

TRANSFORMING MARKETS THROUGH COMPETITION

*New developments and recent
trends in Competition Advocacy*



*Highlights from the first joint
WBG and ICN Awards in
Competition Policy Advocacy*

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Message from the Senior Director at The World Bank Group

This publication showcases the results of the 2014–2015 Competition Advocacy Contest, the result of a fruitful collaboration between the World Bank Group's Trade & Competitiveness Global Practice and the International Competition Network (ICN). The awardees for this, the second round of the contest, have been recognized under the theme of “inclusive growth for shared prosperity.” The winning entries submitted by competition authorities in countries around the world differ, but they all touch upon a unifying theme. It is that successful experiences in competition advocacy go beyond the mission profile or legal mandate of a single competition authority; the best results come from an integrated and coordinated strategy to infuse competition principles in all government interventions in the economy.

The initiative got its start when the Bank Group's Competition Policy practice launched a Global Competition Advocacy Contest to formally recognize countries for their efforts in conducting competition advocacy. Competition authorities play a key role in shaping market outcomes and increasing the effectiveness of broader public policies aimed at promoting robust competition in various business sectors. Competition authorities do more than enforce laws against anti-competitive practices. They also advocate against public and private sector actions that tolerate or even promote such practices. When government interventions facilitate cartels, favor specific firms, or allow incumbent firms to control markets, or where professional associations assist in coordination among competitors, competition authorities can identify and advise on the downsides of such policies and present options that strengthen competition.

Advocacy initiatives lay the foundation for a pro-competition vision of Central Banks, Ministries and Sector Regulators. In Israel, a focused study on a financial services segment led the central bank and cabinet to implement more effective measures to increase sector performance. In Mexico, analysis of the effects on competition of draft laws and regulations gradually trained ministries and regulators to consider effects of policies on markets. Through advocacy in Moldova, public officials now more consistently embed non-discrimination criteria in public aids. In El Salvador, working with limited resources, the government was able to generate substantial citizen engagement in competition policy.

As past contest winners have demonstrated, successful competition advocacy delivers tangible economic benefits. Preventing an association of healthcare providers in Kenya from increasing charges saved consumers around \$1.7 million a year. Prices for domestic flights came down by 70 percent in Indonesia following removal of restrictive air fare regulation. Twenty-two percent more Colombians use mobile internet since a 4G spectrum auction allowed for entry of additional operators. Mexican authorities were able to spend \$185 million more on public health thanks to changes in the procurement process that improved competition conditions.

This publication is intended to be useful as well as celebratory. It shares broader lessons-learned on effective advocacy tools and strategies, and discusses innovative ways of adapting to new competition challenges. Whether reacting to disruptive technologies, focusing on subnational entities, or combining advocacy with enforcement measures, competition advocacy can be the seed to better understanding of market features and competition dynamics all across the government and generates momentum for a comprehensive national competition policy.

The Competition Advocacy Contest has become a public good for sharing knowledge and practical experience among countries. As the Bank Group continues its collaboration with the ICN, I am confident that the emerging success will positively influence public policymaking for the benefit of consumers and businesses everywhere.

Sincerely,

A handwritten signature in black ink that reads "Anabel González". The signature is fluid and cursive.

Anabel González
Senior Director
Trade & Competitiveness Global Practice
World Bank Group



Message from the Chair of the International Competition Network

Competition advocacy is nowadays considered, together with enforcement, a core business of an antitrust authority and plays a key role in promoting a competitive environment, to the benefit of consumers and the economy overall.

This is why competition agencies around the world devote constant efforts to build public support for competitive markets and address disproportionate or unnecessary public restrictions that may undermine the benefits of competition, by providing inputs to government and legislators on proposed or existing legislation, regulations, or policies. In many jurisdictions, competition advocacy appears to be the only way to address the challenges of their negative economic climate and foster growth.

Recognizing its crucial importance, the International Competition Network (ICN) — a project-oriented, consensus-based, virtual network of antitrust agencies – focused on competition advocacy since its foundation in 2001, when it was formed by officials of 14 jurisdictions. Today, with more than 130 member jurisdictions, ICN provides for competition authorities a platform to share their experiences, the advocacy tools and strategies used in various contexts, for example during an economic recession, or a liberalization process, or in the contest of emerging economies.

It is no surprise that as ICN chair I was delighted by the invitation of the World Bank Group to jointly launch a Competition Advocacy Contest in 2014/15 after the successful first round of the Advocacy Contest carried out by the World Bank in 2013/14. The idea of a contest to showcase successful advocacy stories was also well received within ICN as an innovative way to share experiences and learn from each other.

The general theme of the 2014/15 Contest, “Inclusive growth for shared prosperity,” reflects the concerns of the wide membership of these two international organizations and the winning stories proved to be so inspiring that the Advocacy Working Group of ICN decided to present them in more detail to its members in an ICN teleseminar in November 2015. The reader will be also impressed by the stories and actions of the winning agencies reported in this publication.

Building on this fruitful experience, the joint work proceeds with the organization of the 2015/16 edition of the Contest which is focused on “*How to Build a Culture of Competition for Private Sector Development and Economic Growth.*” I am confident that the close cooperation between ICN and World Bank will entail further opportunities for joint initiatives in the near future. The best is yet to come.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Mundt', with a long horizontal flourish extending to the right.

Andreas Mundt
Chair
International Competition Network

Acknowledgments

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El Salvador: Karla Chinchilla, Communication Director (SC), Cesar Azmitia, Digital Manager (SC) and Regina Vargas, Head of Competition Advocacy (SC); **Finland:** Teem Karttunen, Senior Research Officer (FCCA); **Greece:** Dimitris Loukas, Vice-President (HCC) and Lila Katsereli, Head of Competition Advocacy Unit (HCC); **Iceland:** Páll Gunnar, Director General (ICA) and Hilmar Thordarson, Director of Administration (ICA); **Indonesia:** Wahry Retno, Senior Investigator (KPPU); **Israel:** Noa Zvi-Oliver, Director of International Affairs (IAA) and Dana Heller, Head of Competition Division and Deputy Chief Economist (IAA); **Kenya:** Lilian Mukoronia, Senior Advocacy Officer (CAK) and Maryanne Nduati, Policy & Research Analyst (CAK); **Malawi:** Lewis Kulisewa, Director of Consumer Welfare and Education (CFTC), Charlotte Wezi, Executive Director (CFTC); **Mexico:** Carolina Garayzar, Deputy Director General

of International Affairs (COFECE); **Moldova:** Luminita Arama, Head of External Relations and European Integration Unit (CCRM), Viorica Carare, President (CCRM); **New Zealand:** Nicky Beechey, Chief Adviser (NZCC); **Portugal:** Cristina Camacho, Head of the International Relations Unit (PCA) and Maria João Melícias, Member of the Board (PCA); **Russia:** Anna Pozdnyakova, Consultant (FAS); **Singapore:** Lim Wei Lu, Assistant Director (CCS) and Ng Ming Jie, Senior Assistant Director (CCS); and **South Africa:** Donnavan-John Linley, Economist (CCSA) and Tembinkosi Bonakele, Commissioner, (CCSA).

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Introduction

Over recent years in the face of persistently low growth of the world economy, competition — the process of rivalry between firms seeking to win customers' business — has been more widely recognized to be a critical driver of performance and innovation in a national economy and consequently therefore of economic growth and consumer welfare. This recognition has particularly gained ground in many developing economies where the low growth environment is putting progress and shared prosperity at risk. In Latin America and the Caribbean, growth-driven social progress is stalling, in Middle Eastern and Northern African economies, the transition towards market economies and inclusive institutions are threatened by the persistent lack of good job opportunities while other more fragile economies in East Asia Pacific and Sub-Saharan Africa will suffer from the investment crunch.

In this environment, internal growth drivers such as domestic market competition have consequently been receiving high-level attention. Competition policy is a set of policies and laws that ensure competition in the marketplace is not restricted in such a way as to reduce economic welfare and thereby promotes economic growth and shared prosperity in two ways:

Firstly, as several World Bank Group (WBG) and other publications have shown, competition in the marketplace matters for economic growth as it fosters more productive firms and industries,¹ allowing domestic firms to become more competitive abroad leading to higher levels of exports.² Substantially increasing competition in Tunisia has been estimated to boost labor productivity growth by 5 percent in one year. In Brazil, Kenya, Peru and South Africa improving regulations of services sectors that are currently restricting competition could add between 0.1 and 0.5 percentage points to GDP growth.³

Secondly, competition policy ensures that the benefits of vibrant economic activity accrue also to consumers on the lower end of the income scale, namely the poorest 40 percent of each country's population. A lack of competition in food product markets and retail, as a result of anti-competitive practices or regulations that restrict or prevent competition, affect the poorest households more than better-off households while competition in input markets and reduced buyer power have positive effects on farmers and

other small businesses. In Kenya, poverty could fall by 2 percent if competition was more intense in the maize and sugar markets while in South Africa, WBG estimations suggest that around 200,000 people stood to be lifted out of poverty (equivalent to a 0.4 p.p. fall in the poverty rate) just by tackling cartels in only four basic products (maize, wheat, poultry, and pharmaceuticals).⁴

Effective competition policy aims at achieving open, contestable and competitive markets. Therefore, competition policy does not only imply solid enforcement of competition laws, but also proper design and implementation of government intervention in markets.⁵ These interventions are most effective when — while maintaining their regulatory objective — they *enable* rather than unduly *restrict* competition. Competition authorities play an active role in promoting and advocating for sector-regulation that is conducive to competition, broader public policies that embed competition principles, rules for State-Owned Enterprises that guarantee their competitive neutrality, and mechanisms that ensure that state aid does not distort the level playing field.⁶ *Competition advocacy* embraces all these activities conducted by a competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental agencies and by increasing public awareness of the benefits of competition.⁷ Competition advocacy is therefore a core function of competition authorities and highly complementary to competition law enforcement. Together, competition advocacy and enforcement can ensure that citizens benefits from vibrant, competitive and contestable domestic markets.

This publication provides an assessment of new developments and recent trends on competition advocacy based on an innovative and comprehensive conceptual framework that builds on practical implementation by authorities across jurisdictions. The following chapter systematically reviews different objectives of advocacy, the tools that authorities have been employing to these ends, the

1 See Kitzmuller and Licetti (2012).

2 Goodwin and Pierola (2015).

3 Purfield et al. (2016), Vostroknutova et al. (2015), World Bank (forthcoming).

4 Argent and Begazo (2015).

5 Following the World Bank Group's Markets and Competition Policy Assessment Tool (MCPAT), government interventions include direct government participation in markets as a supplier or buyer of goods and services as well as indirect participation in markets through government policies, regulations, rules, procedures and actions of government officials that affect decisions made by market players regarding economic matters.

6 This also includes self-regulation schemes established by professional and business associations that affect incentives of market players to compete in a particular market.

7 As defined by the International Competition Network (ICN).

scope of legal mandates on the basis of which authorities develop these tools and the strategies with which authorities achieve tangible impacts for consumers and the broader economy. Against this background, the third chapter of this book further presents the individual results of advocacy initiatives awarded at the World Bank Group's and International Competition Network's Competition

Advocacy Contest for 2014/15. The final chapter extracts the key lessons learned from successful competition advocacy initiatives, drawing on the results from all awarded stories under the Annual Competition Advocacy Contest and the experience of the World Bank Group in implementing competition policy projects and providing support to competition advocacy in 40 countries worldwide.

New developments and recent trends in competition advocacy

This chapter provides an innovative and comprehensive conceptual framework of competition advocacy tools and strategies implemented and developed recently by competition authorities across the world. Special emphasis is given to newly emerging developments and trends that have proven to be effective in developing countries. The framework is based on the ICN Advocacy Toolkit, the WBG Markets and Competition Policy Assessment Tool (MCPAT) as well as the project experience of the WBG’s Competition Policy Cluster in over 40 countries. Most of the examples provided for illustration purposes are drawn from the set of awarded initiatives under the WBG’s Annual Competition Advocacy Contest.

The why and how of competition advocacy

While competition advocacy has a common and clear ultimate goal of promoting competition and achieving better market outcomes, the means to attain this goal are multi-faceted.

Figure 1 summarizes and visualizes the overarching framework for advocacy initiatives: (a) the objectives of competition advocacy;

(b) the various areas of analysis on which advocacy initiatives are based; (c) examples of tools employed to implement advocacy (further detailed in Figure 2) to achieve the initial objectives; (d) the sets of mandates that competition authorities hold across the globe with varying degree of specificity and compulsion in their terms; and finally (e) the advocacy strategies that make a difference in whether or not a tool or mandate is well implemented to achieve the initial objective.

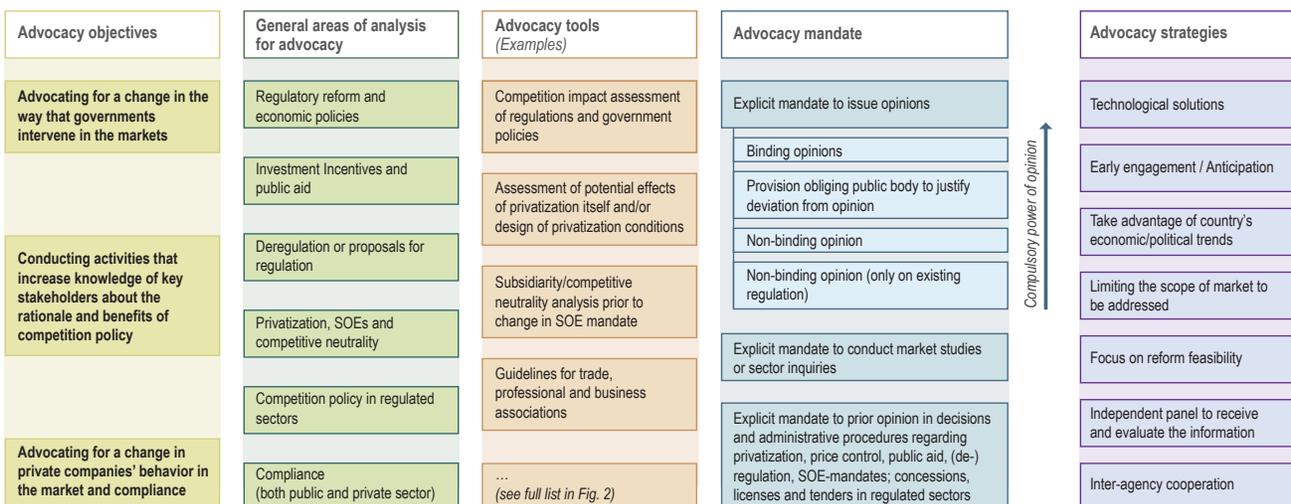
Objectives of advocacy initiatives

Competition advocacy initiatives generally have at least one of the following rationales:

1. Advocating for a change in the way that governments intervene in the markets, which may imply:

- (a) Modifying a (proposed or existing) regulation or economic policy that (i) reinforces dominance or limits entry, (ii) is conducive to collusive outcomes or increases costs to compete in the market, and/or (iii) discriminates and protects vested interests;

Figure 1. Framework for advocacy initiatives



- (b) Minimizing distortions caused by selective industrial policies investment incentives and public aid;
- (c) Supporting decisions on when competition conditions call for regulation/de-regulation;
- (d) Providing mechanisms to establish a level playing field between competing private and State Owned Enterprises (SOEs);
- (e) Guaranteeing competitive conditions for auctions and public private partnerships and/or privatizations;
- (f) Clarifying and delineating the reach of respective legal mandates of competition authorities and sector regulators as well as other agencies regarding the promotion of competition principles, and collaborating across these institutions to implement competition policies in regulated sectors;
- (g) Embedding competition principles in broader economic policies (trade, business environment and regulatory reform, sectoral policies, incentives and investment policy, among others).

2. Conducting activities that increase knowledge of key stakeholders about the rationale and benefits of competition policy (e.g., civil society, media, judges and policy makers), which may include:

- (a) Increasing awareness of the ways that incorporating competition principles in regulatory and broader economic policies can promote and protect the consumer benefits associated with vigorous competition;
- (b) Providing technical expertise regarding particular industries or markets to other policy makers;
- (c) Increasing awareness of the impact of competition enforcement on citizens and business.

3. Advocating for a change in private companies' behavior in the market and compliance, which may include:

- (a) Clarifying applicability of competition law to conduct or self-regulation under Trade and Business Associations;
- (b) Promoting compliance with the law and/or voluntary cease of anti-competitive practices through special programs with grace periods;
- (c) Promoting compliance in public procurement through certificates of Independent Bid Determination.

