] Fed. Trade Comm'n Staff Letter to Alderman Brendan Reilly, Chicago City Council regarding Proposed Ordinance O2014-1367 (Apr. 15, 2014), at 5.

[139] Andy Gavil, Debbie Feinstein & Marty Gaynor, Fed. Trade Comm'n, Who decides how consumers should shop? (Apr. 24, 2014)

[140] Fed. Trade Comm'n, Staff Letter to Senator Darwin L. Booher, Missouri Senate regarding Senate Bill 268 (May 7, 2015), advocacy commenting on a bill in the Michigan legislature exempting a category of vehicles from that state's prohibition on direct car sales by all manufacturers); Fed. Trade Comm'n, Staff Letter to Assemblyman Paul D. Moriarty, General Assembly of the State of New Jersey regarding Several Bills Pending in the New Jersey Legislature (May 16, 2014), (advocacy relating to a proposed partial repeal of New Jersey's prohibition on direct car sales by all manufacturers); Fed. Trade Comm'n, Staff Letter to Rep. Michael J. Colona, Missouri House of Representatives regarding House Bill No. 1124 (May 15, 2014), (advocacy concluding that the proposed legislation, that would have expanded Missouri's prohibition on direct-to-consumer sales, requiring all new motor vehicles in the state to be sold through independent dealers, would render consumers

suggest that new methods of automotive sales are necessarily superior to traditional methods; rather staff suggested that the determination should be made through competition and the competitive process. Staff emphasized that the weight of economic literature suggests that allowing firms in competitive marketplaces to decide how to distribute their products leads to better outcomes for consumers.[141] Accordingly, staff's auto distribution advocacy letters emphasized that, absent countervailing public policy considerations, automobile manufacturers should be permitted to choose their distribution method to be responsive to the desires of consumers. Concurrent with the submission of these advocacy letters, FTC staff publicized its views on auto distribution by publishing a blog post on these issues.[142] Following these efforts, in at least one U.S. state, the legislature reversed its ban on direct automobile sales. New Jersey enacted a law in early 2015 that allows Tesla to operate four direct-sale dealerships.[143] The FTC also plans to host a workshop on January 19, 2016 to explore competition and related issues in the U.S. auto distribution system, including how consumers may be affected by emerging trends in the industry. [144]

unable to choose how and from whom they want to purchase their cars).

[141] Francine Lafontaine & Margaret Slade, Exclusive Contracts and Vertical Restraints: Empirical Evidence and Public Policy, in HANDBOOK OF ANTITRUST ECONOMICS (Paolo Buccirossi, ed., 2008); James C. Cooper et al., Vertical Antitrust Policy as a Problem of Inference, 23 INT'L J. INDUS. ORG. 639-64 (2005).

[142] Marina Lao, Debbie Feinstein, & Francine Lafontaine, Fed. Trade Comm'n, Direct-to-consumer auto sales: It's not just about Tesla (May 11, 2015). This work appears to be showing some benefits—New Jersey recently passed legislation allowing Tesla to operate some direct sales outlets in the state.

[143] New Jersey Assembly Bill 3216. The law allows any "zero emission vehicle manufacturers" to sell directly, but Tesla currently is the only such manufacturer certified in New Jersey.

[144] Federal Trade Commission Press Release on Public Workshop Examining the U.S. Auto Distribution System

Case Study No. 2: Sharing Economy Workshop

The FTC also conducts advocacy and promotes broader understanding of markets by convening public workshops that bring together scholars, industry experts and other thought leaders to weigh issues involving a sector of the economy or a complex legal theory. Recently, the FTC hosted a workshop on the "sharing" economy, which discussed sharing economy platform issues facing regulators, consumers, and industry participants from economic, competition, and consumer protection points of view. [145] This workshop was a natural outgrowth of the agency's advocacy work relating to disruptive innovation in the transportation sector, discussed above in Case Study No. 1, as well as in other sectors of the economy. The workshop facilitated exploration of current and potential future issues that may arise from the development of the sharing economy.

"…the agency's objective in hosting the [Sharing Economy] workshop was not to begin an enforcement push in the sharing economy space, but rather was part of the agency's broader responsibility to advocate for the interests of consumers and to remain abreast of changes in an evolving marketplace."

