



# Experiences with Competition Assessment

COMPETITION COMMITTEE

# **Experiences with Competition Assessment**

**Report on the Implementation  
of the 2009 OECD Recommendation**

2014



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## FOREWORD

In 2009, the OECD Council adopted the Recommendation on Competition Assessment which sets out the purpose of competition assessment and recognises that competition promotes efficiency and produce benefits such as lower prices, improved quality, increased innovation and higher productivity. It also recognises that at times public policies can unduly and unnecessarily restrict competition and that such policies could be reformed in a way to promote market competition while achieving the original public policy objectives. As a result, this 2009 Recommendation suggests that, if they had not already done so, Member countries introduce a mechanism for the identification and possible revision of existing or proposed public policies and measures that unduly restrict competition. It proposes a process for embedding competition assessment within the policy making process, together with a number of practical suggestions for how an effective competition assessment might operate.

The OECD Competition Committee which serves as a forum for sharing and reporting on experiences of Members and non-Members that have associated themselves with this Recommendation has launched a survey to get an overview of competition assessment frameworks. Based on the findings of this survey, which showed that the 2009 Recommendation has been very successful in promoting competition assessment, this report concludes that the Recommendation remains important and relevant, and that the Committee should continue to develop the Competition Assessment Toolkit. The 2013 OECD Competition Assessment review in Greece provides a good illustration of that usefulness and relevance.\*

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\* OECD Competition Assessment Reviews: Greece (2014), available at: <http://www.oecd.org/daf/competition/greece-competition-review-2013.htm>



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## 1. Introduction

### 1.1 *Background to the report*

On 22 October 2009 the Council of the OECD adopted a Recommendation on Competition Assessment, hereafter referred to as “the Recommendation”<sup>1</sup>, suggesting that, if they had not already done so, Member countries introduce a mechanism for the identification, and possible revision, of existing or proposed public policies and measures that unduly restrict competition. The Recommendation built on prior initiatives by the OECD including the agreement of the 1997 Meeting of the Ministerial Council<sup>2</sup> that restrictions on competition are often costly and ineffective in promoting public interests, and the 2005 OECD Principles on Regulatory Quality and Performance<sup>3</sup> which call for governments to review proposals for new regulations, as well as existing regulations, with reference to their impact on competition.

The Recommendation contains a number of clear practical suggestions for how an effective Competition Assessment mechanism might operate. This report is the first assessment of Member countries’ experiences since the Recommendation was adopted in 2009. Based on questionnaire answers received from member and observer countries, the report surveys the extent to which the Recommendation describes the Competition Assessment processes in use, and provides examples of how Competition Assessment is carried out. By comparing the responses with each other, it also draws some conclusions for the fine tuning of the Recommendation and the associated Competition Assessment Toolkit.<sup>4</sup>

Section 1 provides background to the report, describes the principal information gathering questionnaire and discusses the response rate. Section 2

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<sup>1</sup> See [www.oecd.org/daf/competition/oecdrecommendationoncompetitionassessment.htm](http://www.oecd.org/daf/competition/oecdrecommendationoncompetitionassessment.htm)

<sup>2</sup> OECD (1997), Summary of the OECD Report on Regulatory reform.

<sup>3</sup> OECD (2005) OECD Guiding Principles for Regulatory Quality and Performance. Available at <http://www.oecd.org/daf/competition/sectors/37318586.pdf>

<sup>4</sup> See <http://www.oecd.org/daf/competition/assessment-toolkit.htm>, as at 08/06/12.



presents a taxonomy of the different types of Competition Assessment processes that respondents reported, and discusses the impact of the Recommendation and the Toolkit.<sup>5</sup> Sections 3, 4 and 5 assess the efficiency, effectiveness, and substantive coverage of three broad types of Competition Assessment processes. Section 6 contains case-study comparisons of ways that Competition Assessment has affected change, and Section 7 concludes highlighting some of the key results.

The report has three Annexes: Annex I, the questionnaire used to gather the majority of the information contained in the report. Annex II further details the questionnaire results and, where relevant, the coding methodology used. Annex III contains the text of the 2009 OECD Recommendation on Competition Assessment.

## **1.2 Definition and objective of Competition Assessment**

### *1.2.1 Definition of Competition Assessment*

The Recommendation defines Competition Assessment as an appropriate method of identifying existing or proposed public policies or measures that unduly restrict or distort competition, and then potentially revising any such policies or measures in order to adopt a more pro-competitive alternative consistent with the original public policy objectives pursued.

Any activity that conforms with this definition can be considered Competition Assessment. Competition Assessment therefore consists of both a process and a substantive method of analysis allowing policies and measures that unduly restrict competition to be identified, analysed, and then reformed. In line with the Recommendation, this report focuses primarily on the processes through which the substantive assessment is applied and not on the substantive assessment itself. However, the report contains a number of suggestions for development of the Competition Assessment Toolkit which focuses primarily on the substantive assessment and which emerged from the responses received.

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<sup>5</sup> The Competition Assessment Toolkit is a companion document to the Recommendation. It contains detailed suggestions, based on Member experience, of how best to efficiently and effectively conduct Competition Assessments. See <http://www.oecd.org/competition/toolkit>.

### **Case study: Korean fire safety standards**

The Korean Fair Trading Commission (KFTC) assesses the impact on competition of newly proposed regulations. New building regulations had been proposed by the Ministry of Land, and were referred by the Korean Regulatory Reform Committee to the KFTC for Competition Assessment.

The KFTC found that the new regulations would substantially increase the regulatory burden in a way that would impose significant costs on construction firms and might in particular harm smaller firms that would find it hard to handle the strict regulatory requirements. Further, the KFTC believed that the active insurance market in Korea would pose equally effective but more flexible and innovative standards to ensure that insurance premiums were efficiently minimised. The KFTC concluded, therefore, that the policy objectives of the Ministry of Land could probably be achieved with less harm to competition by combining less stringent regulatory minimum requirements with a model of mandatory insurance.

#### *1.2.2 Objective of Competition Assessment*

The OECD Recommendation sets out the purpose of the Assessment in the pre-amble, where it recognises that competition promotes efficiency and produces benefits such as lower prices, improved quality, increased innovation, and higher productivity. It also recognises that, at times, public policies and measures can unduly and unnecessarily restrict competition. Such policies could be reformed in a way that promotes market competition while achieving the original underlying public policy objectives. In order to detect policies and measures that could be improved in this way, a detailed Competition Assessment of the likely effects of the policy on competition is required.

As such, the objective of Competition Assessment is to promote productivity through reviewing whether public policies and measures may be modified to meet their policy objectives without unduly restricting competition.

#### *1.2.3 History of Competition Assessment*

Competition Assessment describes both the substantive methods used to assess whether a particular policy or measure unnecessarily restricts competition or not and the process by which that assessment is carried out.

The practice of assessing whether proposed policies and measures unnecessarily restrict competition is closely linked with the increasing prevalence

of institutionalised formal Regulatory Impact Assessments (RIA) of proposed legislation and other government action. Substantive assessment of existing policies is less clearly associated with a particular movement, though substantive competition assessment is clearly a core part of Competition Advocacy towards government, which is increasingly considered an essential element of most competition regimes. The development of the RIA tool and the Competition Advocacy functions of Competition Authorities, and the inclusion of a Competition Assessment within them, is discussed below.

As an example of the relatively recent introduction of the term Competition Assessment, a 1999 OECD report on the state of competition in Hungary did not use the term, despite suggesting that the Hungarian competition authority should both continue to invest in their Competition Advocacy work, and could try and leverage the incipient Regulatory Impact Analysis system in the country to help screen proposed and existing regulation for unnecessary harmful impacts on competition.<sup>6</sup>

#### 1.2.4 Regulatory Impact Assessments

A Regulatory Impact Assessment is a relatively formal method of assessing proposed regulations for their impact, not just in the area in which the regulation is intended to have an impact. The process was born from a desire to make policy development more rigorous after a period of apparent policy development failure.<sup>7</sup> Throughout the 1990s, the pace of adoption of formal methods of Regulatory Impact Assessment increased throughout OECD Member Countries. As noted in the 1997 publication 'Regulatory Impact Analysis: Best Practices':

*“In March 1995, the Council of the OECD adopted a Recommendation on Improving the Quality of Government Regulation, which included a ten-point checklist. The systematic use of Regulatory Impact Analysis (RIA) is a key part of that checklist. Member country experiences show that a systematic analytical approach is essential to the development of high-quality regulation. Most Member countries now have systems for RIA in place. On 27 May 1997, ministers of Member countries endorsed the OECD Report on Regulatory Reform, which recommends that governments “integrate regulatory impact analysis into the development, review, and reform of regulations.”*

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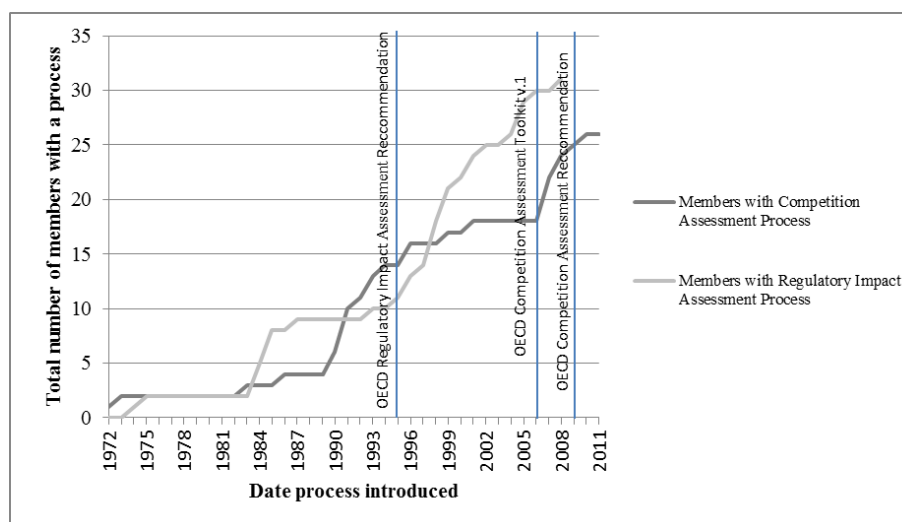
<sup>6</sup> “Hungary - The Role of Competition Policy in Regulatory Reform”, OECD, 1999.

<sup>7</sup> “Regulatory Impact Analysis: Best Practices In Oecd Countries”, OECD, 1997.

In the introductory chapter of the same document, three examples are given of what RIA processes might look at: trade, competition, and job creation. This focus on competition is repeated throughout the report, with the word appearing more than 200 times.