Advocating for governments' pro-competitive role in markets as regulator and direct market participant is critical to opening key markets and promoting a level playing field. For example,

Malawi's Competition and Fair Trading Commission (CFTC) was successful in removing the restrictions on how wholesale distributors' could procure sugar, so that they would operate under the same terms as the wholesalers linked to the national sugar monopoly. This contributed significantly to the process opening up the sugar sector. In **Kenya**, the intervention of the competition authority against a coordinated prices increase set up through self-regulatory measures in the private health sector was a key case that stimulated a "special compliance process." Associations in the agricultural and financial sectors have been given a grace period of eight months in which to dismantle anti-competitive agreements, failing which they face the full criminal and administrative sanctions per the Competition Act. **Indonesia's** competition authority overturned anti-competitive pricing rules set up by the Air Carrier Association which was critical for more affordable air fares in this archipelago. In **Moldova**, as in many countries with developing market economies, enterprises can be at a competitive disadvantage in a market when rival firms receive aid selectively from the State. Moldova's Competition Council (CCM) has introduced an on-line State Aid Register for the reporting and monitoring of all state aid disbursed by all agencies throughout the country. This will provide full transparency and enable the detection, investigation and elimination of anti-competitive forms of state aid.

Fomenting knowledge about the rationale and benefits of competition policy can mobilize civil society to counterbalance an adverse political economy. Portugal's government-backed "Fair Play — with Competition Everybody Wins" campaign targeted a lack of awareness among the business community that competition was a key structural factor in the country's economic recovery. The campaign was well-received by business representatives; a citizen survey suggested that 90 percent of the Portuguese population agrees that competition allows for better prices for consumers compared with less than 80 percent in several EU countries.⁸

Clarifying the scope of competition laws promotes transparent enforcement and better compliance with the law. In **New Zealand**, the Commerce Commission (NZCC), foreseeing a high risk of anti-competitive behavior in the re-building of areas devastated by the 2010/11 earthquakes, launched a successful advocacy campaign aimed at firms in the construction sector to educate and guide them on how and why to comply with competition and consumer protection laws. The campaign succeeded in heightening awareness among suppliers of goods and services in the construction sector of the competition and consumer protections laws and the risks of not complying with them.

⁸ http://ec.europa.eu/competition/publications/reports/survey2014/citizen_summary_en.pdf

Advocacy tools

Competition authorities have developed a variety of tools to implement advocacy and address potential or existing obstacles to effective competition in the market. Figure 2 lists the advocacy tools that have been applied by Competition Authorities in the ICN-WBG Advocacy Contest and in WBG projects. The graph further maps the tools to their general area of competition analysis (such as regulatory reform), the element that it addresses (such as a particular regulation that inhibits competition) and the timing of when the advocacy tool is used (when the measure is under discussion, i.e., *ex-ante*, or already in place, i.e., *ex-post*). Not only can several tools be used simultaneously and in a complementary fashion, they may address several issues in the market and be *ex-post* (with respect to the existing framework) and *ex-ante* (of the proposed new framework) at the same time.

For example, several competition authorities regularly assess the potential impact on competition that a particular regulation or policy may have on a particular market. Mexico's Federal Economic Competition Commission (COFECE) successfully worked with the Federal Commission for Regulatory Improvement (COFEMER) to ensure that competition issues are taken into account while new regulations are being drafted. As a result of their joint advocacy effort, competition impact assessments are now part of the mandatory system for the clearance of all federal regulations before they are issued.

In many cases, a competition authority is not expressly requested to review the impact on competition, but proactively decides to undertake this assessment and propose recommendations. For instance, the Competition Commission of Singapore engaged early on with the Land Transport Authority to share their views on the potential regulatory design of new actors in the taxi market. This opened the door for a continuous dialogue on the draft regulation until it was adopted.

Many competition authorities also review existing sector-specific regulations for potential barriers to competition and issue *ex-post* opinions on competition effects of regulations already in place. In a special initiative, Greece's Competition Commission undertook a comprehensive competition assessment in numerous sectors simultaneously in order to provide the government with a substantial reform agenda, and reactivate competition and economic activity in key markets.

As described above, the objectives of advocacy involve not only modifications of regulation that may inhibit competition but more broadly addressing any cause for lack of competition, including endemic market features, government

intervention or private firm behavior. In this sense, competition authorities have developed different ways in which they interact with public authorities that introduce price controls, public aid schemes and investment incentives to promote that competition principles are adhered to. Competition authorities have helped shape privatization processes to avoid undue reinforcement of dominant positions, facilitation of collusion or market foreclosure, and have worked to ensure that government participation in the market meets competitive neutrality criteria. Competition authorities have also been called upon to assess competition conditions prior to a decision to regulate the market. Finally, advocacy tools can consist in general guidelines to orient public officials or private market players on how to comply with the law and not unduly limit competition.

Most of the time, these advocacy tools result in specific opinions or recommendations. They are transmitted in formal ways through official publications or in informal ways through bilateral conversations and knowledge-sharing. Recommendations and opinions can be binding or non-binding, though by and large, when an advocacy tool is used upon request by another authority, the opinions are of a more binding nature.

Role of a formal advocacy mandate

A worldwide comparison of explicit mandates for advocacy tools described above reveals that these vary greatly across income levels and regions. Among economies with competition laws in place, competition authorities have an explicit mandate to issue opinions in 94 percent of lower-middle-income economies, while in low-income economies only 27 percent of authorities have explicit powers (see Figure 3). Meanwhile, across all income groups, between half and three-quarters of all authorities have an explicit mandate to conduct market studies or sector inquiries.

There is no clear relationship between the scope and effectiveness of advocacy initiatives and registering a more explicit advocacy mandate. It is also not evident that authorities in higher income countries tend to gain more explicit mandates. Further analysis reveals that registering an explicit mandate and conducting effective advocacy are related to separate factors. First, developing economies typically enacted their competition legal framework more recently and typically include explicit mandates for all responsibilities of a modern competition authority (see Figure 4). Second, although competition frameworks in high-income economies were originally developed with more narrow mandates and competition authorities then gradually extended their scope of activities, the original legal frameworks are less frequently

Figure 2. Advocacy tools

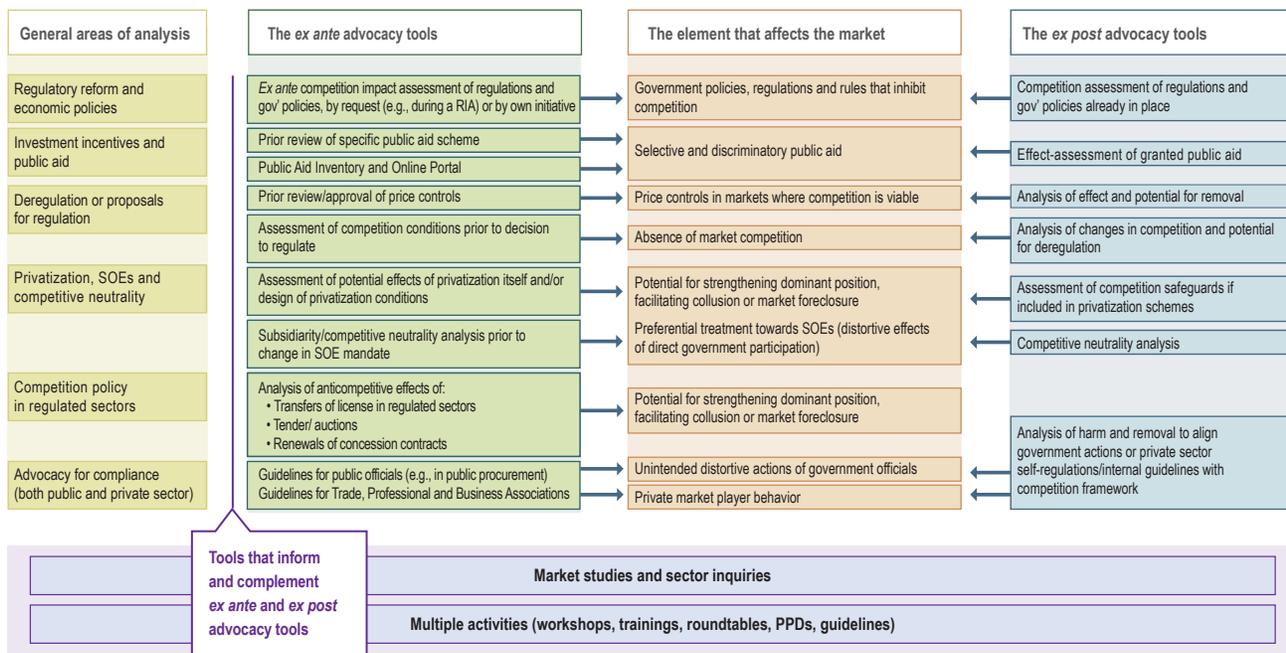
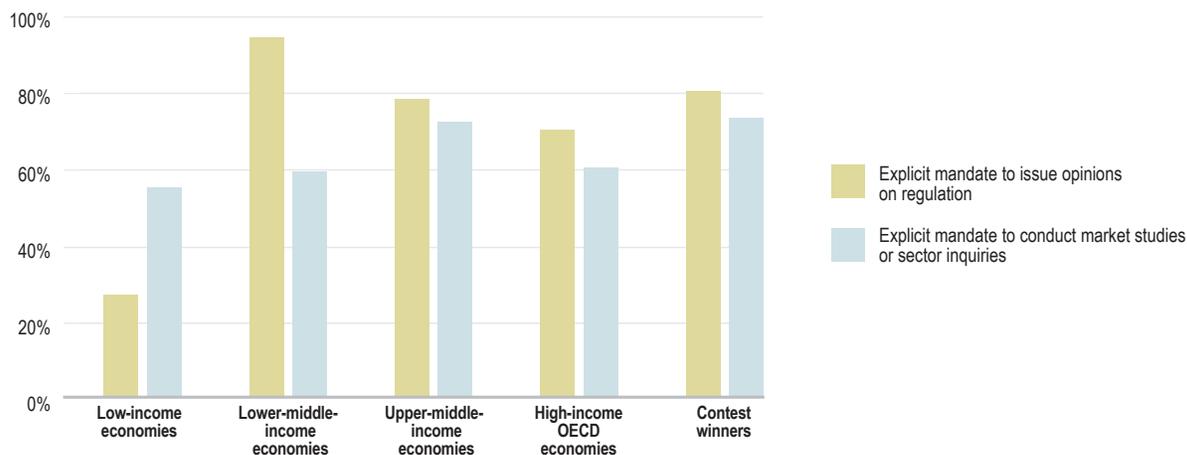
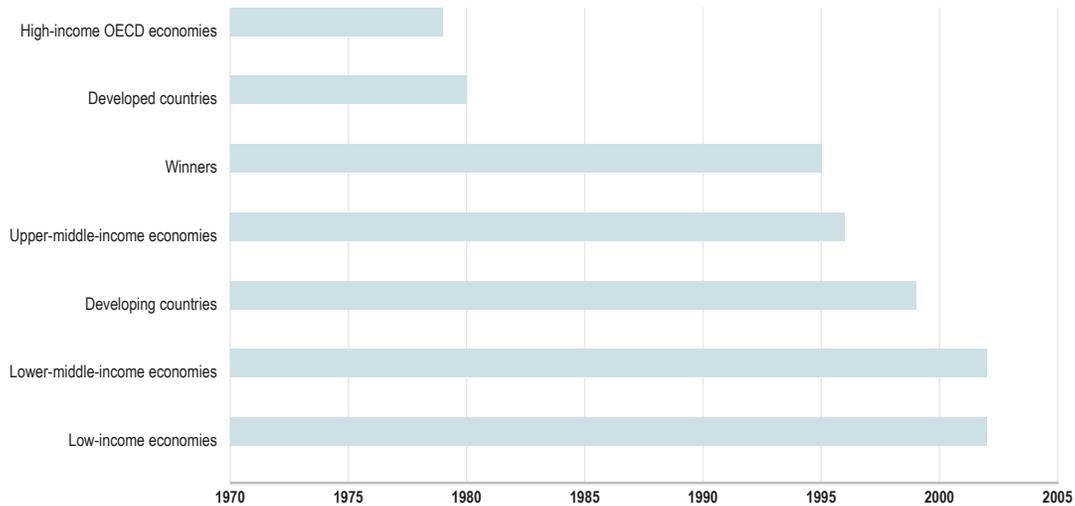


Figure 3. Scope of explicit advocacy mandate, across income categories



Source: WBG analysis based on publicly available legislative frameworks and secondary reports or questionnaires. WBG income classification: **Low-income economies:** Burkina Faso, Burundi, Ethiopia, Gambia, Malawi, Mali, Mozambique, Rwanda, Tanzania, Togo, Zimbabwe; **Lower-middle-income economies:** Armenia, Cameroon, Côte d'Ivoire, Egypt, El Salvador, Honduras, India, Indonesia, Kenya, Moldova, Morocco, Pakistan, Philippines, Senegal, Swaziland, Vietnam, Zambia; **Upper-middle-income economies:** Algeria, Botswana, Brazil, Colombia, Dominican Republic, Ecuador, Gabon, Jordan, Kazakhstan, Mauritius, Mexico, Namibia, Peru, Romania, Russia, Serbia, South Africa, Tunisia; **High-income economies, OECD Members:** Australia, Canada, Chile, Finland, France, Germany, Greece, Iceland, Israel, Italy, Japan, New Zealand, Norway, Portugal, Singapore, Sweden, Switzerland, The Netherlands, United Kingdom, United States; **Contest winners:** El Salvador, Finland, Greece, Iceland, Indonesia, Israel, Kenya, Malawi, Mexico, Moldova, New Zealand, Portugal, Russia, Singapore and South Africa.

Figure 4. Average year of enactment of the competition policy law



Source: *ibid.*

updated than in developing economies⁹ — in part because their implicit mandate is often strong enough to effectively implement these functions. Third, there are regions where explicit advocacy mandates are more commonly included in the competition framework than in others (see Figure 5, e.g., Eastern Europe and Central Asia (ECA) and Latin America and the Caribbean (LAC) versus Sub-Saharan Africa (SSA)), and yet, this is not reflected in systematic differences in advocacy-effectiveness across regions. *Most notably, authorities with successful advocacy initiatives that have won the Competition Advocacy Contest have not necessarily had more explicit mandates.*

Regardless of income level and geographical location, in the great majority of economies that have an explicit mandate to issue opinions, they are non-binding and have often proven to be effective nonetheless. Nevertheless, in upper-middle-income and high-income countries it is common for other public bodies to justify any deviation from the official recommendation by a competition authority. In lower-middle-income and low-income economies, it is most common for antitrust authorities to issue recommendations ex-ante or ex-post that have no binding nature at all and do not require an official response from the respective public body addressed (see Figure 6). Finally, there are a few countries that

only have explicit mandates to review and provide opinions that are already in place and in none of these cases are recommendations binding. *Most of the recommendations by Contest Winners were either non-binding and were still implemented thanks to effective strategies.*

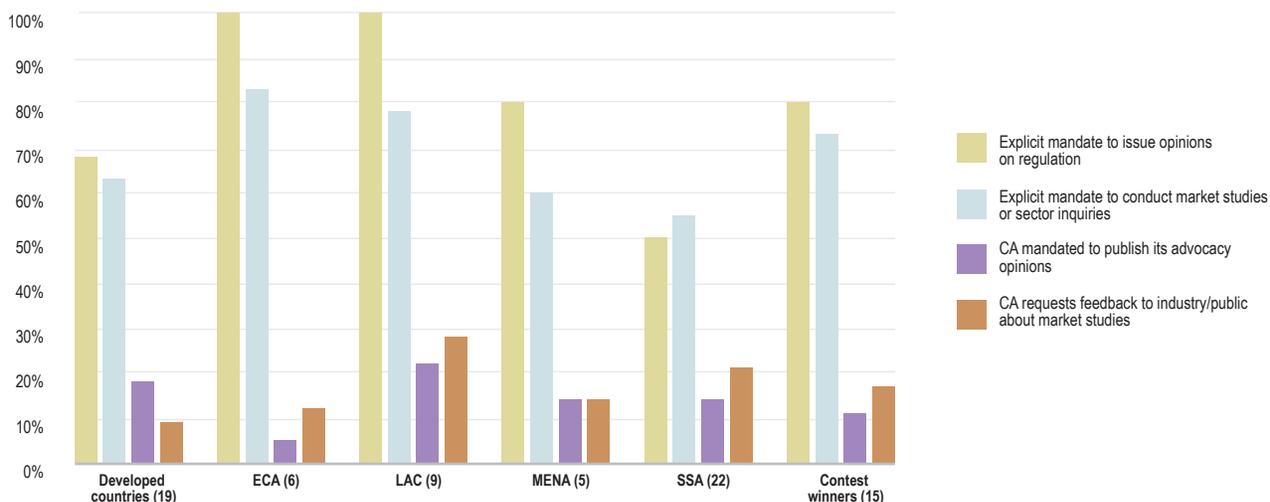
In sum, the scope and explicitness of the mandate for undertaking advocacy varies and over time, even without explicit mandate, authorities have been able to build effective track records on advocacy based on their more general mandate. While competition laws enacted more recently typically include a more specific mandate for a particular advocacy tool (such as opinions or market studies), this has not shown to be a guarantee for impact on markets. *To the contrary, gaining explicit mandates before the necessary institutional capacity is in place can turn formal competition advocacy procedures into a burden for effective regulatory policy.* Moreover, individual country examples show how competition authorities have developed successful and impactful advocacy prior to gaining more specific advocacy mandates.