As FTC Commissioner Ohlhausen mentioned in the workshop's opening remarks, the agency's objective in hosting the workshop was not to begin an enforcement push in the sharing economy space, but rather was part of the agency's broader responsibility to advocate for the interests of consumers and to remain

[145] Federal Trade Commission Press Release on the Sharing Economy Workshop: Issues Facing Platforms, Participants, and Regulators

abreast of changes in an evolving marketplace. The FTC has found that promoting informed discussion and understanding, including of new business models, aids analysis, including at the state and local levels, where regulation covering such issues often is promulgated in the United States.[146]

Noting that the FTC is "uniquely situated to help facilitate interchange and dialog" on the topic of the sharing economy, Commissioner Ohlhausen noted that the sharing economy raises a number of challenging public policy questions.[147] First, how can regulators provide a regulatory framework with enough flexibility to allow disruptive firms to reach their full potential? Second, how do regulators simultaneously ensure that existing consumer protections, such as in the areas of privacy, data security, health, and safety, are not eroded? Third, can features of platforms, such as review systems, replace some regulation? Fourth, how do regulators avoid creating different regulatory tracks for incumbent providers and for platform businesses? Finally, how can regulators remain responsive in a highly dynamic market in which business models are rapidly evolving?[148]

The FTC's sharing economy workshop did not focus on a single business model; rather it aimed to inform conference participants and the public about this rapidly evolving area. It included discussions about disruptive innovations in the transportation and accommodations sectors in particular, where disruptive innovations sometimes conflict with traditional, regulated services such as taxis and hotels. The workshop included the participation of academics, sharing economy providers, and traditional service providers, among others. Workshop panels explored the following issues: the economics of platform design and implications for market structure; the structure and operation of reputation systems adopted by platforms to address the issue of trust needed for parties to transact; the interplay between competition, consumer protection, and regulation from the perspective of disruptive industry participants and regulated industry incumbents; and policy issues facing regulators in this emerging sector of the economy. In connection with the workshop, the FTC received more than 2,000 public comments representing a diverse range of viewpoints.[149]

The FTC's sharing economy workshop was well received (as indicated by the number of public comments submitted as well as by wide in-person and virtual attendance). Further, preceding the June 2015 workshop, FTC staff engaged with many stakeholders on various issues relating to the sharing economy. For example, FTC staff held numerous discussions with staff of the U.S. National League of Cities.[150] These discussions led to National League

[146] Maureen Ohlhausen, Fed. Trade Comm'n, Sharing Some Thoughts on the "Sharing" Economy (June 9, 2015)
[147] Fed. Trade Comm'n Staff Letter to Alderman Brendan Reilly, Chicago City Council regarding Proposed Ordinance O2014-1367 (Apr. 15, 2014), at 5.
[148] Ibid and Fed. Trade Comm'n Staff Letter to Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission regarding Second Proposed Rulemakings regarding Chapters 12, 14, and 16 of Title 31 (June 7, 2013), at 5.
[149] Public comments relating to the sharing economy workshop can be viewed here. In addition, a video recording of the workshop and a transcript of the discussion can be viewed here
[150] NLC website.

of Cities' participation in the workshop and coincided with its publication of two contemporaneous reports discussing data that demonstrate an increasing acceptance of the sharing economy in cities in the U.S.[151]

Although it is too soon to measure any direct results of the sharing economy workshop, the FTC continues to monitor marketplace developments in this rapidly evolving space. The agency will continue to examine how sharing economy businesses disrupt traditional models and to consider the appropriate legal and policy responses to promote innovation and competition while protecting consumers with regard to these dynamics.

Since the workshop, FTC officials have spoken publicly about the sharing economy and noted that U.S. antitrust laws are flexible enough to consider future issues in the space.[152] While agency officials recognise that issues involving disruptive innovation are challenging and may pose risks to consumers that traditional suppliers do not bring, it is "clear that enforcers and policymakers have to strike a balance."[153] Continuing its advocacy through public outreach, including speeches by Commission officials, as well as thought pieces in the media or other channels (e.g., social media platforms), is one way the agency can promote the opinions provided in its advocacy letters and workshops and communicate a consistent message both to GLEs and the broader public.