By 2009 when the OECD published "Indicators of Regulatory Management Systems" over 30 member states had RIA processes in place, and the competition element of the assessment was formally called Competition Assessment. While the data sources are not directly comparable, Figure 1 shows the implementation of RIA processes as assessed by "Indicators of Regulatory Management Systems" compared to lower-bound estimate of the implementation of Competition Assessment processes by OECD member states from this report.

**Figure 1: Comparison of number of members with RIA and Competition Assessment processes over time**



As the graph shows, both RIA and Competition Assessments processes have gone from being almost non-existent at the start of the 1970's to being very common by 2011. At present, Competition Assessment is formally a part of the recommended OECD RIA process.<sup>8</sup>

<sup>8</sup> "Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA) Version 1.0". OECD, 2008.

### 1.2.5 Competition Advocacy

The general substance and process of Competition Advocacy as a key element of a competition authority's activities was developed during the 1990s. "A Framework for the Design and Implementation of Competition Law and Policy"<sup>9</sup>, published by the World Bank and the OECD in 1998, contained a chapter on Competition Advocacy along with chapters on agreements, mergers, and abuse of dominance. It is the first work on this topic and is credited by a recent survey paper on Competition Advocacy as containing the earliest formal definitions of Competition Advocacy.<sup>10</sup> Papers by William Kovacic, Rodríguez Armando and M.B Coate in a special edition of the Brookings International Law Journal discussed the benefits of Competition Advocacy in developed competition regimes, and made recommendations for the inclusion of Competition Advocacy as a core function for perhaps more recently created competition authorities in developing countries.<sup>11</sup>

In 2002 the International Competition Network published a report on Advocacy and Competition Policy, which built on earlier work and defined Competition Advocacy as:

*“Competition Advocacy refers to those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition.”*

The ICN report focussed on all activities of the competition authority that could be considered Competition Advocacy, such as advocating the benefits of competition to consumers and stake holders in general and the benefits of competition law enforcement specifically. It included a substantial discussion

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<sup>9</sup> “A Framework for the Design and Implementation of Competition Law and Policy”, OECD and World Bank, 1998.

<sup>10</sup> “Designing And Implementing Economic Reforms In Developing Countries: What Role For Competition Advocacy?” Simon J. Evenett University of St. Gallen and CEPR, Julian L. Clarke, University of Fribourg. December 2005.

<sup>11</sup> “Getting Started: Creating New Competition Policy Institutions in Transition Economies”, Kovacic, William E. and “Competition Policy in Transition Economies: The Role of Competition Advocacy”, Rodríguez, A.E.; Coate, Malcolm B. 23 Brook. J. Int'l L. 403 (1997-1998).

of the more narrow set of activities targeted at regulators and other parts of government. In particular, it identified that 65% of the 42 authorities that responded to their questionnaire engaged with policy development at an early stage in the cycle, and that 36% are always requested to give an opinion on developing policies. A process whereby the competition authority engages with the policy development process early and automatically is Competition Assessment, as described by the OECD Recommendation, in all but name. Indeed, the figures quoted by the ICN are consistent with equivalent figures from this report.

In a 2005 survey paper by Evenett and Clarke written for the European Commission, the extant literature on "Influential mechanisms of Competition Advocacy" was summarised, with a focus on Competition Advocacy and its influence on the drafters of regulation. Evenett and Clarke identified the following mechanisms:

*"participation in government policy development, interventions before regulatory bodies, input into draft legislation and regulations, submissions and representations to legislative committees and other government bodies, participation in academic curricula, judicial training, protocols or memoranda of understanding with regulators to minimise duplication and reduce uncertainty."*<sup>12</sup>

Together, these represent a reasonably comprehensive list of the methods described by respondents to the Questionnaire which informs this report.

During the latter half of the last decade, a number of papers have discussed some of the political economy problems of Competition Advocacy. Sokol (2010)<sup>13</sup> and Cooper, Porter and Zywicki (2005)<sup>14</sup> discuss how informal Competition Advocacy may not be resilient to changes in the political fortunes of Competition Authorities, in particular noting the changing focus of Competition Advocacy at the US Federal Trade Commission. However, both articles - at least implicitly, embrace the basic economic theory of regulation analysis of policy interventions that supports Competition Advocacy. Stucke

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<sup>12</sup> Supra, 10.

<sup>13</sup> "Antitrust, Institutions, And Merger Control", Daniel Sokol. George Mason University Law Review 2010.

<sup>14</sup> "Theory And Practice Of Competition: Advocacy At The FTC", James C. Cooper, Paul A. Pautler, Todd J. Zywicki. Antitrust Law Journal 2005, vol 72.

(2008)<sup>15</sup> criticises the fundamental pro-competition assumptions of Competition Advocacy in developed nations on the basis that they fail to capture the nuances of policy objectives and competition authorities lack the mandate or ability to make the complicated balancing decisions involved in, for example, defining what is actually meant by "economic efficiency" when there are competing economic objectives to be maximised, such as equity, productivity, or stability. Evenett (2005)<sup>16</sup> applies the same economic theory of regulation to the practical use of Competition Advocacy with a particular focus on developing countries. He questions whether competition authorities, that may be young and inexperienced, are necessarily best placed to correct market distortions, and whether other already existing institutions might be more effective.

### ***1.3 Content of the Recommendation***

The Recommendation builds on the history and analysis of both Regulatory Impact Assessments and Competition Advocacy to suggest both a process for embedding Competition Assessment within the policy making process, and the substantive ways in which the Assessment might be carried out.

The Recommendation calls for members to implement a process that:

- identifies proposed and existing policies that unduly restrict competition
- allows the effective revision of unduly restrictive policies
- involves the competition authority or officials with expertise in competition law and economics
- is integrated into the policy and decision making process at a relatively early stage
- is based on transparent screening criteria

In addition, the substantive assessment should:

- pay attention to the number and range of market participants, the actions that they can take, and their incentives (the supply side of the market)

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<sup>15</sup> "Better Competition Advocacy", Maurice E. Stucke. *St. Johns Law Review*. 2008, Vol 82:951.

<sup>16</sup> "Competition Advocacy - time for a rethink?" Simon J. Evenett *Northwestern Journal of International Law and Business*. 2005.

- pay attention to the choices and information available to consumers (the demand side of the market)
- cover the setting up or revision of regulatory bodies, price regulation, entry regulation, or restructuring of monopolies (government price and regulation)
- cover the introduction of “competition for the market” processes

#### **1.4 Questionnaire**

The primary evidence base on which this report is built is a questionnaire distributed to members and Observer countries in January 2012. Respondents were invited to complete a questionnaire for each of the "principal" processes of Competition Assessment employed. The questionnaire contained a mix of multiple-choice and open-ended questions covering 8 broad categories:

- A description of the process
- The extent to which the process exhibits the elements of the Recommendation
- The resource requirements of the process
- The impact and effectiveness of the process
- Whether the process met its objectives
- Whether the policies and measures that the process applied to unnecessarily restricted competition
- The impact of the Recommendation and the OECD Competition Assessment Toolkit on the development and application of the process
- The Competition Assessment training received, and the demand for further training

The full text of the questionnaire can be found in Annex I.

The questionnaire was designed as a stock taking exercise. Respondents were not explicitly asked to formulate recommendations as to how the Toolkit or the Recommendation could be improved. As a consequence, suggestions for amendments to the Recommendation or the Toolkit are obtained indirectly by comparison of the responses. Substantive conclusions drawn through such inferences are highlighted in the text in separate italicised boxes.



### 1.5 *Response rate*

Figure 2 sets out some summary statistics concerning the response rate. Most responses contained a description of at least 2 different processes of Competition Assessment.

**Figure 2: Questionnaire response rate**

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Total number of potential respondents	52
Number of Countries responding	32
Response rate	62%
Number of Countries detailing at least one process of Competition Assessment	30
Total number of processes described	74
Total number of processes described in sufficient detail to analyse further	68
Total number of case studies provided	57

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Respondents took different approaches in defining what their "principal" processes of Competition Assessment were, and responded in varying degrees of detail. Some responses provided extensive information on the multiple approaches to Competition Assessment within their jurisdiction, while others chose to focus on one or two key processes of Assessment. As a result, it is not possible to ascertain what proportion of respondents have implemented the Recommendation and in what way.

The response rate is large enough, however, to analyse the divergence and similarity between reported Competition Assessment processes, and to analyse the self-assessed effectiveness of the different processes.

### **Case study: Competition Assessment in Denmark, Chile and the UK**

The Danish response covered four different methods of Competition Assessment. These were: screening of proposed policies as part of the legislative process; review of potential state aid concerns in the context of the European Union state aid regime; a system of making requests to ministers to change certain regulations or public policies; and a broad system of Competition Advocacy that includes producing detailed market reports. After consultation with Denmark, it was agreed that - despite being called a system of Competition Advocacy - the detailed reports that the competition authority sometimes produced meant that the Competition Advocacy method was more akin to a system of market or sector studies and was therefore analysed as such. In addition, while the ability to request changes to the Minister appeared relatively formal, the lack of requirement of the Minister to publicly respond to requests meant the system is more similar to ad-hoc advocacy and review and was thus analysed as a process of Discretionary Assessment.

Chile reported six methods of Competition Assessment, the majority of which focussed on competition concerns in the regulation of particular industries. However, Chile also described a one-off process of reviewing potential government impediments to competition across the whole economy and a formal system for challenging unduly restrictive regulation, both of which are described in section 4.

The UK interpreted the questionnaire relatively narrowly, and reported on one method of Competition Assessment, which was Impact Assessment conducted by departments proposing legislation as part of a broader impact assessment process. The UK also has substantive processes of market inquiry, and a broad remit to conduct ad-hoc Competition Advocacy, but these are not analysed in this report.

## **2. Different types of Competition Assessment and impact of the OECD Toolkit and Recommendation**

### **2.1 Taxonomy of Competition Assessment processes**

Respondents interpreted Competition Assessment very broadly. The substantive analysis that was described by respondents covered issues ranging from the evaluation of direct subsidies, through the assessment of competitive neutrality issues, to the broad general competition issues captured in discretionary assessment and impact assessment. The processes through which the substantive analysis took place ranged from quasi-judicial commissions, through discretionary ad-hoc intervention by the competition authority, to formal processes of impact assessment. All processes - and their constituent substantive assessments - are similar in aiming to curtail unnecessary government restrictions of competition.

**Case study: Processes and substance - subsidy and competitive neutrality**

Substantive analyses of the impact of direct and indirect subsidies were presented as Case Studies by a number of respondents. However, the processes in which the assessments took place differed.