Advocacy strategies

Successful competition authorities are increasingly aware of political economy challenges to achieving pro-competition changes in regulation or market behavior, and are therefore creative in the practical implementation of advocacy tools.

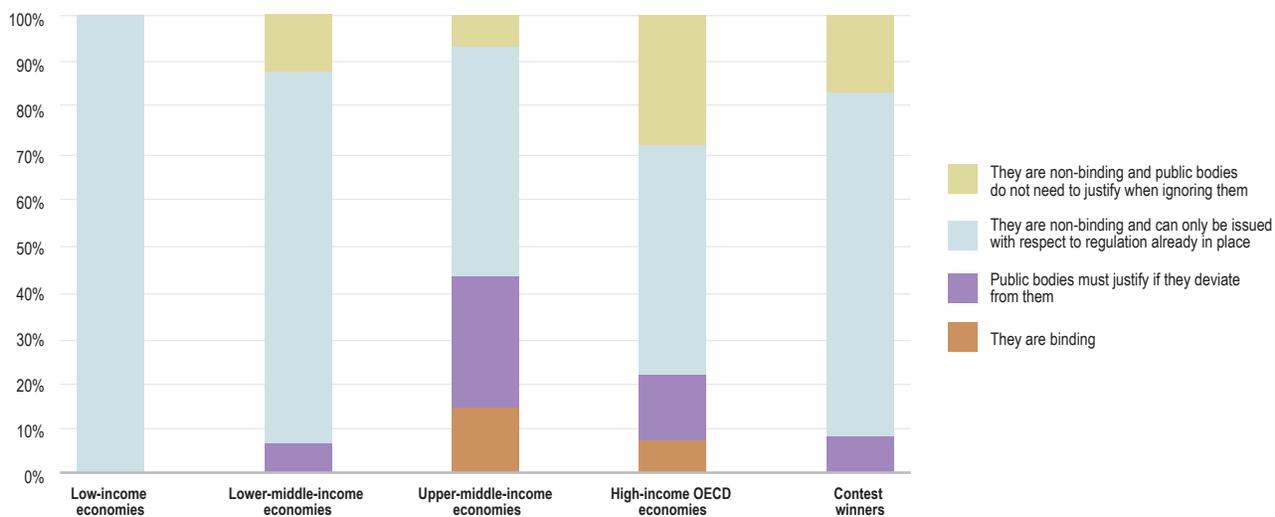
⁹ For example, even though competition laws in countries such as the US, Germany and Sweden do not have formal provisions for opinions on competition assessment or regulatory review, their competition authorities regularly engage in formal or informal exchange with other public bodies on approaches to minimizing undue negative impact of regulations on competition dynamics.

Figure 5. Scope of explicit advocacy mandate, across regions



Source: WBG analysis based on publicly available legislative frameworks and secondary reports or questionnaires. WBG geographical classification. Eastern Europe and Central Asia (ECA); Latin America and the Caribbean (LAC); Middle East and Northern Africa (MENA); Sub-Saharan Africa (SSA). For East-Asia Pacific (EAP) and South Asia (SA), the sample-size was less than 5; **Contest winners**: El Salvador, Finland, Greece, Iceland, Indonesia, Israel, Kenya, Malawi, Mexico, Moldova, New Zealand, Portugal, Russia, Singapore and South Africa.

Figure 6. Compulsiveness of opinions issued in advocacy initiatives



Source: WBG, idem, figure 3.

The *advance of technological solutions* is not only a challenge for competition authorities in regulating the market, but also an opportunity for their own operations. Benefits of competition are vast in sum, but often dispersed, while barriers to competition typically benefit a small number of well-connected actors. Social media and other digital platforms have been instrumental in engaging with a multitude of stakeholders that gain from competition while operating under scarce resources.

Several of the winning or commended entries have employed digital means to spread a culture of competition: a unique on-line portal in **Moldova** now tracks and monitors state aids; a digital, interactive app to raise public awareness of competition problems has been widely used and cited in **El Salvador**; and finally digital aids supported the “Fair Play” advocacy campaign in **Portugal** during the financial crisis.

Digital platforms for communicating and also administering interinstitutional coordination are cost-effective and transparent, but must be tailored to the level of IT skills and familiarity of the targeted population. In the case of tools with non-standard interfaces (such as a dedicated state aid portal) these must be accompanied by tutorial sessions and capacity-building.

It is easier to prevent an anti-competitive regulation or public policy than try to reform it when vested interests have already begun to form, so *anticipation is essential for many successful interventions*. For example, **New Zealand**'s Commerce Commission reacted quickly in the aftermath of the earthquake, **Singapore**'s Competition Commission reached out to Transport Regulator early on, and **Iceland**'s Competition Commission predicted competition challenges and suggested competition impact assessments prior to refinancing decisions. However, this proactive or rapid-response style works best when the authority has a long-standing relationship with the regulators and industry.

Competition authorities' advocacy programs have shown to be more likely to succeed when addressing a pressing national priority. Several entries were in tune with their *country's political cycles and economic trends*. The financial and economic crisis in Europe was a major setback to many markets but was also an opportunity for agencies such as those in **Greece**, **Portugal** and **Iceland** to put forward market-oriented policies and effective competition as tool for much needed productivity boosts.

For very specific objectives, competition authorities have fared well when clearly *delineating the market or sector targeted*. Even in a sector enquiry as broad as the one in the banking sector in **South Africa**, the authority consciously decided to exclude the lending market and interest rates. **Singapore**'s Competition Commission (CCS) has so far only issued a position on third-party booking

platforms, but not on private car-hire companies such as Uber. In the decision of which sectors to choose, *reform feasibility* as well as relevance to consumer welfare are often taken into account. **Israel**'s Antitrust Authority saw the largest disparity between internationally common market features and realities in Israel in the immediate debit card payment segment. The reforms did not require an overhaul of the entire payment system or even payment card market and were highly impactful at the same time. **Malawi**'s Competition and Fair Trading Commission first focused on an acute complaint by business owners on the access conditions to sugar in the wholesale segment, before later on engaging on discussions about the broader policy for the sugar market.

This contrasts particularly with the experience in several countries where authorities — including some recently established — embarked on a number of market studies that at the end did not lead to tangible changes and results in the market. This highlights the importance of using market studies wisely and selectively.

Some authorities have chosen an *independent panel to receive and evaluate the information* in order to gather the best first-hand and untainted information about the market. **South Africa**'s Competition Commission set-up an independent and balanced panel to receive written submissions and conduct public hearings. In some cases, it may even be advisable to allow for anonymous and confidential information-gathering. **New Zealand**'s Commerce Commission hired an independent group to study practices in the construction sector and gave the firms interviewed assurances that no enforcement action would be taken as a result of any revelations arising from the interviews. The research revealed important information on common practices in the sector that would be elementary to designing the advocacy campaign.

Several awards went to competition authorities that have *worked closely with other agencies* and have balanced competition goals with other public interests. CCS built on an established relationship with the Land Transport Authority to secure the preservation of competition principles in the regulation of third party taxi-booking apps. It did so while acknowledging that there were legitimate safety and other public policy issues that needed to be taken into account. In **Malawi**, for example, the collaboration of the Ministry of Industry and Trade was pivotal in securing the success of the advocacy effort and in stimulating further moves to open up the sugar market. In **South Africa**, so as to achieve implementation of 28 recommendations from the banking enquiry, the Competition Commission conducted a wide-ranging program of advocacy to engage with the key stakeholders, including government agencies that would be responsible for acting on the recommendations.

New frontiers in competition advocacy

Several competition advocacy initiatives in recent years stand out for tackling new competition challenges and devising innovative advocacy programs that push the frontier of how to influence competition dynamics for the benefit of citizens.

1. Advocacy strategies are becoming even more anticipatory: several competition authorities are beginning to intercede at the advent of **disruptive technologies and other innovations**.
2. Objectives of advocacy are becoming more targeted, as authorities are beginning to engage more closely with **subnational entities** in order to ensure healthy competition dynamics in local markets.
3. The use of advocacy strategies and tools is more closely linked to specific objectives and therefore content-driven. Young agencies, for example, are combining more “lenient” **enforcement measures with more forceful advocacy activities** in order to achieve rapid changes of market behavior.
4. Through advocacy, competition authorities play an essential role in **developing and sharing market-specific knowledge and expertise** across the entire government.
5. Advocacy-initiatives have more and more concrete **spill-over effects in policy areas that matter for economic development**, including direct state participation in the market.

Disruptive innovations call for frontier solutions by the authorities: In **Israel** and **South Africa**, authorities engaged in thorough market enquiries in specific banking and financial services markets to understand the needs for regulatory intervention and the potential benefits of easing restrictions whenever not indispensable for public policy objectives. This brought questions to light on whether certain upstream charges in payment systems need to be regulated, or when and how non-traditional banks should be allowed to participate in the payment systems. In **Singapore**, CCS's assessment of the new taxi-booking platforms operating on smartphones similarly confronted the authority with questions such as whether private car-hire and car-sharing providers should be allowed, and if so, regulated under the same standards. In each case, the authorities successfully engaged with regulatory bodies in explaining the market and its competition dynamics and advocated for appropriate regulatory measures.

The level playing field among competitors in local markets can be distorted if **subnational authorities** enforce the national legal framework or regulations in different and potentially discriminatory ways. The entries from **Moldova** and **Finland** illustrate that subnational entities play a big role in ensuring a coherent and

consistent application of procedures for licensing or public support measures. The competition agencies in both countries engaged with municipalities and other local bodies that were often ill-equipped and acting within a legal framework that was not sufficiently watertight to avoid discretionary implementation. This is key especially for federal nations where subnational entities have considerable autonomy, but also for highly centralized nations in which the implementation capacity at the local level can be poor.

The efforts by the contest winners and honorees have reinforced the lessons from last year's winners that **enforcement and advocacy work in concert**. Advocacy campaigns focusing on compliance work well where the authorities, as in **New Zealand**, have a strong reputation not only for understanding markets but also for competition law enforcement. It is a far greater challenge for competition authorities in developing countries to convince business leaders that competition law will be enforced effectively. The initial indifference of the business community to competition principles and to the threat of punitive action against non-compliance is particularly marked in countries with a relatively new competition regime.

Entries this year further showed that not only do advocacy programs benefit from a credible enforcement threat but that advocacy can also ensure higher effectiveness of enforcement actions. When non-compliance goes unpunished (due to court appeals or public pressure on the Authority to revoke the ruling), even a cease and desist order will not bring about the desired change in market behavior. Innovative advocacy measures can help to shape public opinion in favor of the authority's mandate, raise awareness of those affected by continuous non-compliance and achieve results in the market more quickly.

In **Malawi**, industry calls for a reversal of the competition authority's cease and desist order for sugar distributors prompted the authority to mount an advocacy campaign to educate industry participants about the Competition and Fair Trading Act and the consequence of non-compliance. This succeeded in changing entrenched attitudes in the industry. The **Kenyan** competition authority engaged in an awareness campaign soon after the introduction of competition law, considering this preferable to immediately taking resource-intensive prosecutorial action when a breach of the Act is suspected. As well as reducing short-term regulatory costs for the competition authority, such campaigns can ensure buy-in to competition laws from firms and encourage them to voluntarily comply in the future, so avoiding subsequent regulatory costs and allowing a competition authority to use its resources optimally.

Enforcement can lead to effective advocacy for changes in sector-specific **government interventions**, too, for example when the enforcement case made evident which government intervention

was facilitating the practice. There are risks, however, when advocacy (based on sector-specific studies in which private parties participated and shared information) is followed by enforcement actions, since there are several aspects of procedural fairness that are being raised by parties.

Effective advocacy goes **beyond general awareness raising and is increasingly data-driven**. This implies that competition authorities assume a leading role in generating and communicating specific knowledge on how different policy options may affect a particular market. In **Singapore**, the insight into market dynamics of taxi networks did not just inform the competition authority's recommendations but also served as a basis for regulatory decisions by the sector-regulator. In **Israel**, the empirical findings from the report in the payment services industry laid the groundwork for targeted advocacy by the competition authority but also triggered further analysis by other public authorities on where regulatory intervention was needed. In sum, the understanding of market dynamics that competition authorities provide can help balance competition with other regulatory objectives.

Competition advocacy has concrete **spillover effects** in policy areas that matter for **economic development**. In public procurement, competition authorities no longer only address specific factors that facilitate anti-competitive practices, but competition agencies in **South Africa** and **Mexico** actively work with public procurement authorities to more broadly improve tender design. The **Russian** competition authority supported effective implementation of trade commitments and allowed more gains from an open economy to accrue to domestic producers and consumers. **Moldovan** authorities have improved sector-specific or regional development policies by ensuring that related incentives and state aid measures do not work against effective market dynamics. A new area where competition authorities are beginning to advocate more forcefully for competition principles and will need to further develop effective advocacy strategies relates to the participation of

SOEs in key markets including energy subsidies provided through SOEs which has broader consequences for climate change and fiscal stability.

Ultimately, regardless of the advocacy areas, the tools utilized and the political economy challenge, a solid grounding in understanding the market is the one common element for success. A key ingredient to being able to choose a sector in which competition will make the difference, the right tool to convey the key messages to stakeholders in charge and the practical implementation technique is a solid understanding of the economic characteristics and incentives of all actors in the market. **Iceland's** competition agency was able to catch the potential risk to competition that the bail out policy by state-funded banks posed for the heavily affected markets. It did this by rigorously studying past experiences of financial crises on competition dynamics in certain sectors. **Mexico's** competition authority was given an ample mandate to review draft regulation after establishing a track record in judging the need for regulatory intervention to achieve policy objectives in very specific market segments. The **Greek** competition authority's task of deciding over licensing requirements for professional services required a case-by-case analysis of each individual trade. In sum, wherever authorities have long-standing engagements with the industry and regulatory counterparts, they are better able to react swiftly and with sound recommendations. In the years ahead, knowledge of market and competition dynamics will be increasingly important to conduct sound microeconomic policies. Ultimately, this knowledge is essential for competition, tax policy (transfer pricing in particular), regulatory reform, specific sector regulations and active industrial policies. How and where to place this capacity within the State structure and how to make information flow effectively for the different uses will become even more relevant and — if endowed with the right resources and capacity — competition authorities could play an important central advisory role.

The Contest

In 2013, the World Bank Group started an initiative for a global platform to share lessons learned on how to promote competition policy — specifically through competition advocacy initiatives. Competition advocacy embraces all those activities conducted by a competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental agencies and by increasing public awareness of the benefits of competition.¹⁰ This “soft” approach seeks to address fundamental barriers to effective competition, such as anti-competitive regulation or economic activities by the public sector, in favor of a business culture supportive of free and open competition and a set of rules structured and implemented so that anti-competitive behavior is less viable or profitable.

The proceedings of the First World Bank Group’s Competition Advocacy Contest in 2014 highlighted the extent to which developing economies were not yet yielding innovative, low-cost solutions for consumers and businesses due to lack of effective competition. On the one hand, it found that competition authorities most commonly had a mandate to investigate and sanction anti-competitive behavior by private market players, yet their mandates were more limited when it came to removing barriers stemming from direct or indirect government intervention in the market. The Contest brought together striking examples of how competition authorities in developing economies have had remarkable success in opening markets and ensuring that all firms in the market have the capacities and incentives to compete on a level playing field.

This second edition of the WBG’s Competition Advocacy Contest was held in collaboration with the Advocacy Working Group (AWG) of the International Competition Network (ICN).¹¹ Applications were open to Bank Group client countries with competition agencies and, for the first time, to agencies from other advanced economies. All regions and sector-specific topics were eligible. The stories were reviewed by experts from different Global Practices at the WBG, including the Trade and Competitiveness Practice and the Poverty Practice, as well as independent non-governmental advisors (NGAs) appointed by the ICN. The criteria used for selecting winners were: (i) collaboration with other agencies/organizations and stakeholders; (ii) results achieved — if intervention was

successful; (iii) overcoming political economy difficulties; and (iv) specific impact of the results.

The general topic of the 2014/15 contest was “Inclusive growth for shared prosperity.” Contestant agencies were judged on their performances in three thematic areas, with winning agencies and honorable mentions announced in early 2015. The themes and winners are listed below.

Theme 1: Promoting procompetitive reforms that foster growth and reduce inequality: Winners: Kenya and Malawi; Honorable mentions: Finland, Indonesia and Russia.

Theme 2: Promoting awareness of benefits of competition in a time of crisis: Winners: El Salvador and New Zealand; Honorable mentions: Greece, Iceland and Portugal.

Theme 3: Promoting cooperation with relevant public bodies to balance competition goals with other public interests: Winners: Moldova and Singapore; Honorable mentions: Israel, Mexico and South Africa.

The winners and honorable mentions come from a wide range of countries from across all regions and tackle diverse challenges in key markets. Some countries are moving towards an open market economy, including developing countries Kenya and Malawi, and former centrally-run economies Moldova and Russia. Others are advanced economies in Europe and Asia-Pacific, such as Finland, Singapore and New Zealand. Some of the highlighted cases concern a single economic sector such as banking in South Africa, civil aviation in Indonesia and sugar distribution in Malawi. Other entries involve an economy-wide approach, such as the Icelandic competition authority’s program to deal with the country’s unprecedented financial collapse in 2008.