Case Study No. 3: Real Estate

The FTC has used several of its available tools to ensure that the proliferation of new technologies and business models that transformed the U.S. real estate industry could proceed unencumbered by anticompetitive regulation.

New technologies and business models that enable consumers to perform some services previously available only through conventional real estate brokers include "limited service brokers," who provide a limited range of services compared traditional full-service brokers, often for a reduced commission or on a "fee for service" basis; "virtual office websites" through which brokers give clients direct access to listings of multiple listing services (MLSs); and services for sellers who market their homes without a broker.

As these new services began to proliferate, so did barriers to their success. The FTC, together with the Antitrust Division of the U.S. Department of Justice (DOJ), undertook a variety of advocacy initiatives to inform the policies and practices of state and local regulatory bodies. The FTC and DOJ sent several letters to state and local real estate regulatory bodies to persuade states not to adopt laws that would restrict competition between non-traditional and traditional brokers;[154] the agencies also published a report on

[151] National League of Cities, Shifting Perceptions of Collaborative Consumption, National League of Cities; and Cities, the Sharing Economy and What's Next, National League of Cities

[152] Edith Ramirez, Fed. Trade Comm'n, Keynote Remarks of FTC Chairwoman Edith Ramirez (Oct. 2, 2015) (noting "[r]egulatory frameworks, to the extent they are needed, should be flexible enough to allow new forms of competition."); and Stephen Weissman, Fed. Trade Comm'n, Pardon the Interruption: Competition and Disruptive Business Models

[153] Edith Ramirez, Fed. Trade Comm'n, Keynote Remarks of FTC Chairwoman Edith Ramirez at 2.

[154] Letter from the FTC and the Justice Department to Loretta R. DeHay, Gen. Counsel, Texas Real Estate Comm'n (Apr. 20, 2005); Letter from the FTC and the Justice Department to Alabama Senate (May 12, 2005); Letter from the FTC and the Justice Department to the Honorable Alan Sanborn, Michigan Senate, and David C. Hollister, Michigan Dep't of Labor & Economic Growth (Oct. 19, 2005).

competition issues in the real estate industry.[155]

"As these new (Real Estate) services began to proliferate, so did barriers to their success. The FTC, together with the Antitrust Division of the U.S. Department of Justice, undertook a variety of advocacy initiatives to inform the policies and practices of state and local regulatory bodies …. complementing the agencies' advocacy, the FTC challenged a number of restrictive rules that discriminated against new low-cost and non-traditional brokers."

Finally, complementing the agencies' advocacy, the FTC challenged a number of restrictive rules that discriminated against new low-cost and non-traditional brokers.[156] For example, in bringing its case against an association of real estate brokers that adopted such practices, the FTC conducted a traditional rule of reason analysis, and found that the association's policies constituted an agreement among horizontal competitors to restrict the availability of information, making such information more costly and difficult to obtain and having the result of impeding new (disruptive) market entrants.[157]

The FTC's enforcement efforts in the real estate area have led, over time, to increased competition in the U.S., such that today's home buyers have the freedom to use an array of online tools catering to their needs and offering different pricing options, from online resources offering MLS listings, comparable recent home sale information,[158] to new tools to assist in the sale and purchase of a home.[159] A recent report by the National Association of Realtors found that in 2014, 43% of home buyers first looked online for properties, 92% of buyers use the Internet "in some way" in their search, and 50% of buyers use a mobile website or application in their search.[160] Moreover, a similar report published in 2012 pointed out that real estate-related searches on Google.com grew 253% in the preceding four years.[161]

[155] FTC & DOJ, Competition in the Real Estate Brokerage Industry (Apr. 2007)
[156] U.S. v. National Ass'n of Realtors; Realcomp II, 635 F.3d 815 (6th Cir. 2011); FTC Press Release, FTC Charges Pittsburgh-Area MLS With Illegally Restraining Competition (Jan. 9, 2009); FTC Press Release, FTC Rules Michigan Realtors' Group Reduced Competition, Harmed Consumers by Restricting Access to Discount Realtors; Listings on its Multiple Listing Service and Public Web Sites (Nov. 2, 2009).
[157] In re RealComp II, Ltd. at 37; see also Realcomp II, 635 F.3d at 830 ("Restricting the online dissemination of home listings is especially pernicious because of the emerging competitive impact of the internet and of discounted brokerage services on the residential real-estate market.")
[158] In re RealComp II, Ltd. at 2, 37
[159] Stephen Weissman, Fed. Trade Comm'n, Pardon the Interruption: Competition and Disruptive Business Models
[160] 2014 Profile of Home Buyers and Sellers, National Association of Realtors
[161] Joint Study by the National Association of Realtors and Google, The Digital House Hunt: Consumer and Market Trends in Real Estate