Denmark, Spain, and the European Union all defined their state aid review processes as a type of Competition Assessment falling under the Recommendation. These mechanisms assess the impact on competition of direct subsidies provided by the state, a requirement under the Treaty for the Functioning of the European Union. Both Spain and the European Union discussed the Competition Assessment of actions undertaken during the Global Financial Crisis, and concluded that their respective state aid review processes had successfully balanced the need to act quickly in the European interest while minimising distortions to competition.

Lithuania discussed the formal legal challenge by the competition authority of the ability of government employed police to provide private security for premises and locations. The competition authority was concerned about the competitive advantage that the police had in their ability to use formal law enforcement powers. More details on the process used can be found in section 4.

Spain also discussed issues of competitive neutrality regarding the competition assessment they had undertaken of the reforms of the Spanish postal market. In particular, the competition authority was concerned about the benefit that Correos, the ex-state owned postal service, had in obtaining contracts for the universal postal service and for providing postal services to public bodies.

In all four cases the competition authorities used different methods to identify and try and correct concerns about unfair competitive advantages provided by government either through direct or indirect subsidies, or through special rights and protections.

More detail and discussion on the assessment of competition neutrality and direct and indirect subsidies can be found in section 5.

Because the range of processes reported is so diverse, in order to make meaningful comparisons and draw conclusions it is necessary to group the processes. In discussion with respondents, 9 different categorisations are adopted which appear to accurately describe the processes reported and whose titles are largely based on the language respondents used to describe the processes in use. The 9 types of Competition Assessment are grouped into three broad categories.

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**Figure 3: Taxonomy of Competition Assessment processes**


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**Competition Assessment processes that directly engage with ongoing policy development**


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These processes directly engage with the policy development process either through being formally integrated with it, or through attempting to influence the development of policy as it happens.

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Impact Assessment	<p>Respondents described a number of mechanisms that are explicitly integrated into the policy development process. They act as a screen to evaluate almost all proposed government policies for their impact on competition. The substantive assessment is broad.</p> <p>They differ as to whether the Assessment is carried out by the competition authority or by the host department that is developing the policy. They also differ as to whether they are integrated into a broader system of impact assessment, or whether the Impact assessment stands alone.</p> <p>Respondents often called these processes "Competition Assessment", though for this report the term "Impact Assessment" is adopted to avoid confusion with the other types of Competition Assessment processes described. Most, but not all, mechanisms categorised as "Impact Assessments" took place within a formal Regulatory Impact Assessment process.</p>
Discretionary Assessment	<p>Respondents described a number of more ad-hoc or discretionary processes whereby the competition authority attempts to influence proposed or existing policy. The methods used to influence were more or less formal. The substantive assessment is also usually broad. While the competition authority may have a legislative mandate for the assessment and subsequent advocacy, there exists no mechanism to force change, and the process is not integrated into the policy development process.</p> <p>Respondents often called these processes "Competition Advocacy", but to avoid confusion with the process of advocating change that can take place within any Competition Assessment method, we adopt the name "Discretionary Assessment".</p>
Market / sector inquiries	<p>Respondents described a range of relatively detailed processes of inquiry into particular markets or sectors that assess how changes, increases, or relaxation of government intervention could increase the amount of beneficial competition in the relevant market or sector. The substantive assessment is also usually broad. While processes had legislative support for the competition authority pursuing them, they all affected change by influencing policy makers. They are almost totally focussed on reviewing the impact of existing policies.</p> <hr/>

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**Competition Assessment processes that are not part of the ongoing policy development cycle**

These processes sit a little apart from the policy development process either due to their one-off nature, or their adversarial method of intervention.

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Commissions with a broad remit	Respondents describe two broad multi-market commissions that assessed how changes, increases, or relaxation of government intervention could increase the amount of beneficial competition in the economy overall. They are both independent from both Competition Authorities and central government. The substantive assessment is relatively broad.
Systems to challenge restrictive legislation or policy	Respondents described a range of mechanisms by which an independent authority, a tribunal or court can review, amend, or annul existing or proposed government policies or measures that unnecessarily restrict competition. This challenge sometimes occurs in a court, a tribunal, or through a quasi-judicial administrative procedure. Their key distinguishing feature is their formal ability to force change, though the processes may in some cases affect change without resorting to formal sanction. The substantive assessment is also usually broad.

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**Competition Assessment processes that are focussed on discretionary state action rather than broader policies**

These processes focus on particular discretionary actions of government, rather than the formulation of broad policies.

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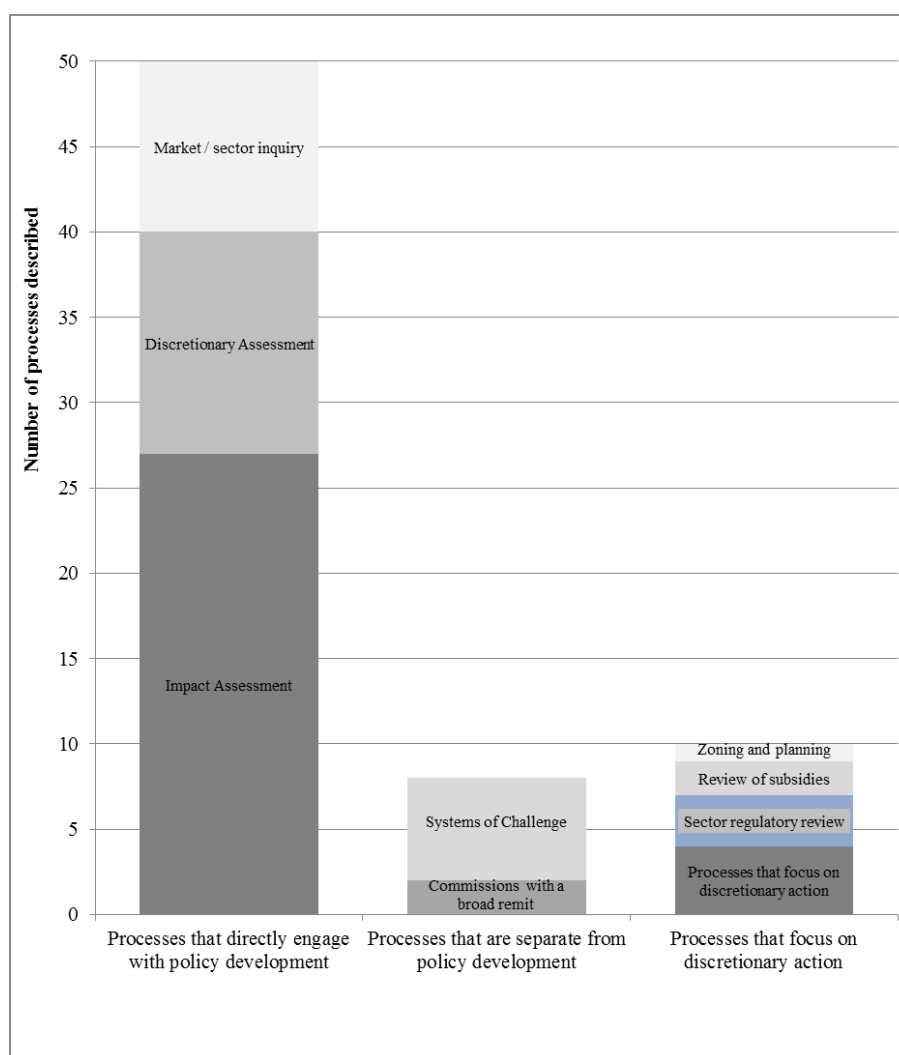
Sector regulatory review	Respondents described processes that covered the specific remit or review by the competition authority of the discretionary actions of regulators or monopoly firms in one or more regulated sectors. The substantive assessment is also usually focussed solely on whether the regulatory actions of the sectoral regulator are proportionate.
Review of direct subsidies	Respondents described processes of competition authority review of direct subsidies or equivalent actions to determine the impact on competition and compliance with relevant legislation. The substantive assessment is therefore often limited to the impact of the subsidies on competition. We note that other mechanisms of Competition Assessment can also deal with direct subsidies, but also often with indirect subsidies (see case study in this section)
Government procurement oversight	Respondents described processes that focussed on oversight of large-scale government procurement to ensure competitive processes and outcomes.
Zoning and planning	Respondents described processes that reviewed planning and zoning decisions to ensure no unnecessary negative impact on competition.

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## 2.2 Processes reported by respondents

74 different processes were described, of which 68 were sufficiently detailed to be categorised and analysed further. Figure 4 shows the distribution of the processes between the three broad categories and 9 sub-categories outlined above.

**Figure 4: Distribution of reported Competition Assessment processes**



The vast majority of processes that respondents described engage directly with the policy development process, and of these the majority were systems of Impact Assessment. However respondents also reported a wide range of alternative processes that, as discussed below, sometimes have little in common with the canonical Competition Assessment described in the Recommendation.

*Respondents reported a wide range of activities described as Competition Assessment processes.*

### **2.3 Coverage of OECD Recommendation and reported processes**

To determine how best to ensure the Recommendation remains relevant to the Competition Assessments conducted by respondents, and to understand the different ways that Competition Assessment processes differ, this section assesses to what extent the Recommendation describes the processes set out in the questionnaire responses. Many of the reported processes were implemented prior to publication of the OECD Competition Assessment Toolkit in 2007 and the adoption of the OECD Competition Assessment Recommendation of 2009 (for details on the dates when particular processes were introduced, see Figure 15).

Figure 5 outlines to what extent the different process types outlined above converge with the Recommendation. The columns represent the 9 elements of the Recommendation described in the introduction, and an additional distinction between existing and proposed policies and measures.