10 As defined by the International Competition Network (ICN).

11 See the ICN AWG Work Plan, 2015-18: <http://www.internationalcompetitionnetwork.org/uploads/library/doc1038.pdf>

The winning and commended entries showcase the rich variety of challenges that competition advocacy tools can address. In El Salvador, the Competition Superintendence's advocacy campaign targeted judicial delays in appeals against its decisions which were hamstringing competition law enforcement. In Malawi, the Competition and Fair Trading Commission tackled anti-competitive practices in the sugar market through an advocacy campaign. Finally, in Moldova, the Competition Council used advocacy tools to support a fairer distribution of state aids. In other cases, advocacy efforts aimed to inculcate an awareness of competition issues among the general public (as in Portugal) or among specific industry players (for example, the construction sector in New Zealand).

The narratives in this book explain how the winning and commended agencies went about tackling these competition issues through the use of advocacy. They record the impacts the advocacy campaigns have made, not only on markets but on consumers, businesses, and other stakeholders who participate in those markets. The submissions from the winning and commended agencies showed that they are putting increasing weight on calculating the economic and other impacts of their activities. This has helped to improve the focus and direction of their advocacy efforts. Singapore's Competition Commission notably follows an advocacy strategy strictly based on "3Ps" — being Proactive, Purposeful and Practical.

World Bank Group and ICN activities on competition policy

The World Bank Group advises client governments in more than 40 countries on competition policy. Through analytical reports, technical advice and lending operations, the WBG develops and helps implement best practices and innovative tools to identify and better tackle anti-competitive regulations and practices. Successful advocacy for pro-competition policies and regulations are generating specific reforms and positive economic impact across regions and countries, including Armenia, the East African Community, Honduras, Kazakhstan, Kenya, Mexico, Moldova, Peru, and the Philippines.

The ICN's Advocacy Working Group (AWG) undertakes projects, develops practical tools and guidance, and facilitates experience-sharing among ICN member agencies, in order to improve the effectiveness of ICN members in advocating for the dissemination of competition principles and to promote the development of a competition culture within society. The AWG has 63 ICN member agencies from 61 jurisdictions and 64 NGAs. It is co-chaired by the Italian Competition Authority, the Mexican Federal Economic Competition Commission and the Swedish Competition Authority.

Together the World Bank Group and the ICN will continue to highlight valuable competition advocacy initiatives around the world. Both institutions recognize that in the long run, the ensuing results in the markets will help untangle some of the knots that limit the potential for economies to grow, to become more productive and more inclusive.

A healthcare worker, likely a nurse or doctor, is shown in a hospital setting, wearing full personal protective equipment (PPE). She is wearing a blue gown, blue gloves, a white hairnet, and a clear face shield. She is leaning over a hospital bed, attending to a newborn baby who is lying in the bed. The baby is wearing a white diaper and is wrapped in a patterned blanket. The healthcare worker is holding a white container, possibly a bottle of medicine or a syringe, near the baby. The background shows a hospital room with a window and some medical equipment.

THEME 1:

Promoting procompetitive reforms that foster growth and reduce inequality

Winners: Kenya and Malawi

Honorable mentions: Finland, Indonesia and Russia

Winners

KENYA:

Using advocacy and building credibility to achieve compliance with competition law

In the face of plans announced by the private healthcare providers' trade association to apply a hefty increase in private healthcare charges, Kenya's Competition Authority (CAK) mounted a successful advocacy campaign to raise awareness and understanding of the new competition law — which outlawed coordinated pricing decisions by a trade association — and to remove any doubts that the Authority would duly enforce the law if necessary.

Key points

- An announcement by the Private Health Care Providers' (PHP) Consortium in Kenya of a 20 percent rise for its members' services breached competition rules for trade associations and reflected both a general ignorance about the provisions of the new Competition Act and CAK's enforcement powers.
- The impact on consumer welfare from the illegal increase would have been substantial, particularly for Kenya's most vulnerable people, many of whom depend on private healthcare.
- The CAK's recourse to implementing the Law through a lengthy investigation and sanctioning process would have been costly and slow, whereas the rise in private healthcare charges was imminent.
- The CAK therefore moved quickly in issuing a Stop and Desist Order and simultaneously embarking on an advocacy campaign to raise awareness among the private healthcare providers of the provisions and market benefits of the Act, and to convince them of the CAK's readiness to act to enforce compliance if necessary.
- In response to the advocacy campaign, and faced with the alternative of a formal sanctioning process, the private healthcare providers rescinded the proposed price increase.
- The success of its advocacy campaign did much to raise awareness of the CAK throughout the country and to establish a reputation of being transparent, effective, cost-conscious and balanced in its approach to competition problems.

- CAK's scrutiny of the PHP Consortium rules helped stimulate an inquiry (the "special compliance process") into the rules, practices and procedures of other trade associations.

The competition issue

The CAK faced an underlying issue, often encountered in countries with newly developed competition regimes, that the private healthcare providers lacked an understanding of the full implications of the Competition Act — at that time in force only since the previous year.

The decision to raise charges by 20 percent in 2012, in response (it was claimed) to increased labor costs, had been coordinated between the Association of Kenya Insurers (AKI) and the PHP Consortium at the first meeting of its kind between the two organizations. It had been announced in a Letter of Intent from the PHP Consortium. It was unarguably illegal under the terms of the Competition Act. Section 22 of the Act, specifically covering restrictive trade practices applicable to trade associations, makes it illegal for a representative trade body to recommend to members a percentage by which charges may be revised. Adjusting prices in response to prevailing market trends is not outlawed but any price review must be undertaken by the individual firms.

Section 37 of the Act empowers the CAK to issue a written order "to stop and desist from engaging" in conduct prohibited under the Act.

The price-setting overtly set out in the letter of intent showed that both the PHP and the AKI had taken no account of the provisions of the Competition Act or had not taken seriously the risks of non-compliance.

The CAK also considered the public interest issues an illegal, non-market driven increase in private healthcare charges would

Healthcare in Kenya

Kenya currently has a ratio of just 1.8 doctors per 10,000 residents, below the average for the Sub-Saharan Africa region. Moreover, only half of Kenya's 40 million people have physical access to healthcare facilities, and the private sector provides half of all healthcare services in the country.

Healthcare services are central to the social goals of Kenya's Vision 2030 which is concerned with the creation of social safety nets to protect the chronically poor and to mitigate the risks and vulnerabilities associated with ill health.^a

^a www.vision2030.go.ke

Consumer savings

“We intervened in this sector because we had the legal basis to focus on it, and we knew we could have a positive impact. We took action against a 20 percent price increase in a country where 50 percent of the population spends 12 percent of their disposable income on healthcare...we saved consumers around US\$1.7 million annually.”

— Francis Kariuki
Director General, CAK

The CAK has estimated that its intervention to prevent a 20 percent rise in private healthcare charges saved patients 162 million Kenyan Shillings annually (around US\$1.7 million).

raise. In particular, it would exacerbate the problems for healthcare provision in Kenya and, since the private sector provided half of all healthcare services in the country, it would be a direct threat to the Government’s “Vision 2030” goal of affordable and equitable healthcare for all Kenyan citizens.

The response of the competition authority

The CAK took up the complementary challenges of spreading knowledge and understanding about competition law and of demonstrating its readiness and ability to implement it.

It devoted time and resources to (i) educating the contravening parties about the provisions of the Act, and (ii) reviewing the Consortium’s rules to evaluate whether these were in compliance with the Act. The review culminated in a “stop and desist” order by CAK on the coordination by the PHP Consortium of pricing changes by their members and further a strong recommendation that the associations withdraw the letter of intent and announce to the public media that they have done so. The associations complied.

Impact and lessons

The compliance effects of the advocacy initiative were immediate and protected consumers from a 20 percent increase in cost for certain private healthcare providers.

Compliance was secured at a relatively low financial cost. In the CAK’s view, mounting awareness campaigns for firms and associations soon after the introduction of competition laws is preferable to immediately taking resource-intensive enforcement action when

a breach of the Act is suspected. As well as reducing short-term regulatory costs for the competition authority, such campaigns can ensure buy-in to competition laws from firms and encourage them to voluntarily comply in the future, allowing a competition authority to use its resources optimally.

The PHP and AKI trade associations and their members will have no incentive in future to ignore the competition law and to discount the threat that it will be enforced. Moreover, awareness of the Competition Act and the CAK’s mandate has been spread widely to other sectors of trade and industry as a result of the advocacy campaign.

Special compliance process

The PHP case was one of the key cases that stimulated an inquiry by the CAK, known as the “special compliance process”, into levels of compliance with the Act by trade associations. The inquiry initially involves associations in the agricultural and finance sectors and grants these groups an eight-month window to transparently dismantle cartels that fix prices and limit competition. Following this grace period, potential penalties for violations against the competition law may include a five year prison sentence or a fine of up to US\$10,000. This program is being rolled out through meetings and round-table discussions between the CAK and the associations, while the associations are meanwhile reporting back to the CAK on the degree of compliance of their rules, practices and procedures.

Milestones

- 1 August 2011:** The Competition Act no 12, 2010, comes into force
- June 2012:** Meeting of PHP Consortium and AKI agrees that charges for private healthcare services should be raised by 20 percent.
- July 2012:** PHP Consortium issues Letter of Intent announcing the prospective price rise.
- August 2012:** CAK launches advocacy campaign. CAK issues recommendation to PHP Consortium to abandon the proposed price increase or face a Stop and Desist Order under section 37 of the Competition Act.
- September 2012:** PHP Consortium withdraws the earlier circular that announced the increase in private healthcare charges.
- 26 June 2015:** Announcement of the “Special Compliance Process” inquiring into compliance levels with relevant sections of the Act by trade associations in the financial sector.

MALAWI:

Aligning established business practices with competition law

In Malawi, the Competition and Fair Trading Commission (CFTC) secured the collaboration of the responsible Ministry to take action against anti-competitive practices in the downstream sugar market. Advocacy among industry stakeholders has ensured increased availability of this essential product for poor consumers and laid the groundwork for a further opening up of the country's sugar market, one of Malawi's leading export commodities.

Key points

- Malawi's Competition and Fair Trading Commission (CFTC) uncovered restrictive business practices by companies contracted to transport processed sugar from the country's sole sugar producer to designated distribution centers, at which the transporters also managed the warehousing of the product.
- The transport/warehouse management companies were found by the CFTC to be acting also as wholesalers, either directly or through affiliates, and to be foreclosing the wholesale distribution market to other wholesalers through the use of various stratagems. This was hurting consumers by pushing up retail prices for sugar.
- The CFTC enforced its findings by issuing a Cease and Desist Order to the principal transport/warehouse management company involved.
- In addition, facing a risk of public push-back, a successful appeal against the Order or simply non-compliance, the CFTC conducted a competition advocacy campaign aimed at providing sugar industry participants with a full understanding of competition laws and thus stimulating compliance.
- The coordination throughout the process with the Ministry of Industry and Trade was crucial and the campaign achieved considerable success. It led directly to effective opening-up of the sugar distribution system and indirectly helped lead to other measures that are on track to liberalize the sugar market more generally.

The competition issue

The competition issue prompting the CFTC's intervention arose from the vertical relationship between Illovo Sugar (Malawi) Ltd, (a publicly-listed company that is Malawi's sole sugar producer and the country's largest private sector employer) and companies that had the dual function of transporting processed sugar from Illovo's mills to designated regional distribution centers serving specified local areas, and also of administering the warehouses at the centers.

The on-selling of sugar from the distribution centers was supposed to be reserved to Illovo. However, under the terms of their contracts with Illovo, the transport/warehouse management companies were able to sell sugar to some wholesalers. This provision gave them the opportunity to run affiliated wholesale operations and offer competition to other wholesalers.

Allegations of anti-competitive practices among some Illovo warehouse managers were brought to the attention of the Commission in early 2013, triggering an investigation to determine if the warehouse managers and Illovo were acting in contravention of the Competition and Fair Trade Act of 2000.

The CFTC concluded that a conflict of interest arose when warehouse administrators doubled as wholesalers. Their access to inside information about availability and pricing of Illovo's sugar gave them the means to foreclose the wholesale distribution market (and in effect the entire distribution market, given their relationship with Illovo), preventing other, in particular smaller wholesalers from buying sugar directly from Illovo and limiting such access to the warehouse companies' affiliated enterprises. The Commission believed that this had led to a higher retail price for sugar than would otherwise be expected.

Strategies to exclude competing wholesalers

In a statement the Commission said that "various tricks" were used, including non-disclosure of information to other wholesalers about procedures for paying for sugar orders and in some cases provision of false information about sugar non-availability at the distribution center. (*Malawi Nyasa Times*, 5 June 2013)

The response of the competition authority

The CFTC construed these practices to fall within the term “predatory behavior” which is prohibited by the Competition and Fair Trading Act of 2000 (section 32(2)(a)). The transport/warehouse management company at the center of the complaint was issued an Order to cease and desist these practices.

However, the CFTC perceived the possibility that affected interest groups would lobby against the Order, or that the Courts would not uphold the Order in case of an appeal by Illovo and the warehouse management company, or possibly that the transport companies would simply not comply. Industry representatives called publicly for withdrawal of the decision. CFTC saw a need to underpin such enforcement action by advocacy efforts to clarify the rationale for its decision, change entrenched attitudes among sugar market participants and so help maintain the momentum for liberalization of the sector.

The CFTC therefore engaged with influential stakeholders in the sugar industry in a vigorous advocacy campaign to convey to industry participants a full understanding of the implications of the Competition and Fair Trading Act and the consequences of non-compliance. This was achieved through a series of face-to-face meetings, joint events and press conferences and through the distribution of brochures and copies of the Act.

Enlisting the Ministry of Industry and Trade to help defend competition in the face of vested interests was crucial to the success of the advocacy campaign. Competition policy and enforcement of competition law are relatively new in Malawi and competition issues have not generally been high on the radar of Government institutions. However, the Ministry of Industry and Trade had come to recognize that enhanced competition within the sugar industry would be important in achieving its wider policy goals.

Ministry of Industry and Trade policy goals for the sugar industry

A Working Group within the Ministry is looking for ways to promote new investment in the sugar cane sector and for the establishment of a SCP (Sugar Cane Products) Regulatory Framework. “Once finalized, it is envisaged that the Regulatory Framework will facilitate the governance of the sector which is at the moment non-existent.”

Ministry of Industry and Trade, Malawi, website:
<http://moit.gov.mw/index.php/2014-12-03-14-08-05/sugarcane-products>

Impact and lessons

Removal of anti-competitive trade practices

Illovo’s new distribution system

- The intervention of the Commission led to changes in Illovo’s sugar distribution system.
- Transporters are contracted by Illovo just for the distribution from the sugar mills to the distribution centers.
- Illovo now directly runs the warehouses at the distribution centers and sells sugar directly to the wholesalers at factory prices. The wholesale distribution is thus fully competitive and open to new entrants.
- The CFTC supervises the distribution points quarterly to ensure compliance.

Wider liberalization moves

The Commission’s success in implementing the competition law and mounting an advocacy campaign has contributed significantly to a further opening up of the sugar sector.

More widely, the advocacy campaign has given many state and non-state institutions a greater understanding of the competition law, the need for compliance and the benefits of competition. As Charlotte Wezi Malonda, the CFTC’s Executive Director, has commented: “Government policy needs to become better aligned with competition law,” and the CFTC’s advocacy has contributed significantly towards achieving this goal and generating a momentum for further pro-competition reforms in Malawi.

To have this impact, the close involvement of the Ministry of Industry and Trade in the advocacy campaign was vital and demonstrated the value for a competition authority, faced with deep-rooted, anti-competitive business practices, to win the support of a governmental ally in any push for the pro-competitive regulation of a market.

Milestones

- Early 2013:** Allegations of anti-competitive trade practices by certain warehouse administrators are brought to the attention of the Commission by a business association in Northern region of Malawi.
- January 2013:** A notice of investigation is issued by the Commission.
- March 2013:** A meeting is held between the Commission and the warehouse administrators and Illovo Sugar Ltd.
- April 2013:** The CFTC Board determines that warehouse administrators had engaged in anti-competitive trade practices contrary to the Competition and Fair Trading Act and are ordered to cease and desist from the practice.
- May 2013:** Illovo and the warehouse administrators (SIMAMA) go to Court and obtain an injunction stopping the Commission from enforcing the Order it had issued. The injunction is granted suspending the enforcement of orders of the CFTC. An Appeals process commenced, brought by both Illovo and the warehouse administrators against the order itself. Later, Illovo opts for an out of court settlement with the Commission, but the warehouse administrators' case proceeds to full trial. The courts rule in favor of the Commission, agreeing that the conduct and the warehouse management system had resulted in anti-competitive effect.
- July 2014:** A new system for the distribution of Illovo sugar comes into effect.

THEME 2:

*Promoting awareness of
benefits of competition in a
time of crisis*

*Winners: El Salvador and
New Zealand*

Honorable mentions: Greece, Iceland and Portugal



EL SALVADOR:

Galvanizing citizen engagement to support competition regime reforms

El Salvador's Competition Superintendence (CS) has pioneered a digital, interactive app to raise awareness among the general public of the serious judicial delays that are creating a crisis for competition law enforcement in the country, and hence for the development of a competitive economy. In this way the CS is working to galvanize public support for changes to the judicial appeal procedures for competition law offences.