Annex A Special Project Contributing Members

ICN Advocacy Working Group

Federal Economic Competition Commission (Mexico)

Italian Competition Authority

Swedish Competition Authority

Volunteer ICN Members

Australian Competition and Consumer Commission

Competition Bureau Canada

Directorate-General for Competition of the European Commission

Japan Fair Trade Commission

Komisi Pengawas Persaingan Usaha (Indonesia)

Korea Fair Trade Commission

Competition Commission of South Africa

US Federal Trade Commission

Annex B Special Project Survey

Survey

The information collected in sections (a) to (d) of this survey questionnaire will be kept as CCS's internal information. When drafting the report, data will be aggregated so as not to identify any single agency. However, the exception to this will be the case studies in section (e) of this survey questionnaire, if you consent to archiving your case study responses on the ICN AWG Benefits Project Online Resource website.

Where relevant, please provide a copy of or web-links to publicly available sources (e.g. webpages, reports) that illustrate the issues raised in your survey responses.

*** Start of Survey***

a) Introduction

1. Please provide your contact details in case we need to contact you about your response.

Full name of your agency: Click here to enter text. Jurisdiction / country: Click here to enter text. Year of establishment of your agency: Click here to enter text. Full name of contact person in your agency: Click here to enter text. Email address of contact person in your agency: Click here to enter text.

2. What is your agency's jurisdiction? (Please check all that apply)

Whole of economy competition regulator	☐
Whole of economy consumer protection regulator	☐
Whole of economy product safety regulator	☐
Sectoral competition regulator If yes, indicate the sector(s) of the economy	☐ Click here to enter text.
Sectoral consumer protection regulator If yes, indicate the sector(s) of the economy	☐ Click here to enter text.
Sectoral product safety regulator If yes, indicate the sector(s) of the economy	☐ Click here to enter text.
Monopoly Infrastructure regulatory role If yes, indicate the sector(s) of the economy	☐ Click here to enter text.
Other areas of jurisdiction	Click here to enter text.

b) Government Advocacy Objectives and Legal Powers

3. What is(are) the objective(s) of your agency's government advocacy related to disruptive innovations in your market? (Please check all that apply and provide additional explanations where applicable.) Where applicable, rank them by order of priority (1 being the most important priority)

Objective	**Response**	**Rank (order of priorty, 1 being the most important)**
Facilitate entry of disruptive innovation in order to promote competition in market(s) affected by the disruptive innovations	☐ Click here to enter text.	Click here to enter text.
Avoid imposing regulations/laws that restrict competition more than necessary to address legitimate public policy objectives	☐ Click here to enter text.	Click here to enter text.
Highlight the impact of disruptive innovation on competition in affected markets that may require new or revised regulations/laws and/or monitoring	☐ Click here to enter text.	Click here to enter text.
Ensure that consumer safety and interests are not harmed	☐ Click here to enter text.	Click here to enter text.
Others	Click here to enter text.	Click here to enter text.

4. How does your agency determine if your government advocacy efforts are successful? Is there any specific measure or criteria used?

Click here to enter text.

5. Based on your experience, how important a concern/focus is disruptive innovation in relation to your agency's work e.g. competition law enforcement and government advocacy?

Response: Choose an item. If your response is "Not a concern", "Not a competition issue" or "Others", please elaborate: Click here to enter text.

6. Based on your agency's experience, in the formulation of regulations/laws for market(s) affected by disruptive innovation, is promoting competition in these markets one of the GLEs' objectives generally? For example, are there institutional safeguards or other mechanisms in place to ensure the promotion of competition is considered by GLEs?

Response: Choose an item. Comments (if applicable, to explain your response):Click here to enter text.

7. Does your agency have statutory powers to review regulations implemented by GLEs?

Response: Choose an item.
If your response above is "others", please elaborate: Click here to enter text.