**Figure 5: Percentage of processes of each type that match the elements of the Recommendation**

Sample size	Procedural elements					Substantive elements			
	Cover proposed actions	Has a specific mechanism for revising actions	Substantially involves the competition authority	Is generally "integrated" into the process	Has transparent screening criteria	Covers supply side constraints on competition	Covers demand side constraints on competition	Covers government price and industry regulation	Covers competition for the market
<b>Processes that directly engage with policy development</b>									
Impact Assessment	27	100%	37%	85%	81%	89%	70%	96%	89%
Discretionary Assessment	13	62%	100%	15%	100%	8%	46%	92%	100%
Market / Sector Inquiries	10	60%	100%	20%	100%	0%	30%	90%	100%
<b>Total</b>	<b>50</b>	<b>82%</b>	<b>66%</b>	<b>54%</b>	<b>90%</b>	<b>50%</b>	<b>56%</b>	<b>94%</b>	<b>94%</b>
<b>Processes that are separate from policy development</b>									
Commissions with a broad remit	2	50%	100%	50%	0%	0%	0%	50%	100%
Systems of Challenge	6	50%	100%	83%	100%	17%	67%	83%	100%
<b>Total</b>	<b>8</b>	<b>50%</b>	<b>100%</b>	<b>75%</b>	<b>75%</b>	<b>13%</b>	<b>50%</b>	<b>75%</b>	<b>100%</b>
<b>Competition Assessment processes that are focussed on discretionary state action rather than broader policies</b>									
Sector regulatory reviews	4	100%	75%	100%	100%	75%	50%	100%	75%
Review of subsidies	3	33%	67%	67%	67%	67%	67%	33%	0%
Government procurement oversight	2	50%	100%	50%	100%	50%	50%	100%	100%
Zoning and planning	1	0%	0%	0%	100%	100%	0%	100%	100%
<b>Total</b>	<b>10</b>	<b>60%</b>	<b>70%</b>	<b>70%</b>	<b>90%</b>	<b>70%</b>	<b>50%</b>	<b>80%</b>	<b>60%</b>



Impact Assessment most closely matches the OECD Recommendation in all substantive categories and all procedural categories except that the process usually only covers proposed policies and measures. Since the methods that cover assessment of existing policies are less well described by the Recommendation, this suggests that the Recommendation is most applicable to the assessment of proposed policies.

*The Recommendation places equal emphasis on assessing the impact on competition of both existing and future policies and measures. Responses, however, indicate that the detail of the Recommendation best describes competition assessment that is conducted on proposed policies and measures. It may be appropriate to consider expanding or amending the Recommendation and Toolkit to better reflect the processes that respondents used to assess existing measures and regulations.*

Systems of Challenge are very similar to Impact Assessments in substantive scope, but usually intervene after a policy or measure has been implemented and are not integrated into the policy development process. By definition, they stand somewhat separate. As discussed in section 4, they nonetheless appear to have a deterrent effect on the development of policies and measures that unnecessarily restrict competition. This ability of a system to challenge existing legislation to discipline the creation of proposed legislation is interesting, as it breaks down any strict analytic separation of methods that only focus on existing or proposed legislation. It also suggests that a holistic consideration of methods that affect both existing and proposed policies may reveal helpful insights.

*The Recommendation and Toolkit do not discuss formal systems of challenging unduly restrictive government policies and measures. However, they exhibit very similar properties to other methods of Competition Assessment, and a number of respondents described such systems favourably and in some detail. The Recommendation and Toolkit could be expanded to cover such systems.*

#### **2.4 Impact of the OECD Competition Assessment Toolkit**

While the Recommendation may only partially describe the majority of Competition Assessment methods in use by respondents, the related Toolkit appears to have been useful in the design of some, and the implementation of the majority, of processes reported.

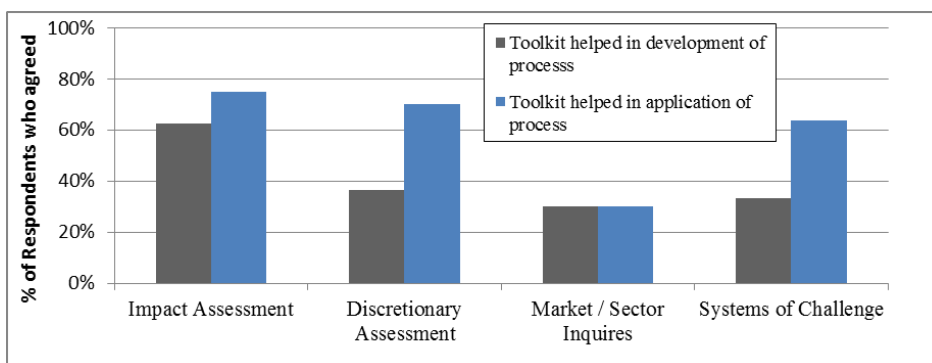
Figure 6 outlines the extent to which respondents felt the Toolkit was helpful in the development and implementation of their Assessment processes.

**Figure 6: Amount OECD Toolkit helped in development and application of Competition Assessment process**

Sample size	Amount OECD toolkit helped in development of method					Amount OECD toolkit helped in application of method				
	No answer	Not at all	A little	Quite a bit / moderately	Substantially / completely	No answer	Not at all	A little	Quite a bit / moderately	Substantially / completely
<b>Processes that directly engage with policy development</b>										
Impact Assessment	27	11%	22%	11%	22%	33%	11%	15%	33%	33%
Discretionary Assessment	13	15%	31%	23%	15%	15%	23%	15%	23%	31%
Market / sector inquiry	10	0%	50%	20%	10%	20%	0%	30%	0%	30%
<b>Total</b>	<b>50</b>	<b>10%</b>	<b>30%</b>	<b>16%</b>	<b>18%</b>	<b>26%</b>	<b>12%</b>	<b>18%</b>	<b>24%</b>	<b>32%</b>
<b>Processes that are separate from policy development</b>										
Broad Commissions	2	0%	50%	50%	0%	0%	0%	50%	0%	0%
Systems of Challenge	6	0%	67%	0%	33%	0%	0%	33%	0%	50%
<b>Total</b>	<b>8</b>	<b>0%</b>	<b>63%</b>	<b>13%</b>	<b>25%</b>	<b>0%</b>	<b>0%</b>	<b>38%</b>	<b>13%</b>	<b>38%</b>
<b>Processes that focus on discretionary action</b>										
Sector regulatory review	4	25%	75%	0%	0%	0%	25%	25%	25%	0%
Review of subsidies	3	67%	0%	0%	0%	33%	0%	0%	0%	33%
Government procurement oversight	2	0%	100%	0%	0%	0%	0%	100%	0%	0%
Zoning and planning	1	0%	100%	0%	0%	0%	0%	100%	0%	0%
<b>Total</b>	<b>10</b>	<b>30%</b>	<b>60%</b>	<b>0%</b>	<b>0%</b>	<b>10%</b>	<b>30%</b>	<b>40%</b>	<b>10%</b>	<b>10%</b>

Figure 7 summarises the data in a simpler form, showing the percentage of respondents providing an answer indicating that the Toolkit helped the development or application of the process either "Quite a bit", "Moderately", "Substantially", or "Completely". Results are given for all processes where the response rate to the questions was greater than 3.

**Figure 7: Impact of the toolkit in the development and application of assessment processes**



The high level of helpfulness of the Toolkit in applying Discretionary Assessment processes is particularly noteworthy considering the relatively lower level of helpfulness in developing the process. This suggests that the content of the Toolkit is of practical help, and sufficiently flexible to be applied to processes and methods that were not influenced by it.

*Respondents found the Toolkit helpful in the application of a wide variety of Competition Assessment processes, even where the Toolkit or Recommendation were not particularly helpful in the development of the process. This seems to imply that the Toolkit is sufficiently flexible and practical to be of substantial assistance.*

In fact, in many cases the development of processes often substantially predated the introduction of the Toolkit. Figure 8 shows that the Toolkit was substantially more helpful in the development and application of processes updated since 2008, the year after the introduction of the Toolkit.

**Figure 8: Impact of date process last updated on extent to which the Toolkit helped in development or application of process**

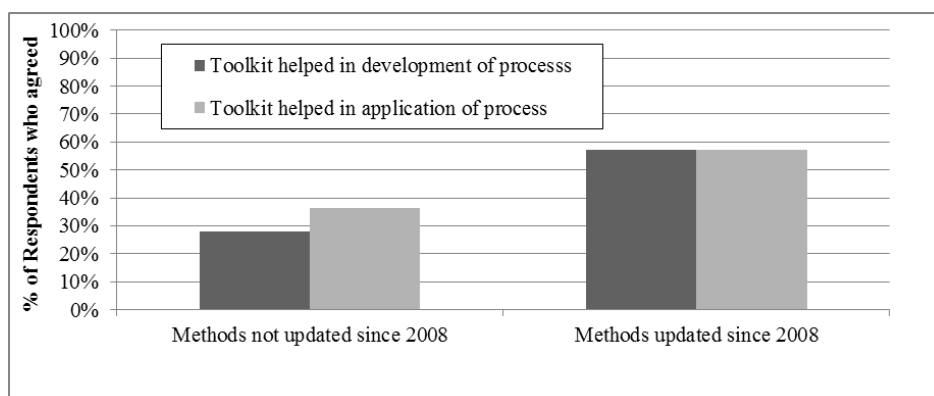
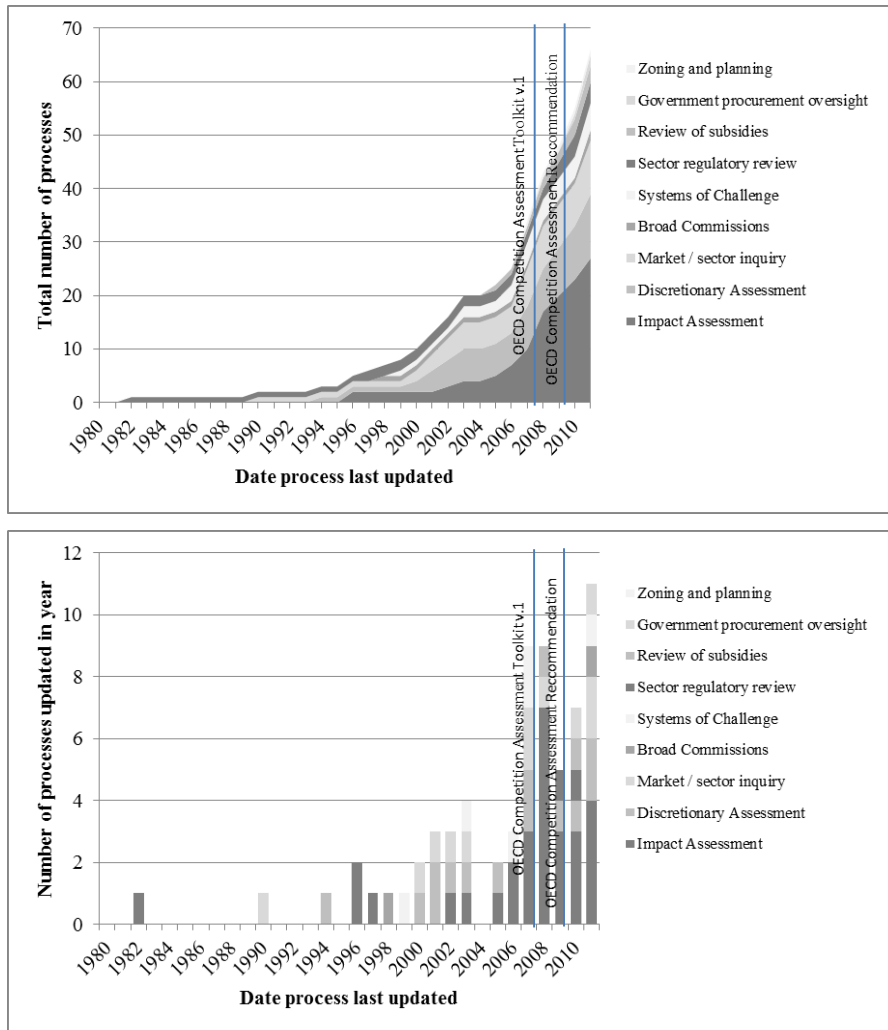


Figure 9 shows when methods were last updated, or introduced if they have not yet been updated. There is a clear increase from 2005 to 2012, showing that the Toolkit and the Recommendation may have contributed and accelerated to this development, and at the very least were well timed to be helpful. Information on when the processes were initially introduced can be found in Figure 15.