Key points

- Judicial delays to appeals against CS decisions are hobbling the administration and enforcement of competition laws in El Salvador.
- In El Salvador's current economic and social situation, lobbying the judiciary and organizing training sessions for lawyers can have only limited effect.
- The CS has developed a digital, interactive app, called AppSC, to bring the delays in the judicial process to the consciousness of members of the general public, business leaders, the judiciary and government officials, and so help generate a popular groundswell in support of a more effective competition regime.
- Competition advocacy has long been accorded a high priority by the CS and the App will be further developed to make other aspects of the CS's work transparent to the public.
- The CS's digitally-based advocacy strategy has been cost-effective and would be particularly well suited to other competition authorities with tightly limited budgets.

The competition issue

A critical issue for the competition regime in El Salvador is that firms have little incentive to refrain from anti-competitive conduct because any sanctions imposed on them by the CS can in practice take years to bring into effect.

While the CS has the necessary mandate to suspend the activities of a firm or impose fines if it finds the firm to have engaged in anti-competitive conduct, its orders can be appealed to the

Administrative Chamber of the Supreme Court (*Sala de lo Contencioso Administrativo*). Currently, 60 percent of the fines imposed by the Competition Superintendence have been appealed in court. The delays in the processes at the Administrative Contentious Tribunal generally last various years; some up to 7 years. Only 37 of the 71 fines imposed by the Salvadoran competition authority during its 10 years of existence have been paid, which monetarily speaking represents 19.6 percent of all the fines applied. Meanwhile, pending settlement of their cases, some firms have persisted with anti-competitive behavior.

There is a widespread lack of awareness generally in El Salvador of the role competition plays as a catalyst for economic development and the near impossibility of imposing sanctions on anti-competitive conduct raises a further impediment to developing a competition culture within the country.

The response of the competition authority

The CS recognized that the meetings and training sessions, such as workshops, that it may arrange with legal practitioners have limited practical impact on efforts to remove judicial bottlenecks. There is no specialized competition appeals tribunal and many legal practitioners seem to take the view that competition law infringements are minor and victimless offences.

The Superintendence therefore took the innovative step of creating AppSC, in all likelihood the world's first such App created to promote and defend competition. It was launched in December 2013 with a series of outreach events and media presentations involving influential businessmen and economists. During its first phase, the

Awareness of the competition issue

"These judicial delays undermine the authority of the CS and so we felt we had to do something... There is now greater awareness of what competition is, and of the role of the CS."

— Francisco Diaz Rodriguez
Competition Superintendent

"We needed to prove we were efficient and able to deal with issues... By making the work the CS does more transparent and bringing citizens into the process, we hope to raise awareness of judicial delays and break the judicial silence."

— César Azmitia
CS Digital Manager and Communications Strategist

App's aim is to make the public aware of the many pending appeal cases, to convey the seriousness of these cases and to show how toothless CS enforcement actions become when cases languish in the court and fines remain unpaid.

The AppSC allows users to track, share and comment on those cases that interest them. To do so, the user locates a card with the case's most relevant information; the current status of the fine imposed [paid, not paid, or temporarily suspended]; a brief summary of the case; the key number; public comments made on social networks and a chronology of the case. Through the App citizens are thus able to add their voices to calls for reforms of the judicial process and for greater competition in the economy. The App can be downloaded from the Competition Superintendencia website: www.sc.gob.sv.



The CS's development of the AppSC, with its interactive features, takes forward a long-running advocacy strategy the CS has been pursuing. Recognizing the widespread lack of awareness in El Salvador of the role competition plays in the economy, the CS has for some time put strong emphasis on interacting with the public in a variety of ways so as to increase the public's understanding of competition policy and to build support for its agenda. To this end it devotes approximately 40 percent of its budget to competition advocacy (OECD 2008).

A second phase of AppSC, launched in November 2015, shares information on market studies.

The AppSC is a low-cost vehicle for competition advocacy. The only external costs have been for the hire of a supplier, which cost US\$3,955 for the first phase and US\$2,260 for the second phase.

Impact and lessons

- AppSC has empowered El Salvador's citizens. By informing citizens and providing a digital platform, AppSC enables users to participate in discussions about competition. Up to May 2015 the App had registered 6,100 hits and comments. To reach this many using traditional educational advocacy methods, such as workshops and town meetings, the cost would have been some US\$65,000 (or 65 percent higher).
- It has raised public awareness of how the judicial appeals process thwarts the resolution of competition cases,
- It is making the work of the CS transparent, increasing the understanding of the role it plays in fostering competition.
- In the longer term, the AppSC will help heighten awareness in the country of the extent, frequency and damage of anti-competitive conduct.
- The greater transparency of the CS's activities and accountability will progressively help it exercise its mandate. This will strengthen the case for extending its mandate and remedy-making powers so as to deter firms from engaging in anti-competitive conduct.

Lessons for other competition authorities to be drawn from the impact of AppSC are that:

- *More can be done with less.* Competition authorities do not need to invest a lot of money to promote competition. With constrained budgets, it is essential to leverage the "earned media" through social networking.
- *A digital strategy is key.* The act of embracing a digital strategy changes the thinking within the authority. A CS representative has commented: "We came to understand that what we were doing was for the public."
- *Small is beautiful.* Even a small country like El Salvador (population 6.34 million) — which moreover has endured a decade of political polarization, constitutional battles within the Supreme Court and tepid economic growth — can come up with great products and ideas to advocate for competition.

Milestones

- November 2013:** 54% of the cases sanctioned by the Competition Superintendencia are pending final decision at the Supreme Court of Justice
- December 2013:** First phase of AppSC ("Online Cases") is launched to focus on outstanding court cases
- November 2015:** Second phase of AppSC is launched to include Market Studies.

NEW ZEALAND:

Promoting fair business practices during post-disaster rebuilding

Following the earthquakes in Christchurch and the surrounding Canterbury Region of New Zealand in 2010 and 2011, the competition authority, the New Zealand Commerce Commission (NZCC), foresaw a high risk of anti-competitive behavior when the rebuilding of devastated areas got underway. To forestall this it launched a “one-stop” shop microsite to educate and guide firms in the construction sector on how and why to comply with competition and consumer protection laws.

Key points

- The NZCC considered that the incentives for companies in the construction sector to respect New Zealand’s competition and consumer protection laws would be lessened during an urgency-driven construction boom in earthquake-devastated areas.
- The heightened risk of anti-competitive conduct by construction sector firms called for a pre-emptive advocacy effort.
- The construction microsite fulfilled this purpose and has heightened understanding within the construction sector of competition and consumer protection laws.
- Its success shows the benefit for a competition authority of building relationships with a target audience so as to deliver a specific advocacy campaign when needed.

The competition issue

The NZCC has publicly stated that the construction sector throughout the world is generally held to be open to collusion, particularly to forming cartels.¹² Other anti-competitive practices often alleged against the industry include market-sharing and bid-rigging, particularly cover pricing — a situation where one or more bidders collude with a competitor during a tender process to obtain a price that is intended to be too high to win the contract.¹³

New Zealand’s construction industry — which generates more than NZD30 billion¹⁴ a year in revenue, accounts for 6.3 percent of nominal GDP (2010)¹⁵ and employs over 170,000 or close to 8 percent of the workforce — would be given a tremendous boost by the need for reconstruction in the areas devastated by the earthquakes. The temptation for firms to collude would likely be particularly strong during this period of high and urgent demand for their services to rebuild a wide range of projects, with fewer safeguards operating than in normal times. The business environment, as well as consumers, would be likely to suffer.

The response of the competition authority

The NZCC had identified the construction sector as a priority area for advocacy before the Christchurch earthquake. Initially, independent research had been conducted with commercial firms in the industry on a confidential basis. The NZCC had given the firms interviewed assurances that no enforcement action would be taken as a result of any revelations arising from the interviews. The research not only revealed low levels of knowledge about anti-competitive practices prohibited by New Zealand’s competition and consumer laws, but also showed that cover pricing was occurring.

Following the earthquakes, the case became stronger for an immediate national educational program to raise awareness in the industry about the laws. It was important that public resources devoted to any advocacy initiative reach as many people as

The Canterbury Earthquakes

In February 2011, a magnitude 6.3 earthquake struck Canterbury Region, killing 185 people and displacing many from their homes. The natural disaster caused an estimated NZD40 billion worth of damage. In the central business district of Christchurch alone over 100,000 homes and 50 percent of buildings were damaged or destroyed. The quakes also caused major disruption to the area’s water, sewage, electrical and transport infrastructure.

The New Zealand government has made the rebuilding of the Canterbury Region one of its four priorities and is committed to spending NZD14.9 billion on the rebuild effort. This will be a significant driver of economic growth in this area over the next decade.

¹² NZCC news release, 7 May 2014.

¹³ See, for example, “OECD Policy Roundtables: Construction Industry,” 2008; <http://www.oecd.org/regreform/sectors/41765075.pdf>

¹⁴ <http://www.mbie.govt.nz/what-we-do/business-growth-agenda/sectors-reports-series/pdf-document-library/construction-report.pdf>, pg. 23.

¹⁵ <http://www.mbie.govt.nz/what-we-do/business-growth-agenda/sectors-reports-series/pdf-document-library/construction-report.pdf>, pg. 10.

possible and thus help ensure that reconstruction contracts were efficiently managed and fulfilled.

Through discussions and meetings with government departments, construction trade associations and individual construction and insurance companies, the NZCC concluded that the most effective advocacy tool would be an accessible user friendly guide tailored to suppliers of goods and services in the construction sector. This included trades people, building professionals and builders' merchants. The resultant "one-stop shop" microsite is a straightforward guide to the three pieces of legislation the Commerce Commission enforces: the Commerce, Fair Trading, Credit Contracts and Consumer Finance Acts.

So as to cater to the different interests and attention-spans of users, guidance on the website was broken down into several layers of detail, moving from high-level summaries at the first level and progressively more detailed information at the second and third levels. The website incorporated feedback from test-users to make sure it was easily navigable, successfully used everyday language to explain difficult legal concepts and was user-friendly in layout and design. (Later in 2014 it was selected as a finalist in a national Plain English competition.) The website was rolled out in May 2014 at two separate launch events and was promoted through workshops, webinars, industry newsletters, publications and stories.

Snapshot of website

<http://construction.comcom.govt.nz>

- #### 1 Misleading your customers is illegal

The main purpose of the Fair Trading Act is to protect consumers. You must not mislead your customers or give them false information. But remember, businesses buy goods and services too, so businesses are also protected.

[Read more...](#)
- #### 2 Customers must be able to rely on your quotes and estimates

Providing quotes or estimates to your potential customers is a key part of doing business. A quote is an offer to do a job for a certain price. It's likely to be misleading if you charge more than your quote, unless you have explicitly agreed a variation with your customer beforehand.

An estimate is the nearest price, or range of prices, that you can give your customer based on past experience. All limits and conditions must be clearly spelled out. If there is to be a significant variation from the estimated price, you should make this, and the nature of the possible variation, very clear to your customer. You must make estimates honestly and base them on reasonable grounds.

[Read more...](#)
- #### 3 Misleading consumers about their rights is illegal

You must not mislead your customers about their contractual or legal rights. For example, if an insurance company advises a customer "you're only entitled to a second-hand hot water cylinder" in a situation where the customer's insurance policy entitles them to a new hot water cylinder, this would likely be misleading under the Act.

[Read more...](#)
- #### 4 Unfair contract terms

If you offer standard form consumer contracts to your customers, terms in that contract must be fair. Standard form consumer contracts are typically contracts with standard terms and conditions that are offered on a "take it or leave it basis" where the consumer does not have an opportunity to effectively negotiate the terms and conditions in the contract.

The laws about unfair contract terms apply to any standard form consumer contracts entered into on or after 17 March 2015 and to terms in existing contracts that are renewed or changed on or after 17 March 2015.

Read more about unfair contract terms on our [website](#).
- #### 5 Keep up to date with important changes to the Fair Trading Act

There have been some important changes to the Act that you should know about including additional rights for consumers and obligations for businesses, as well as investigation and enforcement tools for the Commission.

Read more about these changes on our [website](#).

Please note this is a guideline only and should not be used instead of legal advice. Only the courts can make a ruling on breaches of the Fair Trading Act.

Enforcement actions

The NZCC recognizes that no competition authority can rely solely on advocacy but must also show a readiness to enforce competition laws if it is to establish credibility among business communities. During 2014 it completed two substantive investigations in the construction sector, one resulting in a heavy fine for the non-complying company.

Impact and lessons

The website has achieved:

- Heightened awareness among suppliers of goods and services in the construction sector of the competition and consumer protection laws and the risks of not complying with them. The high volume of visitors to the site since its launch (over 19,000 page views), as well as feedback from an industry association, indicate that it is reaching its audience.
- Continuing engagement with the construction industry. The NZCC regularly receives requests for workshops and presentations to discuss competition law issues.
- Fewer instances of cover pricing, according to an industry association survey of its members.

On a broader front:

- The mandate of the NZCC has been strengthened by its successful “carrot and stick” (i.e., advocacy and enforcement) approach to dealing with the construction industry.
- Competition law has been shown to promote a fair business environment for the benefit of local markets and consumers.

Kate Morrison, Competition General Manager of the NZCC summarizes the key lessons: “The most important aspects contributing to the success of this advocacy tool was the fact that we already had existing relationships with the construction sector from which we could leverage. This was vital in helping us to understand what kind of information this audience needed, and in what format, in order to raise awareness and compliance. It was also a major factor in helping us to successfully disseminate the website to the target audience after it was launched. We did this by using our industry contacts with whom we had already built up good relationships and goodwill.”

Milestones

- 2010:** Independent research firm commissioned by NZCC to carry out interviews with construction sector firms on a confidential basis.
- September 2010 and February 2011:** Two major earthquakes hit the Canterbury Region.
- 2011, first half 2012:** NZCC contacts the government department responsible for the building sector, the Department of Building and Housing (now part of a larger ministry); presentations to construction trade associations in the major city centers.
- Second half 2012 and early 2013:** The rebuild of Christchurch gets underway; NZCC presentations to main insurance companies and Christchurch procurement agencies for the post-earthquake rebuild.
- May 2014:** NZCC Construction website goes live, with two separate launch events in Auckland and Christchurch.
- January 2016:** The construction website had received 19,758 page views and over 8,000 visitors.

THEME 3:

Promoting cooperation with relevant public bodies to balance competition goals with other public interests

Winners: Moldova and Singapore

Honorable mentions: Israel, Mexico and South Africa



MOLDOVA:

Leveling the playing field for competing enterprises

A unique on-line portal to track and monitor state aids is levelling the playing field for all enterprises in Moldova by helping to remove the unfair advantage some have been receiving through aid from government agencies.

The portal is serving as an advocacy tool to spread awareness of competition principles and practices among public agencies and to strengthen inter-agency cooperation.

Key points

- In many countries with developing market economies, such as Moldova, some enterprises have been disadvantaged in competing in a market because some rivals have been receiving financial and non-financial support selectively from the State.
- Moldova's Competition Council (CCRM) has tackled this problem by introducing the innovative on-line Moldova State Aid Register (SIRASM) for the reporting and monitoring of all state aid disbursed by all agencies throughout the country.
- The full transparency provided by the portal enables the detection, investigation and elimination of anti-competitive forms of state aid and so creates a level playing field for all enterprises.
- Equally importantly in the long term, the portal also plays an advocacy role among a population not yet fully attuned to all aspects of a market economy to spread the growing culture of competition, particularly within public authorities.

The competition issue

The playing field for all competing enterprises in Moldova has not been level because considerable volumes of government aid of various kinds have been provided selectively only to few enterprises. Non-recipients of state aid have been disadvantaged and competition in many markets has been distorted, with negative consequences for enterprises in terms of efficiency and productivity.

Most of Moldova's state aid schemes are meant to target a broad number of beneficiaries, but lack of transparency has resulted in state aid benefiting only a few market players. Moreover, around 90 percent of state aid is given in the form of tax exemptions and subsidies, which is susceptible to benefitting just a few enterprises.¹⁶ The level of state aid is put officially at around 8 percent of government spending and around 4 percent of GDP, but in practice it is likely to be higher.

The selective granting of state aid is a familiar competitive feature of economies moving towards a market economy. In Moldova, it is among several legacies of the country's former centrally-controlled economic system. Monopolies still dominate a significant part of the manufactured goods market, prices remain regulated for some "socially-important" domestic products, and state-owned enterprises (SOEs) account for some 19 percent of GDP. It will take time for people throughout the country to absorb the mentality and for civil servants to apply the practices needed to manage a competitive market economy.

The response of the competition authority

Faced with the anti-competitive effects of the state aid provided and the little awareness of such effect among many of its administrators, the CCRM perceived that both an effective register of state aid and an advocacy campaign to instill competition principles in its administration were needed. A paper-based system of monitoring state aid would be burdensome, inefficient and open to discretionary behavior, and merely a series of training events on state aids would be a lengthy form of advocacy with little effectiveness.