If your response is "yes", please (a) describe your statutory power; (b) the typical circumstances where your agency will use its statutory powers to review regulations/laws related to disruptive innovations; and (c) where possible, provide examples where your agency has exercised its statutory power to review regulations/laws related to disruptive innovations: Click here to enter text.

c) Advocacy and Engagement Process

8. Does your agency proactively scan existing or new regulations related to disruptive innovations for any potential competition issues?

Response: Choose an item.
Comments (if applicable, to explain your response): Click here to enter text.

If your response is "yes", please list the platforms/venues/channels that are used by your agency? Click here to enter text.

9. What are the factors/circumstances that might trigger your agency to engage with GLEs in relation to disruptive innovations?

Click here to enter text.

10. Is your agency considering engaging in or currently engaged in or has in the past already engaged in government advocacy efforts in relation to disruptive innovations? (Please check all that apply and provide additional explanations where applicable.)

Considering engaging in government advocacy efforts in relation to disruptive innovations	☐
Currently engaged in government advocacy efforts in relation to disruptive innovations	☐
Engaged in government advocacy efforts in the past in relation to disruptive innovations	☐
No	☐

Comments (if applicable, to explain your response above): Click here to enter text.

Where applicable, please also list the types of GLEs that your agency is considering engaging in or currently engaged in or has in the past already engaged in government advocacy efforts relating to disruptive innovation:

Parliament	☐
Judicial authorities	☐
Government departments	☐
Local authorities	☐
Sector Regulators	☐
Others	Click here to enter text.

11. What are the sectors covered in your agency's previous, current, and/or forthcoming government advocacy efforts in relation to disruptive innovations? Please check all the boxes that apply. Where applicable, please provide a short description of the disruptive innovation (e.g. new business model introduced through taxi booking apps like Uber) and the context of the government advocacy effort (e.g. to advocate against new regulations that ban specific disruptive innovation).

Sector	**Check the relevant boxes**	**Short description of the disruptive innovation and the context of the government advocacy effort**	**Indicate if your effort is previous, current or forthcoming**
Education	☐	Click here to enter text.	Choose an item.
Energy	☐	Click here to enter text.	Choose an item.
Financial Services	☐	Click here to enter text.	Choose an item.
Healthcare	☐	Click here to enter text.	Choose an item.
Manufacturing	☐	Click here to enter text.	Choose an item.
Postal Services	☐	Click here to enter text.	Choose an item.
Professional Services	☐	Click here to enter text.	Choose an item.
Real Estate	☐	Click here to enter text.	Choose an item.
Retail	☐	Click here to enter text.	Choose an item.
Telecommunications	☐	Click here to enter text.	Choose an item.
Tourism and Hospitality	☐	Click here to enter text.	Choose an item.
Transport	☐	Click here to enter text.	Choose an item.
Others		Click here to enter text.	Choose an item.

12. Please list the government advocacy tools used by your agency. (Please check all boxes that apply and provide additional explanations where applicable.)

Government Advocacy Tools	**Check the relevant boxes**
Legally challenging and proposing review of existing or new regulations	☐ Click here to enter text.
Providing formal opinions, comments and advice on current or proposed laws to GLEs	☐ Click here to enter text.
Providing formal opinions, comments and advice on current or proposed regulatory initiatives to GLEs	☐ Click here to enter text.
Participating in cross-GLEs task forces or groups	☐ Click here to enter text.
Participating in meetings, discussions, or consultations with other GLEs	☐ Click here to enter text.
Conducting market studies or other research projects and issuing formal reports	☐ Click here to enter text.
Conducting or participating in seminars, workshops, conferences or training programs for GLEs	☐ Click here to enter text.
Conducting outreach sessions for GLEs	☐ Click here to enter text.
Issuing guidelines or other explanatory publications on competition impact assessment for GLEs	☐ Click here to enter text.
Publishing "thought pieces" in the media or on informal channels like social media platforms	☐ Click here to enter text.
Others	Click here to enter text.

13. Based on your response to question 12 above, what are the government advocacy tools that are most commonly used by your agency when advocating competition considerations in relation to disruptive innovations to GLEs? In particular, which advocacy tool(s) is(are) more effective?

Click here to enter text.