**Figure 9: Date of when processes were last substantially updated**

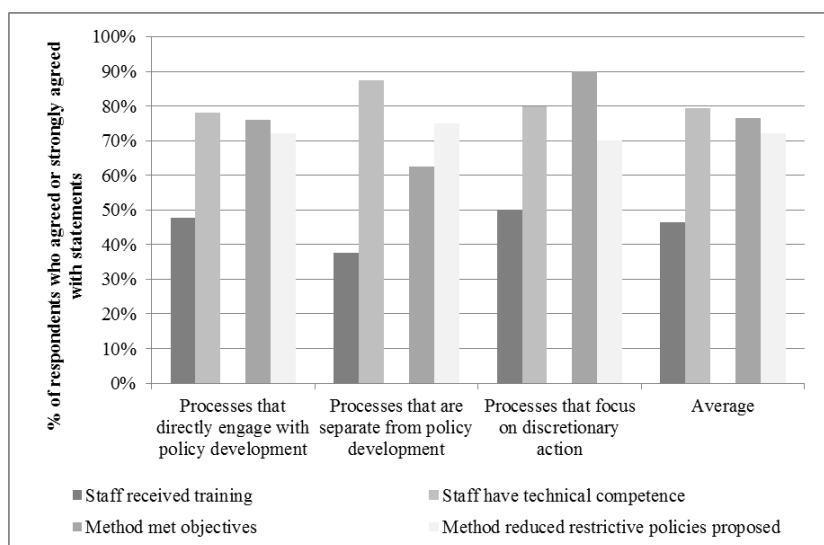


## 2.5 Training received, and demand for future training

A crucially important question is the extent to which those who apply the Competition Assessments have the experience and training to do so efficiently and effectively. Like many other specialist areas of impact assessment, Competition Assessment requires a risk-based balancing of competing factors that can be complicated and time consuming.

Figure 10 summarises the extent to which respondents felt that the people who applied the Methods were trained, had the technical capacity to undertake the assessments efficiently and effectively, and whether they felt that the methods met the objectives set out for them and reduced the number of unnecessarily restrictive policies proposed.

**Figure 10: Training, technical competence, and extent to which objectives are met**



Across all methods it was generally felt that staff had the technical competence to conduct assessments, and that the methods both met their objectives and reduced the number of policies proposed that unnecessarily restricted competition.

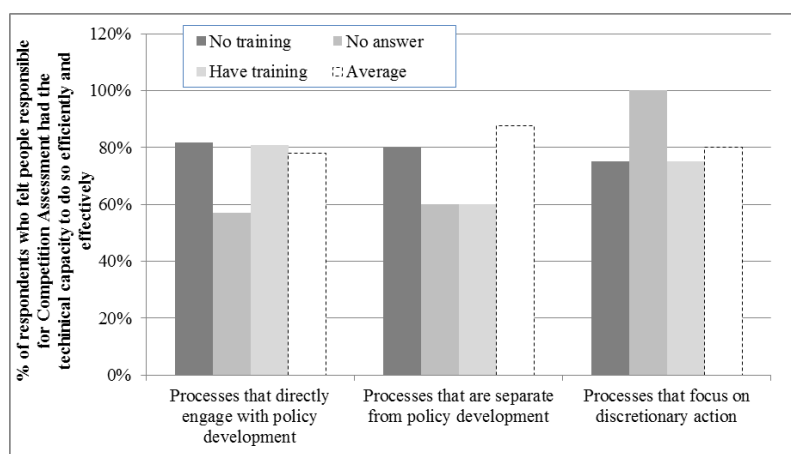
However, a large number of respondents said that the people who carried out the assessments had not received training. This was the case across all assessment methods. The rest of this section discusses the impact of training on technical competence, and the impact of technical competence on effectiveness.

### 2.5.1 Training

Training was commonly based on the OECD Toolkit and Recommendation, though material produced by the European Union, the UK Office of Fair Trading, and the International Competition Network was also used.

As Figure 11 shows, there is no significant relationship between whether the people who applied the Competition Assessment process received training and their reported ability to undertake the process efficiently and effectively. This lack of correlation is surprising. While it may be due to noise in the data, the sample size is relatively large and most respondents answered all the relevant questions. It is possible either that the training that staff received has not been particularly effective, or that the training has been effective but not enough to offset any imbalance in technical ability that may have existed prior to the training being applied.

**Figure 11: Relationship between training and whether respondents felt that those responsible for carrying out Competition Assessments were technically able to do so.**



*While most respondents felt that the people applying Competition Assessments had the technical capacity to do so, there is a noteworthy lack of significant correlation between whether an authority has received training and the assessed level of technical capacity.*

### 2.5.2 Technical capacity

While the link between training and perceived technical competence is weak, there is a strong link between whether a method is applied by staff that were technically competent, and how successful respondents felt the method was. Figure 12 gives the results of a simple Ordinary Least Squares regression of self-assessed effectiveness of the regime against self-assessed competence. It clearly shows a strong positive relationship between the two.

**Figure 12: Results of regression of effectiveness of process against technical competence of people applying the process**

Results for linear regression

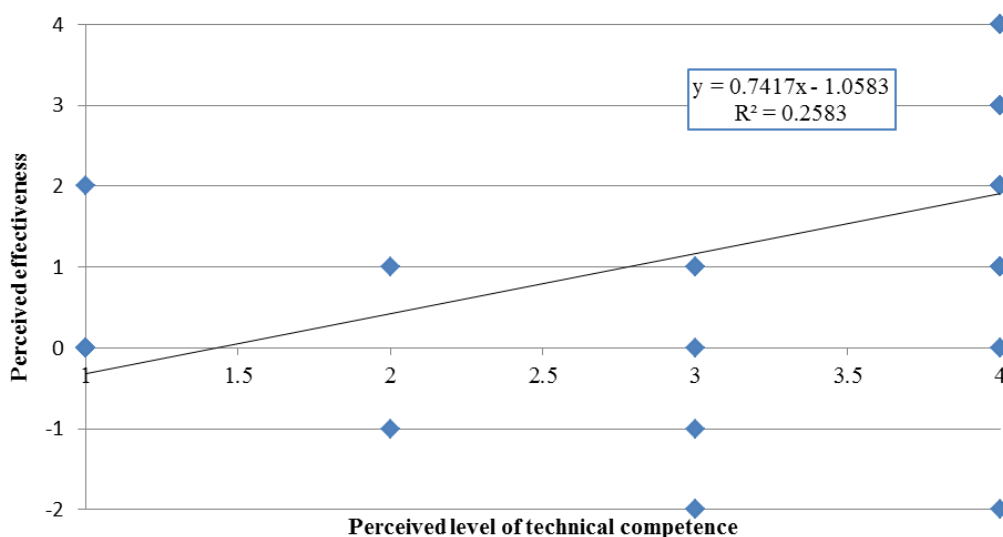
$$\text{EFFECT} = \alpha + \beta \text{ COMPETENCE} + \varepsilon$$

Where

EFFECT is calculated from answers to questions about whether the process met its objectives, and whether it reduced the amount of unnecessarily restrictive policies proposed. 2 points were assigned if respondents strongly agreed, 1 point if they agreed, -1 points if they disagreed, and -2 points if they strongly disagreed. The score thus ranged from -4 to +4

COMPETENCE is calculated from answers to questions about the competence of the people applying the process, where 5 points were assigned if respondents strongly agreed that staff " who apply the competition assessment have sufficient technical competence to do their job effectively", 4 points if they agreed, 3 points if they neither agreed or disagreed, 2 points if they disagreed, and 1 point if they strongly disagreed.

	$\alpha$	B
<b>Estimate</b>	-1.06	0.74
<b>Standard Error</b>	(0.57)	(0.15)
<b>Degrees of freedom</b>	66	





While training appears to be of mixed impact, where it increases technical competence, it most probably makes the method commensurately more effective.

*Given that a large number of respondents said that those implementing the Competition Assessments had not been trained, and the strong relationship between the effectiveness of Competition Assessment and the technical competence of those applying it, there appears to be substantial further demand for beneficial training in the application of Competition Assessment processes.*

### **3. Processes that directly engage with ongoing policy development**

#### **3.1 Overview**

Respondents described three broad types of process that have their effect by directly engaging with the policy development process.

Many respondents described methods directly as "Competition Assessment" or "Competition Impact Assessment". These were usually part of a mandatory Regulatory Impact Assessment element of policy development and thus occur relatively early in the policy development cycle. They may be conducted by the competition authority, or by the authority developing the policy in question. Impact Assessment is almost exclusively focussed on screening proposed policies and measures. In some cases the Competition Assessment element of the Impact Assessment is mandatory, but exists separately from other elements of the Impact Assessment. In a few cases it not only sits separately but is conducted by the competition authority *ex-officio*. In this last instance Competition Assessment is distinguishable from the methods described as Discretionary Assessment only by the way it regularly engages with relatively early stages of policy development. Note that, as outlined above, this report adopts the terminology "Impact Assessment" to describe these methods of assessment to avoid confusion with the broader set of Competition Assessments that respondents described.

The processes described as "Discretionary Assessment" differ from the process of Impact Assessment by not being integrated into the formal policy development process and thus does not act as a screening device for proposed policies that have not yet been enacted. Discretionary Assessment is flexible, and usually applies to both existing and proposed policies and measures. It is

more ad-hoc and discretionary on the part of the competition authority, and usually has influence by presenting good arguments that convince policy and decision makers, rather than engaging in formalistic or adversarial processes.

Discretionary Assessment efforts often involve some research by the competition authority. Where this research is large scale and public, it was often referred to as a Market Study or Sector Investigation. Since these are relatively resource intensive, most Competition Authorities will only engage on such a large scale study if there is some prima-facie case for concern. Despite their scale and relatively formal nature, Sector Studies usually also have their impact through influencing the policy process rather than formal mechanisms that force change. In most cases, Sector Studies analyse the impact of existing policies rather than proposed ones. In addition, however, some Sector Inquiries, such as the ones launched by the European Union, are aimed at increasing the sector expertise of the authority and to prepare the ground for possible competition cases in the sector.