The innovative idea for developing an online register for state aid (SIRASM) was developed with the help of the World Bank Group. SIRASM provides an automatic procedure for the notification and reporting of state aid granted at both national and regional levels by all central and local state agencies in the country. Registration of users, who are given individual passwords to access the system, began in January 2015.

After some initial training difficulties, mainly related to stakeholders' inexperience with IT and resistance to change, and after a period of training sessions and presentations, stakeholders have embraced SIRASM. All central authorities and 60 percent of local authorities — over 170 agencies in all — are inputting data to the platform. SIRASM has attracted interest from several competition authorities, including the European Commission.

¹⁶ http://www-wds.worldbank.org/external/default/WDSContentServer/WDSF/IB/2014/10/08/000442464_20141008154059/Rendered/PDF/911820BRI0COLL0a0Competition0Policy.pdf

State Aid and Competition Laws

In the situation prevailing in Moldova and in many other countries with emerging and even advanced market economies, the way to deal with anti-competitive state aid is not to ban all state aid. Some types of State aid — for example, general measures open to all enterprises or aid to correct market failures — can bring positive economic benefits and enhance the competitiveness of an economy.

The Law on State Aid, adopted in June 2012 provides for the competition authority to regulate the procedures for authorizing, granting, monitoring and reporting state aid in Moldova.^a It covers all forms of state aid in all sectors of the economy and requires local and state authorities to provide information to a central inventory about the state aid they dispense, and requires that the competition authority to create and maintain a State Aid Register (section 19).

The provisions of the Law are aligned to the rules on state aid of the EU, with which Moldova has negotiated an association agreement.

A comprehensive Competition Law was adopted in September 2012 and also mirrors the relevant provisions of the EU treaties and secondary legislation.^b It is applied in parallel with the state aid law.

a See <http://www.lawyer-moldova.com/2012/10/law-on-state-aid.html>

b See [https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3286024/Competition_Law_nr__183_from_11-07-2012_\(2\).pdf](https://www.energy-community.org/portal/page/portal/ENC_HOME/DOCS/3286024/Competition_Law_nr__183_from_11-07-2012_(2).pdf)

Large stakeholder response

“The key element that resonated with state aid providers was the opportunity to participate in a unique online platform. There was a certain pride that Moldova had developed something original and admired even by European counterparts.”

— Luminita Arama, CCRM

Eliminating Competition-Distorting State Aid

If the CCRM determines that State Aid is not compatible with a competitive environment, the agency administering the aid must cease or adjust the aid and get repayment of the aid already paid out. It may take the agency concerned to court if it fails to follow a CCRM directive (Law on State Aid, Article 13).

Snapshot of state aid portal of Moldova

Impact and lessons

- SIRASM has made the state aid system transparent to all concerned in its administration.
- The detection and investigation of state aid that may be distorting competition are rapidly improving. A level playing field for all competing enterprises is in this way being created. Following the introduction of SIRASM, five new alleged state aid schemes to private and public beneficiaries in energy, agriculture and provision of public service have been notified by the CCRM to ensure compliance with state aid criteria. Aid schemes in airports, PPPs and SEZs have already been analyzed and modified.

- 170 central and decentralized public authorities are exposed to competition principles, getting them to appreciate the importance of balancing competition goals with other public interests and of working with the competition and regulatory authorities to ensure that balance is struck.
- Businesses are more exposed to the growing competition culture. As a result of the CCRM's scrutiny of state aid, businesses receiving state aid are learning about competition principles. Those businesses not in receipt of state aid are finding out about it and may be in line to benefit from it.
- The general public is becoming better informed about state aid. The CCRM issues annual reports on its work in this area.
- Public resources and funds are being saved. The alternative paper-based system of reporting state aid is burdensome, inefficient and more open to discretionary practices. Cost savings in the civil service wage bill amounted to almost 25 percent in the first year of implementation of SIRASM.

Electronic solutions, especially for countries in transition to a market economy...

- ...require cooperation from all participants, efficient planning and deployment of resources to increase IT skills.
- ... help control state spending by lowering costs, increasing transparency, reducing the risks of discretionary behavior and improving the interactions between the government and business sector.
- ... help balance competing goals — but in this respect electronic solutions need to be complemented by strong administrative and enforcement capacity, a comprehensive development strategy and continuous communication between all stakeholders.

Milestones

SIRASM

November 2013: Agreement signed with the International Finance Corporation (IFC) on the provision of technical support for the development of SIRASM; development project started in December 2013.

July 2014: SIRASM presented to the public.

Late 2014: System training and testing conducted.

30 January 2015: First user of SIRASM registered.

Ongoing: Meetings and seminars with local and central state authorities on the competition and state aid laws and on SIRASM.

Legislation

15 June 2012: New State Aid Act adopted (Act No. 139)

14 September 2012: New Competition Act adopted (Act No. 183)

27 June 2014: Moldova and EU sign an Association Agreement (ratified by Moldova on 2 July 2014 and provisionally applied from 1 September 2014).

SINGAPORE:

Preserving the pro-competition benefits of a disruptive technology in new regulatory rules

A timely and well-rounded competition advocacy campaign by the Competition Commission of Singapore (CCS) ensured that a disruptive and controversial technology which stimulated competition — third-party taxi booking apps — was legalized within the regulated public transport market.

Key points

- The regulations for taxi operators in Singapore stipulated that a licensed taxi company must run a call center to take bookings (recently accessible through the apps the companies developed for their own business).
- These established booking networks have not addressed the issue of insufficient supply of taxis, particularly during peak periods, and they inhibit expansion of smaller taxi companies.
- Third-party taxi booking apps, through which customers book journeys directly with drivers working for any of the licensed taxi operators, have recently entered Singapore's market and started to be actively used by customers.
- The CCS found that these apps benefitted both customers, through access to a larger pool of drivers, and taxi-drivers, through an enlarged potential customer base.
- The third-party apps were not regulated although they operated exclusively with licensed taxi drivers. Regulation of the apps by the Land Transport Authority (LTA) was expected and the CCS saw the need for a structured advocacy campaign aimed at preserving as many of the apps' competitive features as possible.
- The new regulations balance the goals of promoting competition in the taxi market while at the same time recognizing the interests of taxi companies and the safety of taxi users.

The competition issue

Singapore's larger licensed taxi companies have had their own taxi booking apps for some time which allows customers to book vehicles via the companies' own call centers. Under the licensing rules, taxi companies are required to provide call centers; customers do not have direct contact with taxi drivers when booking taxis.

This system of booking taxis through a company's own network (or call center) has not been sufficiently effective in alleviating the longstanding mismatch between the number of customers seeking taxis and the availability of vehicles, particularly during peak periods. Yet the resulting network effect can operate as a barrier to the entry of new companies and the expansion of existing ones: Customers tend to favor the networks with the largest numbers of taxis and other customers which gives an advantage to established market incumbents over new entrants.

In transport markets the solution to such network effects has often been to introduce a multi-operator booking system, linking all customers to all competitors, for example flight search engines in the aviation sector. Third-party taxi-booking apps, through which customers communicate directly with licensed taxi drivers, brought multi-operator schemes to Singapore in late 2013. However, these apps were controversial in Singapore as elsewhere in the world and were seen as a disruptive technology impacting a sector regulated by the LTA, the public transport regulator. (This sector excludes private car hire, such as the service provided by Uber, which is currently not regulated.)

Response of the competition authority

Given the tightly regulated nature of the public transport sector, regulation of third-party booking apps by the LTA was inevitable and posed a challenge to their continued existence, or at least to the way in which they were being utilized. The CCS determined therefore, that it would be beneficial to engage with the LTA on the drafting of booking app regulations. The CCS was well-placed in this regard as it had established a close relationship with the LTA over several years.

The CCS's campaign followed a '3Ps' advocacy strategy.

The tenets of the CCS's '3Ps' Advocacy Strategy

1. **PROACTIVE**
2. **PURPOSEFUL**
3. **PRACTICAL**

1. **Proactive:** Following the entry of these third-party app providers into Singapore, the CCS conducted a limited study of their potential benefits and possible barriers to market entry in early 2014. The preliminary findings, based on discussions with taxi drivers and passengers, showed that the apps provided additional choice and more competitive booking fees (set and retained by the app providers) for commuters, and enabled taxi drivers to get additional bookings from sources other than their own companies.

The CCS's study of the taxi industry provided insights which enabled it to engage authoritatively with the LTA. It began an advocacy campaign in June 2014 with CCS's top managers sharing the findings and recommendations of the study with their LTA counterparts.

2. **Purposeful:** The advocacy had a clear objective: to build a compelling argument that pro-competitive policies bring the most benefit in the long run, and to do so quickly so that the LTA had sufficient time to take CCS's input into consideration in drafting regulations.

CCS's arguments to the LTA

- Entry of third-party taxi apps would benefit consumers, taxi drivers and even some taxi companies;
- To facilitate entry, these apps should be able to operate in Singapore with regulatory certainty;
- Call booking standards of taxis companies should be reviewed to mitigate the taxi companies' concerns that they would not be able to meet the standards set by the LTA (in terms of calls served) if their drivers were diverted to serve bookings through third-party apps;
- Third-party apps should be allowed to grow organically based on market forces.

3. **Practical:** The booking apps raised important public policy and consumer safety issues for the LTA. In August 2014, the LTA sought CCS's advice on the draft regulations. CCS recognized that a practical and balanced approach was needed if different viewpoints were to be reconciled. In particular, the CCS considered that price regulation of the apps could restrict their commercial flexibility but it accepted the LTA's case for it.¹⁷ The new regulations on third-party apps came into force in May 2015.

Impact and lessons

Greater competition

- Competition among taxi companies and third-party app providers for bookings of taxi services has intensified.
- Taxi booking apps — both those run by the taxi companies and third-party apps — are being developed with more consumer-friendly features. One third party app provider has opened a research and development center.
- Increased competition benefits taxi drivers, who can utilize third-party apps to pick up fares that would otherwise be missed.
- Customers benefit from the use of a single platform to access taxi drivers employed by different operators. Since third-party apps began operating, the utilization rate of taxis has risen from 65 percent in 2012 to 69 percent as of late 2014, indicating an improvement in the demand and supply of taxis. The taxi-operating companies, through the National Taxi Association, have publicly acknowledged this effect, which is helping them meet taxi-availability requirements.
- Now that the app providers — at least four are currently in operation — are formally legalized, new providers can enter the bookings market. By reducing the network effect, third-party apps could facilitate entry and expansion in the taxi operating market.

Acceptance of disruptive technologies

- By providing information about the benefits of these third-party apps to LTA, the regulators were able consider all the facts and eventually to adopt a light touch approach in regulating them.

Lessons

The CCS has stressed that its advocacy success with the LTA shows that is important to:

- *Do the groundwork.* The CCS's rapid market study enabled it to build a compelling case for competition to present to the LTA.
- *Build trust with regulators.* The timely advocacy intervention was made possible by the relationship the CCS had established with the LTA over several years. Ming Jie, the CCS's Senior Assistant Director of the Policy and Markets Division, has said that relationship management is the key to success in any advocacy strategy. The CCS has set up a division to work with other government departments and agencies to build trust and develop similar long-term relationships.
- *Leverage a good reputation.* A competition authority needs a strong reputation, not only for understanding markets but also

¹⁷ The regulation contains certain fare-related safeguards for commuters.

for competition law enforcement to establish the credibility to run an effective advocacy campaign.

Milestones

- Late 2013:** Third-party apps are introduced in Singapore.
- January–
May 2014:** CCS undertakes limited study of third-party apps; it finds that they have positive competitive impact on the taxi-booking market.
- June 2014:** CCS's top management engage LTA's top management to share CCS's findings. Extensive staff-level discussions and senior management exchanges follow.
- August 2014:** LTA produces draft regulations and invites CCS to advice on them.
- November 2014:** LTA publishes the new regulations for third-party taxi booking apps. These require all third-party taxi booking services with more than 20 participating taxis to register every three years with the LTA.
- May 2015:** The regulations come into force.

Honorable Mentions

THEME 1: Promoting procompetitive reforms that foster growth and reduce inequality

Honorable mentions: Finland, Indonesia and Russia

FINLAND: Leveling the playing field in local markets through consistent application of regulatory procedures

Lack of uniformity in how authorities applied rules to license and supervise commercial activities hindered businesses, especially small companies, from getting started or expanding in a specific market. While examples are generally small-scale, taken together they were found to impact local market dynamics. To address this the Finnish Competition and Consumer Authority (FCCA) launched a nationwide advocacy campaign and reforms to reduce discretionary practices and provide higher predictability for competitors in the market.

The FCCA had received company complaints about non-uniformity in practices and decision-making by authorities across municipalities. In a 2013 business survey, 40 percent of respondents said that discrepancies in official interpretations of regulations had hurt their businesses. Local health inspectors' requirements for equipment in bakeries, for example, would vary from town to town.

In response to these complaints the Advocacy Unit of the FCCA launched the country's first investigation into the licensing and supervisory practices of authorities in the summer of 2013. The aim was to identify possible hindrances to competition caused by the practices and to explore ways to eliminate them. The investigation mainly focused on those sectors in which companies needed licenses from local authorities to operate, including taxi, restaurant, construction, social welfare and health care services as well as the convenience goods and energy sectors.

The FCCA looked for market distortions flowing from discretionary or other actions taken by the authorities in interpreting regulations (without apportioning blame to officials). Particular attention was paid to regional differences. The FCCA intentionally did not consider any distortions directly caused by legislation nor whether licensing arrangements were appropriate in particular case.

A report on the investigation was published in April 2014. It confirmed that discretionary practices by authorities had anti-competitive effects. Market success could be driven by a company's ability to interpret regulations rather than by a company's success as an efficient supplier. The report acknowledged that the unpredictability of official decisions was a deterrent to investment decisions, whenever business models were not regulated consistently and could lead to additional and unnecessary costs for companies which would be passed on to consumers.

Results and impact

The FCCA's report succeeded in its aim of sparking a public discussion. During this advocacy process, several reasons for the lack of coherence in supervisory practices emerged and remedies were proposed:

- Legislation was open to various interpretations and was insufficiently watertight; fuller and frequent clarification of legislation would help remedy this;
- Regulatory processes varied; legislation should be clearer about processes and practices;
- Too many non-binding recommendations and unofficial guidelines at different levels were issued; these should be pruned;
- Agencies were insufficiently resourced; they should receive more funding and officials should receive continuous training;
- Agencies were fragmented; some should be centralized;
- Regulatory Impact Analysis of regulations should be more rigorous;
- Better electronic databases and shared registers of decisions should be maintained.

Licensing authorities have launched joint projects to enhance the uniformity of authorities' practices. One important example of the trend to standardize regulations across regions is the comprehensive liberalization of store opening hours in December 2015. This has eliminated the discretionary treatment in applications for shop opening hours that was hitherto found across regions.

INDONESIA: Promoting market reforms in the domestic aviation sector

Indonesia's Commission for the Supervision of Business Competition (KPPU-RI) has been a consistent advocate of the opening of the market for the country's domestic air services. A successful advocacy campaign in the early 2000s helped the market grow and brought down airfares, and KPPU's efforts to push for further reforms continue.

Anti-competitive regulation of the air transport sector in Indonesia has restricted the full development of domestic aviation with consequent effects on the interests of the economy, the airline industry and passengers. The KPPU campaigns strongly for opening this market, emphasizing that airline connectivity is essential for economic development in such a vast archipelago, that the numbers and reputations of airlines grow when an aviation market is open, and that competitive prices for economy service domestic flights benefit both consumers and the airlines.

The KPPU continues to run a pro-competition advocacy campaign directed at the Ministry of Transportation, business associations, mainly the Indonesian National Air Carriers Association (INACA) and the airline companies, and the mass media. It is conducted through dialogue and headings with stakeholders, official advice and letters to stakeholders and media coverage.

The main points emphasized during the campaign were:

- Successfully to oppose the ability of INACA, under an agreement with the Government in 1997, to fix domestic airline prices in Indonesia. KPPU maintained that INACA's price fixing agreement should be revoked on the grounds that:
 - The price fixing agreement contravened Law No.5 of 1999 prohibiting monopolistic practices and unfair business competition;
 - Business associations should not act as regulators.

- To advise the Government against setting price floors in the sector. (The Indonesian Government sets both floor and ceiling prices for the domestic airline industry. Airlines, depending on the levels of service they provide, may set prices at specified levels in relation to the ceiling price.) In particular, KPPU argues that it is misguided to invoke safety considerations in the setting of floor prices; Indonesia, like other countries, requires all airlines to meet the same safety standards and the Government should ensure that these standards are met rather than intervene in commercial matters. Government should intervene in the market only where there has been a market failure.
- To lobby against unfair business practices, in particular relating to the levying of fuel surcharges, KPPU argued that a standard formula to calculate the fuel surcharge should be set by the Government so as to prevent consumer exploitation through an excessive surcharge.

The KPPU's recommendations have been partially implemented by the Government: In particular, as a result of KPPU advocacy, INACA's right to set prices was revoked in 200.