14. Are there any differences in your agency's advocacy approach or choice of tools across the types of GLEs listed in your response to question 10 above.

Click here to enter text.

d) Advocacy Outcomes and Lessons

15. What are the typical competition concerns caused by regulations/laws relating to disruptive innovations based on your agency's experience? Please check all that apply.

Typical Competition Concerns	Check the relevant boxes	Comments (if any, to elaborate on the competition concerns)
Banning entry of disruptive firms	☐	Click here to enter text.
Banning expansion of disruptive firms	☐	Click here to enter text.
Restricting entry of disruptive firms	☐	Click here to enter text.
Restricting expansion of disruptive firms	☐	Click here to enter text.
Restricting ability of disruptive firms to compete effectively with incumbents	☐	Click here to enter text.
Restricting ability of incumbents to compete effectively with disruptive firms	☐	Click here to enter text.
Reducing the incentive of incumbents to compete aggressively with disruptive firms	☐	Click here to enter text.
Reducing the incentive of disruptive firms to compete aggressively with incumbents	☐	Click here to enter text.
Limiting the development of the affected/new market(s)	☐	Click here to enter text.
Limiting the proliferation of the disruptive innovation	☐	Click here to enter text.
Limiting the ability of consumers/businesses to exercise countervailing buyer power	☐	Click here to enter text.
Others	Click here to enter text.	

16. Does your agency take into account non-competition related public considerations/justifications when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations?

Response: Choose an item. Comments (if applicable, to explain your response):Click here to enter text. If your response is "yes" or "sometimes", please discuss the typical non-competition related public considerations/justifications (e.g. employment, public safety, consumer protection, health) and how your agency treats them within your assessment. Click here to enter text. If your response is "no", please discuss the typical non-competition related public considerations/justifications (e.g. employment, public safety, consumer protection, health) and why your agency does not take them into account. Click here to enter text.

17. What are the typical challenges (e.g. lack of evidence of economic benefits, political pressures, social and cultural norms) encountered by your agency when advocating to GLEs the need to consider competition issues in their existing or proposed regulations related to disruptive innovations? How does your agency address these challenges? Please provide details and examples where possible. Are these challenges different from those encountered by your agency when dealing with non-disruptive innovations?

Click here to enter text.

18. What are the learning points or best practices (e.g. when or how to engage GLEs) that your agency can highlight with regard to effective government advocacy relating to disruptive innovations? In particular, what are the key factors to achieving success? What are the areas to watch out for to ensure these government advocacy efforts are successful? (N.B.: As highlighted earlier, individual responses will not be released publicly.)

Click here to enter text.

19. Apart from this special project, does your agency have any recommendations on future initiatives that the ICN AWG can undertake in relation to government advocacy and disruptive innovations?

Click here to enter text.

e) Case Studies

The case studies seek to identify:

(i) examples of GLE's regulatory responses to disruptive innovations that could potentially restrict competition and how your agency advocated for GLEs to consider competition issues; and

(ii) examples of how GLE's regulatory responses to disruptive innovations successfully facilitated competition in affected market(s) and how your agency advocated for GLEs to implement these regulations.

To facilitate comparison across ICN members' government advocacy related to disruptive innovations, the special project team suggests, where applicable, that your agency covers disruptive innovations in the following sectors:

- education (e.g. massive open online courses like Coursera)
- transport (e.g. smartphone based car hire applications like Uber),
- financial services (e.g. crowd-sourced funding, financial technology services and products like Bitcoin and C2C mobile payments),
- healthcare (e.g. advances in diagnostic and therapeutic technologies that allow physician assistants to diagnose and treat simple disorders),
- real estate (e.g. online real estate brokerage services like Realtor.com), and
- tourism (e.g. C2C businesses like Airbnb).

Examples pertaining to your agency's government advocacy related to disruptive innovations in other economic sectors are equally welcomed.

20. Please indicate your consent for publishing the case study responses on the ICN AWG Benefits Project Online Resource

Consent for publishing case study: Choose an item. Comments (if applicable): Click here to enter text.

21. You may provide in your response as many case studies on government advocacy related to disruptive innovation as you wish. The suggested format for submitting the case study responses is set out below. Kindly limit each case study to 1,000 words.