#### **Case study: Flexibility of process in the Egyptian Steel case**

The Egyptian competition authority (ECA) undertook an extensive study of the domestic steel industry following concerns raised about excessive prices. Initially, it was possible that the study might conclude in enforcement action. However, after over a year of investigation the study identified that the cause of the high prices was a lack of new licenses for the efficient type of "integrated" steel processing plants. This meant that global increases in the price of raw materials were hitting the Egyptian market particularly hard, and that the localised price rises were unlikely to be caused by overtly anticompetitive behaviour. The ECA then conducted a process of advocacy to promote the awarding of new licences. The advocacy has been successful, and four new licenses have been awarded. New domestic production capacity is likely to come on-stream in 2012 which should reduce the price of steel.

The ECA adopted a flexible approach, initially keeping open the possibility for enforcement action, but eventually producing a market study followed by concerted advocacy to secure change.

### **3.2 *Comparative analysis of effectiveness***

Since Impact Assessment, Discretionary Assessment, and Sector Studies all pursue a similar end by different means or processes, it is reasonable to compare how respondents assessed their relative effectiveness.

Figure 13 compares key self-assessed performance metrics for the three broad methods.

**Figure 13: Self assessed effectiveness and efficiency of processes that engage with policy development process**

	Effectiveness		Average Full Time Equivalent (FTE) staff per "case"	Efficiency	
	% respondents agree that process met objectives	% respondents agree that process reduced unnecessarily restrictive policy		% of cases reviewed that pose possible policy problems	% of problem cases that are resolved
<b>Impact Assessment</b>	67%	63%	0.17	38%	27%
<b>Discretionary Assessment</b>	85%	77%	0.77	58%	42%
<b>Market / Sector Inquires</b>	90%	90%	1.10	77%	50%

Note: Sample sizes for Average FTE per case and % of cases reviewed that post problems are relatively small ( $6 < N < 10$ ).

All three processes are considered effective, and all three processes have some level of success at identifying and resolving policy proposals that may unnecessarily restrict competition. However, there are a number of marked differences between the processes.

### 3.2.1 Drivers of effectiveness

Impact Assessment processes exhibit substantially lower self-assessed scores for effectiveness than either Discretionary Assessment or Market / Sector Inquiries. They also appear less effective at resolving problem cases. In contrast, Sector Inquiries appear to be about as efficient as Discretionary Assessment, being slightly more effective but also requiring slightly more staff.

This does not mean that Impact Assessment is necessarily a less effective method of conducting Competition Assessment and affecting change since the different processes exist for different purposes, and operate in different ways. These are discussed below, with relevant conclusions highlighted.

### 3.2.2 Policies affected

Different processes of Competition Assessment affect different types of policies. Impact Assessment, unlike any other general process reported by respondents, acts as a screening function for proposed policies. In theory, every proposed policy should be screened, at least superficially, for its impact on competition. This necessitates a relatively light analysis of each policy, and is reflected by the low average Full Time Equivalent staff<sup>17</sup> per case of just 0.17. Since Impact Assessment is often applied to all cases, it is not possible for resources to be prioritised as flexibly, and analysis can sometimes be superficial. The relatively low per cent of problem cases resolved may reflect this relatively limited depth of analysis.

In addition, due to its non-discretionary nature, Impact Assessment is required to focus on all areas of policy not just the "low-hanging fruit" that more discretionary processes can target. It may thus be harder to achieve change. This is reflected in respondents views that the policy areas analysed through Impact Assessment are more restrictive of competition than other those analysed through other methods, and that the drafters of legislation are less able to understand the competition implications of their policies.

**Figure 14: Self assessed level of unnecessary restrictions targeted by processes that engage with policy development process**

	Current legislation unnecessarily impedes competition	Drafters of legislation understand competition implications
Impact Assessment	22%	67%
Discretionary Assessment	15%	85%
Market / Sector Inquires	10%	90%

This is an interesting finding that may require further attention. If Discretionary Assessment and Market / Sector Inquiries are considered more effective, but target easier areas of policy, it suggests active prioritisation on the

<sup>17</sup> Full Time Equivalent, or FTE, is a measure of resource use in terms of how many full time people, working for a year, would be required to complete a particular task. For example, if it took one person a year to process a case the FTE would be 1. Similarly, if it took a team of 4 people 3 months to process a case, the FTE would also be 1.

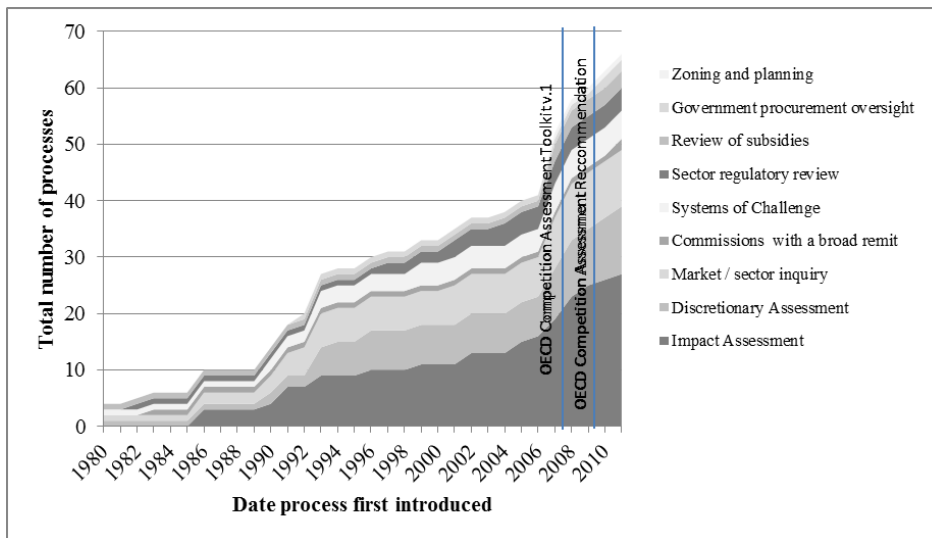
part of the competition authority. However, it also suggests that when the focus of Competition Assessment is discretionary, competition authorities may avoid the areas of policy where drafters are less understanding of competition concerns even though it may be exactly these areas where Competition Assessment may be most helpful.

*In an attempt to maximize efficiency, discretionary methods of competition assessment, including Market / Sector Inquiries, may avoid more challenging - but potentially important - policies. Amending the Recommendation and Toolkit to explicitly discuss the pros and cons of active prioritisation could be considered.*

### 3.2.3 Date of introduction

Impact Assessment processes are also more likely to have been recently introduced than Discretionary Assessment or Sector Studies, and have had less time to become established. Figure 15 shows when the different Competition Assessment processes were first introduced.

**Figure 15: Cumulative distribution of date of when processes were first introduced**



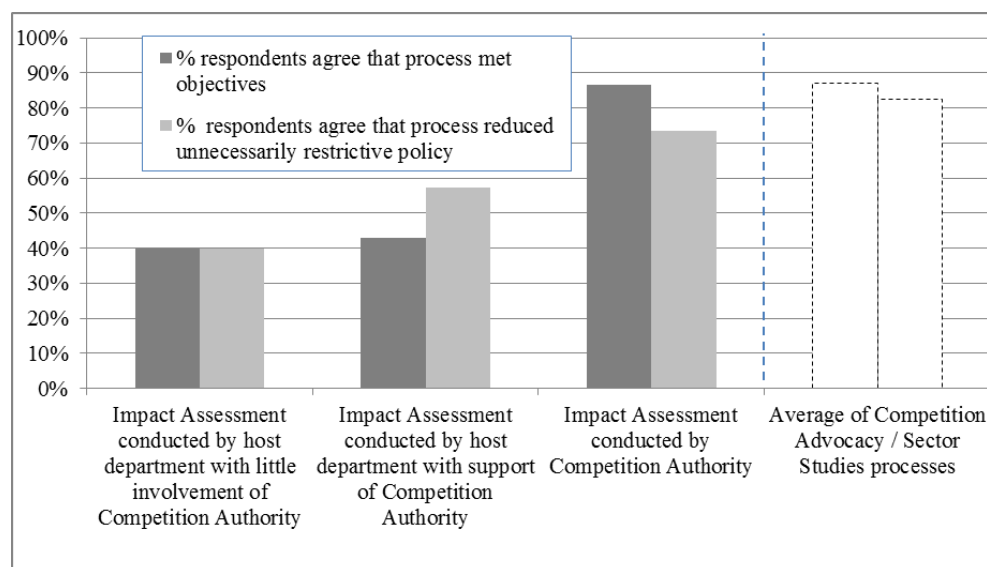
While a number of new processes of different types have been introduced in the last five years, the number of new Impact Assessments outstrips both the

number of new Sector Inquiry processes and the number of new Discretionary Assessment processes reported. The relatively short amount of time they have existed may contribute towards the lower reported levels of satisfaction, though no statistically significant relationship between the age of a process and its reported effectiveness can be found.<sup>18</sup>

### 3.2.4 *Involvement of the competition authority*

A key difference between Impact Assessment and other processes of competition assessment is the varying level of involvement of the competition authority. Some Impact Assessment processes are implemented by the host department that is proposing the policy, and the competition authority may have little input. This appears to limit the effectiveness, as shown in Figure 16.

**Figure 16: Impact on competition authority involvement on effectiveness of Impact Assessment processes**



<sup>18</sup> Processes were given points according to the reported levels of effectiveness, as described in Figure 12. The total number of points was then regressed against YEARS, the amount of time the process was already in place measured in years. Under all tested specifications, the coefficient for YEARS was positive, but not statistically significant.

As the involvement of the competition authority increases, the perceived effectiveness of the process also increases. At the extreme, where the impact assessment is conducted almost solely by the Competition Authority, the perceived effectiveness is very similar to the average perceived effectiveness of all the other processes reviewed in this section.

One reason for this might be the ability of those conducting the assessment to do so efficiently and effectively. Respondents believed that those applying competition assessments within host departments often lacked the technical skills to do so efficiently and effectively. As Figure 17 shows, respondents felt that host departments were substantially less well placed to conduct Competition Assessments than the competition authority.