Results and impact

Following the revocation of INACA's price-fixing privilege in 2001:

- The number of airline companies operating on domestic routes increased significantly — from 7 in 1997 to 27 in 2004.
- Ticket prices came down considerably. They were around 70 percent lower in 2004 than in 2001.
- Consumers benefited substantially. KPPU has calculated that people living on six major routes were approximately 22 trillion Rupiah (US\$2 billion) better off as a result of reduced airfares.

RUSSIA: Ensuring equal opportunities to access critical fertilizer component

Russia's domestic market of potassium chloride is critical for the fertilizer industry and ultimately national food security. The commodity is currently supplied by a monopoly and the Federal Antimonopoly Service of the Russian Federation (FAS Russia) was given the task of developing guidelines for non-discriminatory access to the product. The implementation of the guidelines ensure that all producers of fertilizers can compete on a level playing field.

The production of potassium chloride in Russia is currently monopolized by a single supplier, JSC Uralkali, and the incumbent is protected by high economic entry barriers. As a raw material for various fertilizer types, the terms by which producers of fertilizers access potassium chloride determines their ability to produce and sell their fertilizers at competitive prices. JSC Uralkali is also a major exporter, with 90 percent of output sold abroad, and a producer of fertilizer itself. Russia's anti-monopoly authority, the FAS, has a long tradition of supervising the market and ensuring that the domestic market is adequately served.

For five years, buyers of the raw material had been complaining about pricing and allocation of potassium chloride. In particular, parties alleged that Uralkali had been imposing discriminatory conditions on certain market players in the fertilizer sector, undermining the competitive dynamics. FAS' efforts to resolve the individual cases were time- and resource-consuming. A new situation for the industry was created by Russia's accession to the World Trade Organization (WTO) in 2011. Membership required that domestic prices for raw materials were not substantially different from prices in foreign markets so as to ensure that the market was open for global trade. This was an opportunity to start proactively averting anti-competitive access conditions by the monopoly commodity supplier.

The Russian Government instructed FAS, under its remit to prevent anti-monopolistic activity, to develop formal Recommendations relating to non-discriminatory access to potassium chloride for purchases on the domestic market. These Recommendations have the effect of a regulatory instrument which prescribes certain features of market behavior but ensures firms that their practices will not be questioned under anti-monopoly legislation.

Between 2010 and 2012, the FAS worked up the following recommendations:

- Procedures, timelines and terms for purchases of potassium chloride should be non-discriminatory, enable consumers of this commodity to compete fairly, and prevent any unjustified refusal to supply by the single producer of potassium chloride; and
- Prices of the product for the domestic market should be based on minimum export prices, so as to prevent high monopolistic prices within Russia.

FAS had collaborated with the relevant Ministries, and had also involved the largest industrial consumers and agricultural firms, in developing the recommendations, as well as briefing the Russian Government on progress and keeping the mass media informed. Following the Russian Government's approval, the FAS recommendations were disseminated among market participants. JSC Uralkali then developed its marketing policy for sales of potassium chloride in the Russian domestic market and agreed on it with the FAS.

Results and impact

The explicit rules on non-discriminatory access to potassium chloride — a key input product for the fertilizer industry — are now enabling all market players in the fertilizer sector to compete on a level playing field and to offer agricultural producers better deals for these agrochemicals. The FAS expects that this had further positive spill-over effects on the country's food security.

THEME 2: Promoting awareness of benefits of competition in a time of crisis

Honorable mentions: Greece, Iceland and Portugal

GREECE: Revitalizing domestic markets through multi-sector regulatory reform

Advocacy efforts by the Hellenic Competition Commission (HCC) in response to the financial crisis led to revisions of legislation and repeal of provisions that restrict competition.

Enterprises in Greece have long faced a myriad of regulations in important markets that have inhibited them from competing freely with each other. In an effort to cut back on anti-competitive provisions in these regulations, the HCC launched a set of targeted advocacy initiatives aimed at government agencies. It had seen the need for these initiatives and in general for a more expanded advocacy program as a result of the ongoing financial crisis which had exposed the structural rigidities and inefficiencies that thwart the country's economic recovery.

In its advocacy campaign to lower regulatory barriers to competition, the HCC joined with the Organisation for Economic Co-operation and Development (OECD) in using the OECD Competition Assessment Toolkit, which provides a method for identifying unnecessary restraints on market activities and develops alternative measures to achieve the same government policy objectives underlying the restraints.

The first joint assessment in 2013 focused on four key sectors (retail, food processing, construction materials and tourism) representing 21 percent of GDP and 25 percent of total employment. Using the Toolkit methodology, the team reviewed more than 1,000 pieces of legislation, identified 555 problematic regulations and made more than 320 recommendations on legal provisions to be amended or repealed. Some of the key recommendations included:

- Abolishing the requirement to seek price approval or price notification;
- Fully liberalizing Sunday shop opening hours;
- Lifting the five day restriction on the shelf life of milk;

- Liberalizing prices of over-the-counter medicines;
- Relaxing regulations on shop promotions and discounts.

Following publication of the report, the Greek Government announced its intention to adopt 80 percent of the recommendations. An initial estimate based on partial implementation of recommendations (66 out of 329) suggested net gains for the economy of approximately EUR5.2 billion. By mid-2014, 237 of the 320 recommendations had been fully implemented and most enacted into law by parliament (Act No. L 4254/14) according to IMF estimates.

A second assessment, conducted by the HCC alone, reviewed existing laws and regulations in professional services during 2011-2013, and led to the issuing of more than 20 formal opinions identifying various regulatory obstacles. The HCC's work in this area was prompted by the adoption of a law on professional services (Law 3919/2011), which on the one hand required abolition of restrictions on fixed minimum fees, and replacement of licensing systems with new simple notification measures, and on the other hand entrusted HCC with the evaluation of when to maintain or reintroduce restrictions based on overriding public policy objectives. HCC carefully evaluated which restrictions would be proportional to achieving the desired professional services standards. Following the adoption of HCC's balanced recommendations, three-quarters of nearly 350 regulated professions had been opened to competition by 2013.

Results and lessons

According to Dimitrios Loukas, Vice-Chairman of the HCC, the most important factor in undertaking competition impact assessments is gathering timely economic sector data in order to conduct rigorous economic analysis and demonstrate to businesses that the gains from lifting restrictions are sizable. A well-structured communication strategy is also necessary to promote these findings and manage the conflicting expectations of stakeholders.

ICELAND: Flexibly reacting to competition challenges in the wake of a financial crisis

During a major financial crisis, advocacy by the Icelandic Competition Authority (ICA) of an innovative approach to competition policy won Government support and was central to official efforts to speed up economic recovery.

Competition enforcement and promotion faced unprecedented challenges in Iceland after the financial collapse of October 2008. Major banks had gone under and some other banks had been taken over by the State. The economy was hit by a stock market crash and liquidity and currency crises. Most Icelandic firms were in serious financial difficulties. Many had come directly or indirectly under the ownership of their state bank creditors. Thereby, in practice certain banks held indirect control of two or more competitors in the same markets. This posed challenges for effective competition but in such crises, calls grow strong for competition policy to be set aside. In a proactive way, the ICA rose to the challenges by adopting innovative strategies and becoming the key advocate for the use of competition-promoting measures to speed up economic recovery.

The advocacy program had been developed by the ICA, within a few weeks and with a staff of just 22, after a rapid analysis of other countries' financial crises and consultations with leading academics in order to draw lessons about which policies worked and which didn't. The conclusions were clear: setting aside competition policy in the midst of financial sector collapse prolonged and intensified the crisis; the effect of removing barriers to market entry and opening up markets for new competition was to speed up economic recovery.

The ICA's advocacy strategy confronted both the growing consolidation of control among fewer market players and at the same time promoted the reduction of entry barriers to allow for potential new market players to enter. This approach was successful and competition policy became the cornerstone of broader government policy.

Results and lessons

The key subjects of the advocacy strategy were:

- **Incorporating competition concerns into public decisions.** The ICA formally asked banks and public authorities to undertake a competition impact assessment when deciding onto refinance business undertakings.
- **New and unconventional merger rules.** Notification of all mergers, where the combined turnover amounts to ISD 2 billion (US\$20 million) or more, is obligatory in Iceland and as transitory measure, competitive effects of bank ownership on a commercial concern were evaluated in each merger investigation. This was introduced through a ruling by the Competition Appeals Committee. Detailed conditions for the banks' ownership of specific companies were then imposed. The conditions were applied even if the horizontal mergers would usually be unlikely to lessen competition, but as a special consideration to the unprecedented circumstances in Iceland.
- **The removal of entry barriers and the opening of markets.** Within a few weeks the ICA had analyzed 15 significant markets, including food and transport, identified over 120 obstacles facing firms starting or expanding operations and proposed over 90 remedies (See Report No 2/2008). Special focus was placed on financial markets because the banks owned most firms and the currency crisis adversely affected most businesses.
- **Firm enforcement of competition rules.** Enforcement is an integral part of the ICA's advocacy policy since it shows the Authority must be listened to. It made it clear that banks and businesses would not be allowed to transfer to consumers the costs arising from their bad management. Firm enforcement of competition law in Iceland, moreover has contributed to 0.6 percent to Iceland's annual GDP since 2005.

Although the impact of its advocacy initiatives during the crisis has not yet been evaluated, the ICA believes that these played a critical role in the relatively speedy recovery of the economy. "A time of crisis is not the time to back away from promoting and enforcing competition," the ICA's Hilmar Thordarson, has said; without a clear competition strategy the Icelandic economy would have faced increased protectionist pressures.

PORTUGAL: Developing a competition culture to aid economic recovery

The competition authority, with government endorsement, affirms that competition is a key structural factor for the country's economic recovery, but that many business people are not aware of this. It therefore launched a major competition advocacy campaign to promote the benefits of competition, and the importance of compliance with competition rules.

The Portuguese Competition Authority (PCA) saw that a lack of awareness within the business community of the benefits of competing fairly within a strong legal and regulatory system was holding back the development of a fully competitive economy and hampering the country's recovery from its post-2010 economic crisis. SMEs in particular failed to be aware of competition law and practices, mainly because many lacked the resources to employ legal advisers.

As Maria João Melicias, Member of the Board of the PCA, said, "... incentives to compete are not embedded in our culture, therefore we need to disseminate a competition culture and change mindsets." The PCA accordingly launched a campaign entitled, "Fair Play – With Competition Everybody Wins," to raise awareness of the benefits of competition, and the importance of compliance with competition rules. Additional goals for the PCA were to build relationships with the business community, raise awareness of the role of the PCA in the Portuguese economy and reach out to a wider range of stakeholders: the legal community, academics and consumers.

The Portuguese Government lent its support to the PCA's advocacy program. This was crucial. Without the support of the Government, it would have been more difficult to get across the message that competition is a key structural factor for the re-launch

of the economy, and the reinforcement of the competitiveness of the Portuguese economy after the crisis.

"Fair Play" is the first initiative of its kind for the PCA. A team of 25 was set up to develop an extensive set of advocacy materials including a dedicated website, and an animated "Fair Play" film produced to explain the benefits of competition and the prejudicial effects of anti-competitive behavior. Print and digital materials — for example a booklet on leniency for those confessing to cartel activity — were developed internally by experienced staff and distributed at roadshows and made available online. "Fair Play" sessions were held in eight cities in partnership with ten business associations that provided the venues as well as support staff and marketing. The campaign was publicized nationally through television and print media and received endorsements from the European Commissioner for Competition and from the Portuguese Prime Minister.

Results and lessons

The campaign reached its target audience: over 500 people registered to participate in the roadshow sessions, over 2,300 viewed the video and 35 news stories were published in national and regional newspapers.

According to the PCA, the recent Global Competitiveness Index of 2015, published by the World Economic Forum, shows that the perception on the effectiveness of competition policy in Portugal increased in 2014/2015. Portugal improved its position in the areas of the Index related to competition. The World Economic Forum highlights that Portugal made significant strides in bolstering competitiveness.

The PCA believes this is an indication that the country has embraced the competition message even if it can't take full credit for this development.

THEME 3: Promoting cooperation with relevant public bodies to balance competition goals with other public interests

Honorable mentions: Israel, Mexico and South Africa

ISRAEL: Bringing about regulatory solutions to address lack of competition in electronic payment services

Bringing about the wider use of debit transactions in the payment card sector required the Israeli Antitrust Authority (IAA) to collaborate closely with sector regulators and other stakeholders. Its advocacy strategy towards them resulted in the adoption by the Government of many of the IAA's recommendations and in thus tackling market inefficiencies that are costing Israel over US\$100 million annually.

While the use of electronic payment means is prevalent in Israel, customers have been discouraged from using immediate debit transactions (as opposed to deferred debit transactions) when buying goods and services in Israel because of structural peculiarities in the payment card market. Merchants pay a relatively high fee for accepting immediate debit payments, and customers pay a per-transaction fee on some forms of debit transactions. The feature of debit card payments (immediate and deferred), whereby funds are deposited in merchants' accounts within a few days of the transaction, is common elsewhere but rare in Israel.

The IAA considered that a wide use of immediate debit cards, as commonly used in most other developed countries, would benefit consumers as well as merchants, especially small merchants. As the IAA's mandate became aligned with the government's broader economic mission, the IAA also considered the benefits in terms of reducing the cost of living in Israel, reducing the use of cash and curbing the size of the shadow economy.

It therefore undertook an extensive market investigation that identified barriers to competition in immediate debit card transactions. After an initial consultation paper, an advocacy campaign was mounted to solicit comments from stakeholders in Israel, including designated regulators, before reaching a set of agreed remedies. As part of this advocacy strategy, the IAA undertook a comparative analysis of payment markets in other countries. The report received a good deal of attention given the relevance for the

cost of businesses and, according to Dr. Dana Heller of the IAA's Competition Division, this helped to make stakeholders receptive to the proposed remedies. The IAA published its final report on the investigation in September 2014.

The IAA has been involved in the regulation of the payment card industry for over a decade, including supervision of interchange fees (through court decision) and the operation of the single local payment card switch. The policy recommendations in its final report called for action by other public entities, such as the Bank of Israel and the Committee to Examine Reducing the Use of Cash in Israel's Economy. The IAA recommended:

- Setting a separate interchange fee rate for debit transactions;
- Instructing banks to offer "immediate" debit card payments;
- Prohibiting banks from charging customers a transaction-based fee for immediate debit transactions (as opposed to a monthly fee);
- Examining the possibility of performing debit transactions on the existing ATM switch and thereby enabling an alternative backbone infrastructure for payment services.

Results and impact

The Bank of Israel, as well as an inter-ministerial team and the Israeli Cabinet, have adopted many of the IAA's recommendations which are expected to enhance competition and consumer welfare through the use of more payment options — specifically a wider use of immediate debit cards. Merchants, particularly small businesses, will be able to compete more effectively thanks to lower cash-handling costs and reduced fees for accepting electronic payment means.

An IAA study concluded that the payment market has major influence on the wider economy, and reducing market inefficiencies could provide a stimulus of over US\$100 million annually. In addition, increasing debit transactions is expected to reduce cash usage and will aid efforts to reduce the scope of the shadow economy.

MEXICO: Preventing rules that limit competition in the first place

Mexico's Federal Economic Competition Commission (COFECE) successfully worked with the Federal Commission for Regulatory Improvement (COFEMER) to ensure that competition issues are taken into account when new regulations are being drafted. As a result of their joint advocacy effort competition assessments are now an integral part of the mandatory system for the clearance of all federal regulations before they are issued. As one of the results, reforms in the energy sector in 2014 included pro-competition solutions.

Numerous regulatory barriers to competition — stemming from laws, regulations, and administrative practices — harm consumers and businesses in Mexico. According to a recent OECD report, the country ranks 31 out of 33 OECD and BRICS economies in terms of regulatory barriers to product markets.

Promoting competition is a national priority as laid out in the National Development Plan 2013-2018. Yet until early 2013 there was no effective mechanism for reviewing draft regulations at the federal level that threaten competition in specific markets.

Mexico's competition watchdog, COFECE, recognized that it needed to develop a competition advocacy program aimed at the relevant regulatory bodies to promote the use of its expertise in competition policy and practice in the analysis of a draft regulation before it became enacted. It worked closely with COFEMER — the Better Regulation Authority in charge of reviewing all draft regulations proposed by federal agencies to ensure that their impact in terms of social benefits outweighs their costs. This process of analysis and approval by COFEMER is mandatory for all ministries and regulatory bodies.

In 2013, the two supervisory bodies signed a formal agreement to include the competition assessment as a specific component of the ex-ante Regulatory Impact Analysis (RIA) regulators must use in the rule making process. The consideration of competition issues in a RIA now proceeds in three stages. First, government bodies preparing a regulation must complete a Checklist of Competition Impact. Secondly, if this indicates that the proposed regulation has any effect on competition, it is sent to COFECE for a competition assessment. Even if threats are not detected through the initial checklist, COFEMER may sometimes submit a draft to COFECE for an assessment. Thirdly, if a threat to competition is confirmed, COFECE's board makes non-binding recommendations to COFEMER within 7-20 working days for amendments to be considered.