(a) Please describe the disruptive innovation, the affected market(s) and how it (they) was (were) affected by the disruptive innovation. Where available, please include any quantitative and/or qualitative data when describing the impact of the disruptive innovation on the affected market(s).

(b) Identify the GLEs involved. Describe the public considerations/justifications put forward by the GLEs in regulating the disruptive innovation.

(c) How did the GLEs in your jurisdiction respond to the disruptive innovation? Please describe how the GLEs' proposed or existing regulations/laws restrict or have the potential to restrict competition (e.g. restrict the entry or expansion of disruptive firms and the proliferation of their disruptive innovations)? Alternatively, did the proposed or existing regulations/laws promote competition?

(d) Describe the objectives of your agency's government advocacy efforts in relation to the GLEs' proposed or existing regulatory response to the disruptive innovation.

(e) Did your agency take into account public considerations/justifications when advocating for GLEs to consider the competition concerns raised by regulations/laws governing disruptive innovations? How were these consideration/justifications treated within your assessment?

(f) What advocacy tools did your agency use to engage the GLEs? Why were these advocacy tools chosen?

(g) What challenges or difficulties did your agency face when advocating that the GLEs take into consideration competition issues in their proposed regulations/law related to disruptive innovations?

(h) What was the outcome of your agency's advocacy effort (e.g. was the advice or recommendation made by your agency adopted fully, partially or not at all)?

Please attach a copy of or provide links to publicly available sources (e.g. webpages, reports) that document this government advocacy effort undertaken by your agency.

End of Survey

Annex C Members who participated in the Survey

S/N	Authority	Economy	Region
1	Australian Competition and Consumer Commission	Australia	Oceania
2	Authority for Consumers and Markets	The Netherlands	Europe
3	Authority for the Protection of the Consumer and Defence of Competition	Panama	North America
4	Barbados Fair Trading Commission	Barbados	North America
5	Belgian Competition Authority	Belgium	Europe
6	Bundeskartellamt	Germany	Europe
7	Brazilian Administrative Council for Economic Defense	Brazil	South America
8	Superintendence of Industry and Commerce	Colombia	South America
9	Commission on Protection of Competition	Bulgaria	Europe
10	Competition and Markets Authority	United Kingdom	Europe
11	Competition Bureau Canada	Canada	North America
12	Competition Commission of Hong Kong	Hong Kong SAR	Asia
13	Competition Commission of India	India	Asia
14	Competition Commission of Mauritius	Mauritius	Africa
15	Competition Commission of Pakistan	Pakistan	Asia
16	Competition Commission of Singapore	Singapore	Asia
17	Competition Commission of South Africa	South Africa	Africa
18	Danish Competition and Consumer Authority	Denmark	Europe
19	European Union Directorate General Competition	EU	Europe
20	Federal Antimonopoly Service of the Russian Federation	Russia	Europe
21	Federal Economic Competition Commission	Mexico	North America
22	Finnish Competition and Consumer Authority	Finland	Europe
23	French Autorité de la concurrence	France	Europe

S/N	Authority	Economy	Region
24	Georgian Competition Agency	Georgia	Europe
25	Israel Antitrust Authority	Israel	Asia
26	Italian Competition Authority	Italy	Europe
27	Jamaica Fair Trading Commission	Jamaica	North America
28	Japan Fair Trade Commission	Japan	Asia
29	Korea Fair Trade Commission	Korea	Asia
30	Komisi Pengawas Persaingan Usaha	Indonesia	Asia
31	Latvian Competition Council	Latvia	Europe
32	Malaysia Competition Commission	Malaysia	Asia
33	National Markets and Competition Commission	Spain	Europe
34	Norwegian Competition Authority	Norway	Europe
35	Office for the Protection of Competition	Czech Republic	Europe
36	Office of Trade Competition Commission	Thailand	Asia
37	Philippines Department of Justice – Office for Competition	Philippines	Asia
38	Superintendencia de Competencia	El Salvador	North America
39	Swedish Competition Authority	Sweden	Europe
40	Taiwan Fair Trade Commission	Taiwan	Asia
41	Turkish Competition Authority	Turkish Republic	Europe
42	US Department of Justice	US	North America
43	US Federal Trade Commission	US	North America
44	Vietnam Competition Authority	Vietnam	Asia