**Figure 17: Ability of those applying processes that engage with policy development process to do so efficiently and effectively**

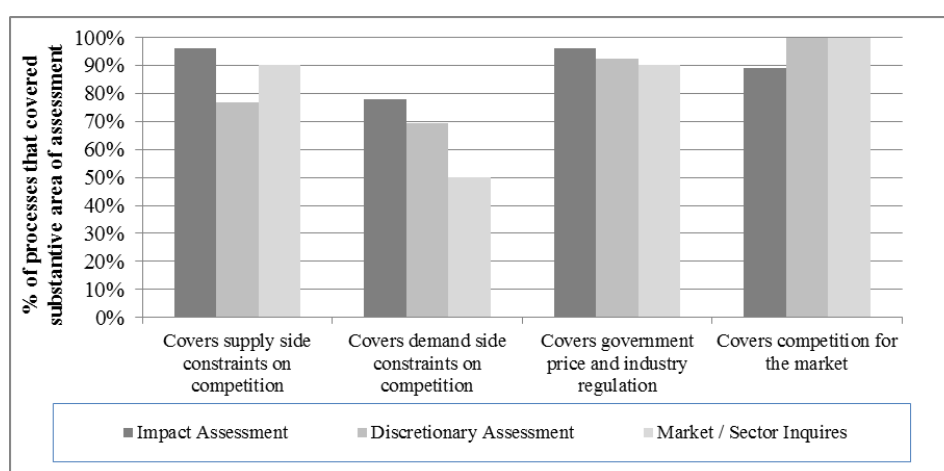
% agree that people that apply the process do so efficiently and effectively	
Impact Assessment conducted by host department with <u>little</u> involvement of competition authority	40%
Impact Assessment conducted by host department with support of competition authority	43%
Impact Assessment conducted by competition authority	87%
Average of Discretionary Assessment / Sector Studies processes	91%

*Competition Assessments conducted by host departments, rather than the competition authority, appear to be substantially less effective than assessments conducted by the competition authority itself. This may be due to the substantially lower reported technical capacity of host departments in applying the relevant competition assessment framework but may also be due to the fact that competition is not the core business of most host departments. Further training and support for host departments may be beneficial.*

### 3.3 Comparative analysis of substantive coverage

Figure 18 compares the extent to which the different processes cover the substantive area of analysis suggested by the Recommendation.

**Figure 18: Self assessed level of substantive coverage of processes that engage with policy development process**



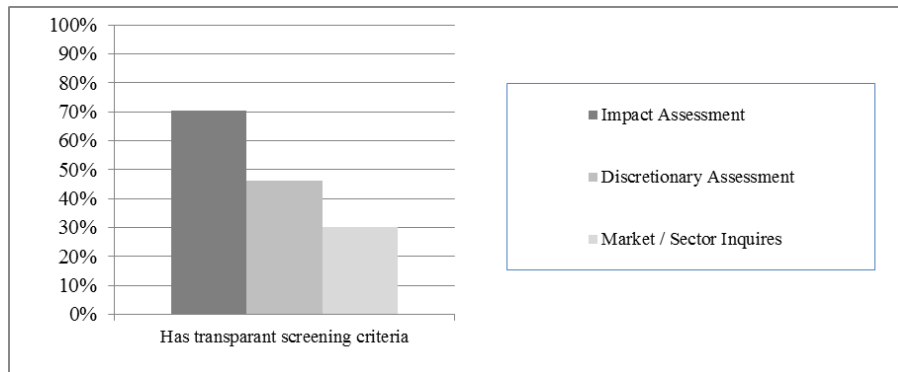
All processes are reasonably likely to cover "competition for the market" and "price and industry regulation". There is high, but slightly less universal, coverage of "supply side constraints". However, in marked contrast, all three processes less regularly cover "demand side constraints on competition".

Noteworthy is the relatively low coverage of demand side issues by Market and Sector studies despite their relatively larger scale and FTE cost compared to Impact Assessment and Discretionary Assessment.

While not part of the substantive assessment, it is also notable, as displayed in Figure 19, that Market and Sector studies, and to a lesser extent Discretionary Assessment processes, do not appear to regularly have transparent screening criteria.



**Figure 19: Self assessed occurrence of transparent screening criteria of processes that engage with policy development process**



A lack of screening criteria theoretically makes the competition assessment process less clear to those who are developing policy or devising measures, and thus decreases the ability of the process to reduce the amount of unduly restrictive policies and measures that are proposed in the first place. However, perhaps due to the relatively small sample size and the difficulty of answering the normative questions on which this analysis is based, there is no statistically significant relationship between whether a process has transparent screening criteria and whether respondents felt the process was effective.

*There is no evidence that the existence of transparent screening criteria is correlated with methods that are considered effective. However, if transparent screening criteria and a broad coverage of competition issues are considered desirable, the Toolkit might focus more on ensuring that a) the importance of screening criteria is demonstrated for Sector Inquiries and Discretionary Assessment as well as Impact Assessment; and b) that the importance of integrated demand and supply side analysis is demonstrated for Sector Inquiries and Discretionary Assessment as well as Impact Assessment.*

#### **4. Competition assessment that is not integrated in the policy development process**

Respondents described two processes that have their initial effect independent from the main policy development process. The first type involves processes whereby the competition authority, or some other agency, is able to challenge existing or proposed legislation and an independent arbiter makes binding decisions based on the challenge. Such Systems of Challenge are not embedded in the policy development cycle in-so-far as they are designed to act

on the policy development process, rather than within it. The second is Commissions with a broad remit, usually established on an ad-hoc basis, that take a one-off economy-wide view of what government policies or measures may impede competition and then make recommendations to government that may be incorporated in future policy decisions. It is not integrated in the policy development process largely due to its ad-hoc nature.

### **Case study: Systems of Challenge**

Systems of Challenge involve the competition authority either directly over-ruling government decisions, appealing to an independent body, or a combination of both. The challenge itself is usually a last resort, and is likely to be preceded by informal advocacy to try and resolve issues without resorting to formalistic and sometimes antagonistic methods.

In Lithuania, the competition authority is able to amend or revoke policy that unduly restricts competition. Their decisions can be appealed to an administrative court, and finally to the supreme administrative court of Lithuania. Such actions take place after an initial assessment is made by the Authority, and attempts are made to resolve any concerns informally. In their case study, Lithuania describes how a law allowing state policy to provide private security services was revoked by the authority. This was appealed, but the supreme court upheld the initial action by the authority. The process was initiated following a complaint from a private sector security firm which triggered an in-depth investigation. The investigation found that the law governing the remit of the policy needed to change, and the formal process was instigated.

In Mexico the competition authority can issue binding opinions on administrative regulations that can only be overturned by the President. Opinions on broader laws and regulations are non-binding, and more akin to processes described in this report as Discretionary Assessment.

In Italy, every year the competition authority suggests changes to government policies and measures to Parliament which are debated directly. In addition, the Authority can challenge laws and regulations in administrative courts.

In Chile the competition authority submits detailed market analysis to an independent Competition Tribunal which can use its powers to force legislative change. In their case study, Chile describes an Abuse of Dominance investigation that found that the cause of dominance were restrictive policies of the Customs Agency. The restrictive policies were changed following consultation without recourse to formal systems of challenge.

In Spain the competition authority can challenge regulations that pose obstacles to effective competition in administrative courts. In their case study, Spain describes how monopoly regional concessions on road passenger transport unduly restrict competition. Through conducting a Market Study and subsequent advocacy work the competition authority secured change at the national level that rendered the concession system less distortive, however regional government continued to offer concessions on long 25-year terms that remain problematic. As a consequence, the competition authority has commenced formal legal challenges of regional decisions. In all, the process has taken 5 years so far, and is still ongoing.

#### 4.1 *Comparative analysis of effectiveness*

While the categories for Commissions with a broad remit and Systems of Challenge are both separate from the normal policy development process, they are very different from each other in process. In addition, since only two respondents described Commissions with a broad remit, these are discussed as a case study later in this section with the statistics presented in the following tables for reference.

Figure 20 presents headline figures for the self-assessed effectiveness and efficiency of the two processes.

**Figure 20: Self assessed effectiveness and efficiency of processes that are not integrated in the policy development process**

	Effectiveness		Average Full Time Equivalent (FTE) staff per "case"	Efficiency	
	% respondents agree that process met objectives	% respondents agree that process reduced unnecessarily restrictive policy		% of cases reviewed that pose possible policy problems	% of problem cases that are resolved
<b>Commissions with a broad remit</b>	100%	100%	0.08	n/a	n/a
<b>Systems of Challenge</b>	50%	67%	0.93	73%	35%

The sample size of those who responded to these questions is 8 and therefore very low. In general, Systems of Challenge are considered reasonably effective at meeting their objectives and at reducing the amount of unnecessarily restrictive policies or measures that are proposed.

It is particularly interesting that Systems of Challenge reduce the number of unnecessarily restrictive policies or measures that are proposed, since by the way we have defined the category they apply primarily to proposed policies and measures and are therefore not integrated into the policy development cycle. Systems of Challenge most likely have this effect because the possibility of future challenge of unnecessarily restrictive policies appears to be a consideration during the initial proposal of policies and measures.

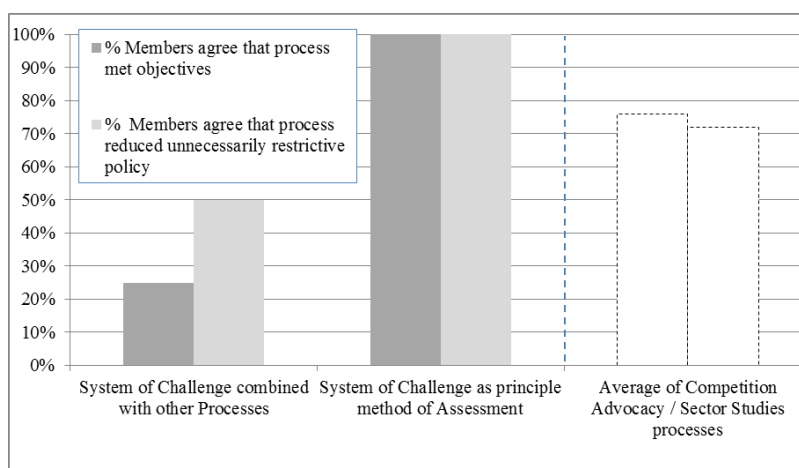
This importance of policy makers considering the possibility of later challenge is largely missing from both the Recommendation and the Toolkit. Much of the recent literature on Competition Advocacy (and by extension many methods of Competition Assessment) is focussed on the need to take into account the political economy of affecting change, and better understanding the formal Systems of Challenge used by respondents may assist in that task.