Key to ensuring that the initial checklist is accurately completed and that any recommendations by COFECE are taken on board by COFEMER was technical coherence and capacity-building. Jointly, the institutions have trained 800 federal and state officials already and COFEMER is conducting individual capacity building training with regulatory agencies.

Results and impact

Since 2013 over 80 regulatory proposals have been submitted for comment by COFECE under the approval mechanism. COFECE's opinions include full explanations of the proposed regulation's effects on competition and are expressed in terms that other government entities can readily understand and act upon. In the energy sector, for example, COFECE recommended not to unduly limit the set of potential partners with State Enterprises for hydrocarbon exploration and productions; to limit the use of exclusivity rights on natural gas pipeline distribution permits and to ensure a competitive process in the Electric Power Industry. These three recommendations set the basis for the new sector regulations enacted in 2014.

SOUTH AFRICA: Using stakeholder advocacy to promote banking reforms

Consumer and competition concerns in the banking sector led the Competition Commission of South Africa (CCSA) to undertake an assessment of the industry which led to the development of 28 recommendations to improve competition in the banking sector. The implementation of these recommendations required a substantial advocacy campaign among stakeholders. A 2014 review found that not only had public authorities implemented many of the recommendations but the banks had also changed their market behavior.

In 2006-2008 the CCSA held a wider market enquiry¹⁸ into the banking sector to identify consumer and competition concerns. Customer concerns have focused on high banking fees, a lack of transparency for different types of fees, and difficulties in switching accounts between banks. Competition concerns have focused on governance-structures of card payment schemes and access to the national payment system which has allowed incumbents to hinder entry by new competitors. These factors have deterred further financial inclusion of consumers. This first CCSA study was devised following extensive consultations with stakeholders in South Africa as well as with the UK's competition authorities, who have vast experience with payment systems competition issues. In a highly inclusive approach, CCSA set-up an independent and balanced panel to which submissions were presented in writing and through public hearings.

The Banking Enquiry resulted in 28 recommendations to improve competition in the banking sector. The CCSA conducted a wide-ranging program of advocacy to engage with the key stakeholders that would be responsible for acting on the recommendations and moving them forward. These included the National Treasury, the South African Reserve Bank (SARB), the Department of Trade and Industry (DTI), card associations, regulators, and consumer and civil society organizations. An interdepartmental process with the National Treasury as overseer was set up to expedite the implementation of the recommendations.

Recommendations focused on three areas:

- Consumer related services and transaction fees – this included fees for rejected debit orders, the transparency and

comparability of transaction fees and the ability of customers to switch bank accounts

- Interchange setting – the setting of ATM and card interchange rates (for debit, credit and hybrid cards), with a focus on transparency and the governance of setting interchange rates
- Access to the national payments – this covered restrictive rules placed on non-deposit taking banks, access to payment systems of non-banks, governance of the Payments Association of South Africa that controls access to national payment systems.

Results and impact

In 2014 the CCSA undertook a review to assess the implementation status of the recommendations. The review found that at least 10 recommendations were fully implemented and resulted in tangible benefits for customers in South Africa. Regulatory intervention was not required in all cases and advocacy itself induced a change in behavior by market players. Important developments in the sector include:

- Retail banks reduced charges on rejected debit orders voluntarily and eliminated the no cash-back rule,¹⁹ switching of accounts has been improved, and pricing of products has also become more transparent.
- The Central Bank now regulates interchange rates for ATMs and payment cards.
- Financial inclusion grew from 51 percent in 2006 to 75 percent in 2013.
- The price of monthly packaged bank accounts declined by 26 percent to R52 (US\$5).
- The market share of small competitors increased from 8.1 percent in 2010 to 11.4 percent in 2012.
- Penalty fees on rejected debit orders by retail banks were dramatically lowered.

CCSA representatives say that the most notable lesson learned from the market enquiry was the importance of proper consultation with relevant stakeholders, especially if the stakeholder is the regulator responsible for implementing the competition authority's recommendations.

18 An "enquiry" so-called because the CCSA did not have sufficient investigative powers at its outset to qualify as a "market inquiry," which is now a formal process under the South African competition regime.

19 The cash-back rule means that shoppers can draw cash at point of sale terminals at a cheaper rate than they would at ATMs.

Key Lessons Learned

The systematic assessment of the recent trends and developments in competition advocacy and the specific examples of this year's Competition Advocacy Contest have brought to light important lessons:

How advocacy tools are used is more important than whether they are explicitly included in the legal framework. Across the globe a general mandate to promote competition has been a sufficient basis to build a successful competition advocacy track record. While a more specific mandate for a particular advocacy tool (such as opinions or market studies) can be helpful for young authorities, it is by no means sufficient to achieve impact on markets.

Market studies can be helpful but must be *problem-oriented, narrow and actionable*. While market studies are by now a standard task for many competition authorities, their effectiveness in promoting more competitive markets varies widely. Those that have transformed paper into action have built on a particular concern (such as a complaint by businesses about access to wholesale sugar markets), focused on a narrow segment of the sector (such as immediate debit card payment), understood the dynamic relationship with the industry (by involving an independent panel to receive submissions), and offered clear and feasible reform options (such as regulation of third-party booking platforms).

Measuring what advocacy strategies can achieve and have achieved makes efforts tangible and any mandate more credible. An opinion on a specific legislative instrument will only resound with policy makers when it is attached to a figure reflecting the gains to be made from following the opinion, in terms of investment, savings, or growth. Authorities gain credibility and support when demonstrating the results after the reform. Competition effects are not only reflected in price changes, but often in access to services (mobile subscribers) or increased connectivity to international markets.

Economic crises or disruptive innovations are challenges and opportunities at the same time. A changing political or economic environment often has major effects on markets and brings a chance for competition authorities to influence discourse and decision-making. Authorities such as those in Iceland have made a difference by presenting well-grounded and technically solid analysis of how market features and regulatory environments interact and affect competition dynamics.

Changes to market and regulatory environments are happening faster, and this is where long-term engagements with regulators and industry play out. Successful responses to a new service-model or a suddenly heightened risk to anti-competitive practices typically leverage previous knowledge of the sector and its stakeholders. Knowing how construction companies compete and collude helped authorities to put in place effective preventive measures after an earthquake and a sudden peak in demand. Driving pro-competitive change in the taxi industry is best done on the basis of a long-standing collaborative relationship with the transport regulator.

Effective advocacy is targeted and content-driven. Authorities now tend to combine awareness raising advocacy tools with specific objectives, such as compliance. Chile showed how to implement an effective self-compliance mechanism that reduces opportunities for collusive behavior by issuing detailed guidelines on the role of business associations and competition law. After enacting its competition law, Kenya's awareness-raising campaign was not designed as a general introduction to competition policy but was focused on informing business associations about the temporary program through which they could come forward voluntarily, align their internal statutes and rules with the new legal provision and therefore avoid substantial sanctions for anti-competitive behavior. With a clear message and a specific objective, Kenya's authority effectively dismantled numerous cartels in just eight months.

Impact of competition advocacy initiatives

The most measureable impact of a successful advocacy campaign can be the benefits to consumers and businesses. *For consumers, competition advocacy initiatives that ensure firms have the right incentives to provide more goods and services at competitive prices directly increase their welfare.* Such interventions often have an additional distributional impact by improving market outcomes of goods that are key for the consumption basket of the poor. This is the case 16 percent of the time among the winners and honorable mentions of 2013/14 and 2014/15 Competition Advocacy Contest (see Figure 7). For example, the intervention in the healthcare market by the competition agency in **Kenya** to prevent a substantial increase in service charges saved consumers around US\$1.7 million a year. *For businesses, competition in input*

markets reduces costs improving competitiveness of downstream markets. Competition in input (upstream) markets — such as transportation, financial services, and energy, telecommunications, and construction services — is a key driver of efficiency and productivity growth in downstream markets.²⁰ Domestic competition in these sectors also fosters export competitiveness.²¹ Twenty percent of the advocacy stories awarded so far provide more practical evidence of these effects.

When advocacy initiatives target essential services sector, then benefits often accrue to consumers and businesses at the same time. In 64 percent of the cases, the advocacy initiatives targeted sectors such as transport, telecom and construction where both consumers and businesses stand to gain from increased coverage, reduced costs or simply open markets for key services for a modern economy, particularly linked to logistics and cross-sectoral services. For example, airline ticket prices for domestic flights came down by 70 percent in **Indonesia** following an advocacy campaign by Indonesia's Commission for the Supervision of Business Competition, significantly benefiting people living and working on the major routes. **Israel's** reform of the immediate debit card payment segment will help reduce market inefficiencies in the payment market estimated to be costing the economy US\$100 million a year.

The impact of advocacy initiatives staged by the commended authorities in the earlier 2013/14 contest have been documented in a previous publication.²² Since then, their efforts have continued to transform key national markets. In **Chile**, an independent impact evaluation of the Guidelines for trade associations drawn up under the advocacy program conducted by the National Economic Prosecutor's Office (NEPO) found that 95 percent of respondents said that the Guidelines had succeeded in spreading a competition culture and that 84 percent of respondents belonging to a trade association had amended their information exchange policies to comply with competition law. NEPO's work to promote a competition culture within business and particularly to get trade associations to comply with competition rules continues through a combination of enforcement and advocacy actions, and has been adopted by several other competition agencies in the Americas.

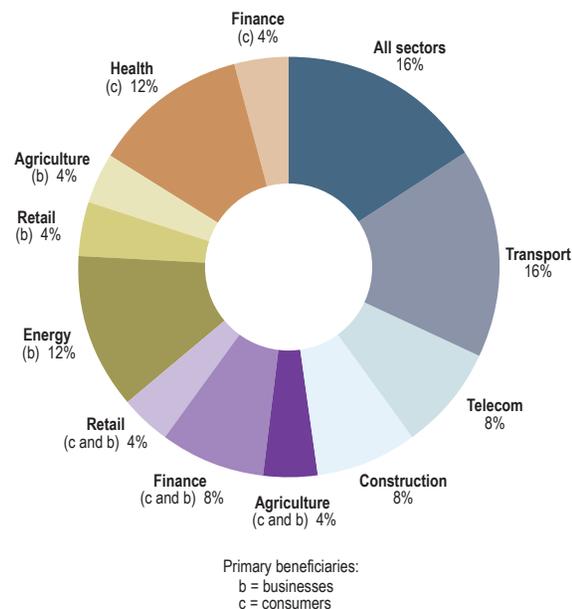
The success of **Colombia's** Superintendence of Industry and Commerce (SIC) in ensuring a level playing field in the auction of 4G spectrum for mobile communications, and so allowing new entrants into the market, has stimulated significant market growth,

20 Kitzmuller and Licetti (2012).

21 Goodwin and Pierola (2015).

22 *The Competition Policy Advocacy Awards: Changing Mindsets to Transform Markets: Lessons Learned from the First Annual Awards on Competition Policy Advocacy*, World Bank Group, 2014.

FIGURE 7. Distribution of competition advocacy stories by targeted sector



Source: Author's own calculation.

increased business connectivity and benefits for consumers. According to a 2015 SIC study, consumers should benefit considerably from price reductions with up to US\$56 million savings on mobile internet charges. Competition is not only about an effect on prices — in Colombia, increased output and market access were other relevant benefits of more intense competition. In 2014, the overall number of mobile internet users increased by 22 percent and the two new market entrants have gained increasing numbers of subscribers. This is even more relevant since this facilitates business services for small and medium size entrepreneurs that use telecommunications to connect with suppliers and customers, access market info and carry out transactions. Success like this one highlights the impact that lifting restrictions on competition might have on competitiveness of particular industries, sectors, and even countries.

Through advocacy, competition authorities have also increased the quality of government interventions in markets and reduced its unintended distortive effects on markets.

The **Egyptian** Competition Agency (ECA), following its global advocacy strategy to foster a more competitive market by limiting government intervention and spreading a competition culture, is playing an increasingly central role in supporting the country's economic development. It has significantly influenced policy making and practices in several economic sectors — key for both

competitiveness and social purposes — including electricity supply, tourism, shipping, raw leather and health care. Amendments in 2014 to Egypt's Competition Law have strengthened the ECA's powers, amongst others mandating that it be consulted on any draft laws and regulations likely to harm competition. The role of competition in market reform was recognized by the inclusion of a competition pillar and related technical assistance and implementation support in the multi-billion lending program negotiated between the Egyptian Government and the World Bank Group.

The break-up of a price-fixing and market sharing cartel between the **Pakistani** and Saudi Arabian State-owned airlines was significantly influenced by an advocacy initiative by the Pakistan Competition Commission directed at the Government Ministry overseeing civil aviation. The air services agreement between Pakistan and Saudi Arabia had been amended to allow two new airlines from each country to enter the market and provide direct services during the Hajj. Following these pro-competitive changes to the agreement, in 2015 27 percent more citizens than in the previous year took advantage of air travel for their pilgrimage, over 18 percent of the pilgrim passengers were carried by the two new market entrants and pilgrimage passengers enjoyed 10 percent lower fares in 2015 than in 2014.

Among the honorable mentions, the Competition Superintendence in **El Salvador** has continued to liaise with public offices to prevent anti-competitive provisions, and most recently, has made specific

recommendations in the market of liquid fuels to increase competition. In Mexico and South Africa, advocacy to fight bid-rigging in public procurement tendering has produced palpable results. In **Mexico**, a consolidated purchasing program in the health sector has saved around US\$185 million. In **South Africa**, the Competition Commission has applied the Construction Fast Track Settlement process over recent years, finalizing five settlement agreements in 2014-15 and referring non-cooperating firms to the Competition Tribunal for prosecution. A key message of **Turkey's** advocacy program — to raise the awareness by government officials engaged in the privatizations of State enterprises of the vital need to ensure that the privatized market could not be monopolized — was reinforced by a 2015 report on the electricity wholesale and retail markets. Not only Colombia's, but also **Moldova's** advocacy in partnership with the telecommunications regulator was successful: Improving market transparency led within one year to a doubling of the internet traffic via mobile telephony and a six-fold increase in 4G service users.

How do these individual benefits to consumers and businesses transcend to broader development objectives? Table 1 concludes how each and every of the stories has not only shown tangible impact but contributed to broader economic growth and consumer welfare, in particular of those more in need. This is how competition ultimately improves public health, increases financial inclusion, and how it allows industries and economies to become more competitive to create more and better jobs.

TABLE 1. Relation of competition advocacy initiatives and broader development goals

Contest Year	Country	Observed impact on market competition	How competition translates into economic growth through higher productivity and more competitiveness	How competition ensures that benefits accrue to consumers and bottom 40% of the population
2013/2014	Colombia	US\$56 million savings on mobile internet charges and 22% more mobile internet users	Digital dividends from mobile internet : Higher productivity of businesses	Digital dividends from mobile internet : Citizens with better access to jobs and opportunities; benefit from better government delivery of services
2013/2014	Moldova	Mobile internet traffic doubled and 4-fold increase in 4G users		
2014/2015	Kenya	Consumer savings of around US\$1.7m per year in health services	Higher firm-productivity through more competitive inputs	Improved public health
2013/2014	Mexico	Savings in health sector of \$185m		
2013/2014	Egypt	Pro-competition regulatory reform, e.g. in electricity supply, shipping, tourism and healthcare		
2013/2014	El Salvador	Pro-competition policies in liquid fuels	Higher firm-productivity through more competitive inputs	
2013/2014	Turkey	Pro-competition government intervention in electricity sector		
2014/2015	Russia	Non-discriminatory access to essential commodity input for fertilizer	Better access to inputs for more competitive final products	Improved food security
2014/2015	Malawi	Greater and non-discriminatory access to sugar		
2014/2015	South Africa	Heightened competition in the banking sector reflected in lower prices for consumer products	Improved access to finance	Increased financial inclusion
2014/2015	Israel	Reduction of inefficiencies in payment services markets costing US\$100 million per year	Higher productivity of retail markets	
2014/2015	Finland	Comprehensive liberalization of shop opening hours		Increase and more flexible access to basic goods
2014/2015	Greece	EUR 5.2billion net gains for economy from regulatory reform, e.g. in retail sector		
2013/2014	South Africa	Anti-competitive practices tackled in construction sector	Better value for money in public works	
2014/2015	New Zealand	Fewer instances of bid rigging in construction sector		
2014/2015	Singapore	Greater efficiency in taxi matching rates and innovative customer services	Greater mobility for workers and tourists	
2013/2014	Pakistan	27 % more travelers on pilgrimage route and 10% lower air fares for pilgrims	More efficiency ensuring that government intervention (incl. through SOEs) does not distort the level playing field	
2014/2015	Indonesia	Reduction of domestic air fares by 70 percent		
2014/2015	Iceland	Heightened supervision to merger cases to avoid ownership concentration through (state) bank creditors		
2014/2015	Moldova	170 public authorities reporting state aid through portal		
2014/2015	El Salvador	Civil society aware of judicial delays in competition cases		
2014/2015	Portugal	Public opinion towards role of Competition Policy has changed	Economy-wide strengthening of competition policy promoting productivity in key markets	
2013/2014	Chile	Majority of trade associations changed information exchange policies		

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