*Despite acting on policies and measures that have already been implemented, Systems of Challenge appear to affect the earlier policy development process. This is likely due to policy makers considering that unnecessarily restrictive policies or measures may be challenged in the future, and are therefore less prone to propose them. The Recommendation and Toolkit could provide more detail and guidance on how Systems of Challenge can increase the effectiveness of other methods of Competition Assessment through such an effect.*

#### 4.1.1 Drivers of effectiveness

Four out of the six responses that described Systems of Challenge also described other formal methods of Competition Assessment that the Systems of Challenge supported in some way. The remaining two only described Systems of Challenge which appeared to be the principal formal way that the competition authority interacted with the policy or decision making process.

**Figure 21: Differential impact of whether System of Challenge is combined with other processes**



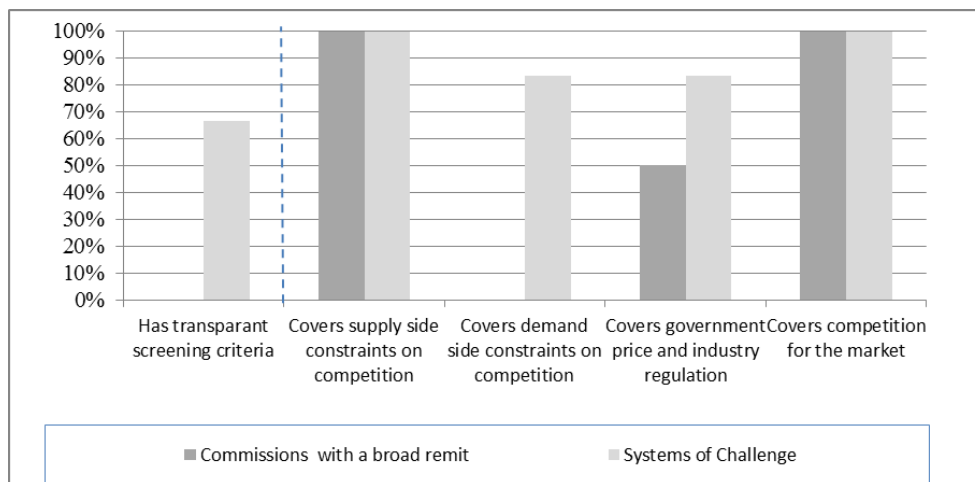
These stand-alone processes, which include the processes used in Lithuania, Norway and Mexico, appear to be considered particularly effective with all respondents believing they met their objectives and reduced unnecessarily restrictive policies and measures. In contrast, Systems of Challenge combined with other processes appeared substantially less effective with the lowest self-assessed level of effectiveness of any broad method of Competition Assessment.

*Respondents suggest that Systems of Challenge can be highly successful methods to discipline policy and decision makers. At the same time, respondents suggest that they can sometimes be relatively ineffective. In both cases, they employ methods somewhat different from those recommended by the OECD and outlined in the Toolkit. This suggests further research may be needed into best-practice design and operation of Systems of Challenge.*

#### 4.2 Comparative analysis of substantive coverage

Figure 22 compares the extent to which the different processes cover the substantive areas of analysis suggested by the Recommendation.

**Figure 22: Coverage of substantive areas of analysis (non-integrated assessment processes)**



Systems of Challenge tend to cover all four main concerns. In particular, they appear more likely to cover demand-side concerns than any other general method of competition assessment. In addition, they appear relatively likely to have transparent screening criteria.

#### **Case study: Productivity Commissions in Chile and Australia**

Both Chile and Australia described Productivity Commissions with a broad remit.

The Chilean Productivity Commission is a one-off economy-wide review of government policies and measures that unduly restrict competition. It involved 150 businessmen, entrepreneurs, and academics working in 10 sub-committees. Together they identified 300 restrictions to competition, and designed 50 initiatives to correct them. The process was started in 2011 and by May 2012 13 initiatives had already been implemented.

The Australian Productivity Commission, by contrast, is a stand-alone body that acts as the Government's primary advisor on microeconomic questions and regulation. In their case study of their work, the Commission highlighted their activities in supporting the 1990s National Competition Policy (NCP). The NCP was a broad sweep of economy-wide policies and measures aimed at exposing previously sheltered activities to competition. The Productivity Commission has undertaken a number of follow-up reports and studies to ensure that the recommendations of the NCP were applied in practice. In addition to supporting the NCP and subsequent economy-wide reviews, the Australian Productivity Commission also undertakes sector inquiries and other ad-hoc investigations, both at the request of government and *ex-officio*.

*Productivity Commissions appear to be successful ways of catalysing and maintaining support for economy-wide long term pro-competition reform. While somewhat different in method to the other processes described by respondents as Competition Assessment, the Recommendation and Toolkit may be extended to describe when such Commissions are appropriate, and what best-practice might be.*

## **5. Processes that review discretionary government action**

Most legislation and policy is not discretionary in nature as it sets general rules and is applied coherently across the economy. However, some policies and measures are applied in a discretionary manner. For example: direct and indirect

subsidies, measures affecting planning, procurement decisions, and ad-hoc regulatory decisions made by sectoral regulators.

10 of the 68 processes described by respondents were focussed on ensuring that these discretionary interventions did not distort or unduly restrict competition.

### 5.1 Comparative analysis of effectiveness

Since the sample size of each process that focussed on discretionary action is relatively small, the tables below compare Competition Assessment focussed on discretionary action with an average of the other more general methods of Competition Assessment.

**Figure 23: Self assessed effectiveness and efficiency of processes that target discretionary action**

	Effectiveness		Average Full Time Equivalent (FTE) staff per "case"	Efficiency	
	% respondents agree that process met objectives	% respondents agree that process reduced unnecessarily restrictive policy		% of cases reviewed that pose possible policy problems	% of problem cases that are resolved
<b>Competition Assessment of Discretionary actions</b>	90%	70%	0.93	45%	45%
<b>Competition Assessment of <u>non-</u>Discretionary actions</b>	74%	72%	0.56	55%	34%

There appears to be no great difference in effectiveness between Competition Assessment focussed at specific discretionary actions, and more general Competition Assessment of non-discretionary actions. If anything, Competition Assessment of specific discretionary actions appears to be a little more effective, though at a greater apparent FTE cost per case.<sup>19</sup>

<sup>19</sup> The sample size for all "FTE per case" estimates is very small, and caution should be taken not to read too much into aggregate differences between processes. For example, it may be that some respondents have included the

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There is room to strengthen the approach to the review of discretionary actions outlined in the Recommendation and the Toolkit. The Recommendation appears to suggest adopting general processes that cover the whole economy and all types of issues, yet respondents described a number of successful methods that were more focussed. The Recommendation also highlights certain types of discretionary action, and not others.

For example, the Recommendation suggests that assessments review "competition for the market", which most commonly arises in discretionary actions by Government to allow firms to compete for *defacto* monopoly rights in a market. However, there is no reason to believe that competition for the market is a more common or worrying concern than other competition issues raised by discretionary government action. As the case study in section 5 highlights, issues of "competitive neutrality" where state owned entities compete with private businesses, and "direct or indirect subsidies" can be important areas of concern.

The Recommendation and Toolkit could better reflect existing assessment methods focussed on particular discretionary actions of Government in two ways: by explicitly mentioning review of discretionary government action - such as subsidies - in the general Recommendation; and/or devoting a section of the Toolkit to the particular issues posed by assessment of discretionary actions.

*While the recommendation does not exclude discretionary policies and measures such as direct or indirect subsidies or issues of competitive neutrality, the Toolkit currently focuses primarily on general methods of Competition Assessment as applied to regulation. It might be improved by including explicit discussion of a broader range of discretionary government interventions.*

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time-cost of identifying potentially problematic issues within their FTE estimate, while others have only included the time spent actually conducting substantive assessments of already identified potential cases. In a notification style system under EU state aid for example, one would expect a higher FTE per problematic case as a lot of state aids require notification and subsequent analysis without raising any concerns.



## 6. Competition Assessment in practice

Respondents detailed over 50 different cases of how Competition Assessment, in its various forms has been applied in practice. The sectors in which the most concerns were discussed are summarised in Figure 24.

**Figure 24: Common sectors of successful Competition Assessment case studies**

Sector	Number of cases discussed
Medical	7
Finance	6
Electricity	5
Transport	5
Telephony	4
Airports	3
Construction	3
Govt. Procurement	3
Professions	2
Wholesale of food	2
Water	1
Storage	1
Whole economy	1
EV vehicles	1
Cable TV	1
Import / Export	1
Waste disposal	1
Security	1
Steel production	1
Motor Insurance	1
Retail of food	1
Ports	1
Post	1

This section discusses three areas: concerns in the Medical sector, concerns that are related to restrictions of the number of market operators in a wide range of sectors, and areas of high complexity. Details on case studies that involved competitive neutrality issues and indirect subsidies can be found in section 2.

### 6.1 Cases in the medical sector

Seven respondents described the use of Competition Assessment in the medical sector. Three discussed restrictions on where pharmacies could be opened and who owned them, two discussed restrictions on who could be a General Practitioner, and two on restrictions on the wholesale and distribution of medicines. The particular cases are described in Figure 25

**Figure 25: Examples of intervention in the Medical market**

Country	Concern	Process
<b>Pharmacies</b>		
Romania	Ordinance proposed by Ministry of Health would restrict ownership of pharmacies to pharmacists, and restrict the number of pharmacies that can open in urban areas.	The competition authority identified the problems through a process of Competition Assessment. Following intervention, the two restrictive elements of the policy were removed.
Estonia	In 2005 a new restriction was enacted restricting the ability to open new pharmacies in urban areas. It was hoped this would encourage new pharmacy openings in rural areas. It did not. Further, the urban market was highly concentrated, and vertically integrated. The inability of new pharmacies to enter the urban market curtailed competition in both pharmacies, and the distribution of drugs.	The competition authority identified and analysed the issue through a process of Competition Advocacy. However, despite a relatively strong evidence base against it, the restriction is still in place.
Ukraine	The Ministry of health proposed that all pharmacies must stock 50% of drugs licenced for prescription and have access to a 500m <sup>2</sup> warehouse. This is unduly onerous and prevents small or innovative pharmacies from entering the market.	The competition authority identified the problem through a process of Competition Advocacy.
<b>General practitioners</b>		
Ireland	The method by which GP's could access public funds for providing publicly funded healthcare was opaque, and favoured established GP practices over new ones.	The competition authority conducted a market study, and identified a number of policy changes that would promote competition between GP's providing publicly funded healthcare. In May 2012 the proposals were before parliament.
Ukraine	New proposals for reforming healthcare provision substantially decreased - without justification - the number of people able to act as General Practitioners	The competition authority identified the problem through a process of Competition Assessment.

<b>Drug distribution</b>		
Bulgaria	The Ministry of Health required drug firms to nominate their wholesale distributors at the time that drugs are provided a licence. Due to long licence periods this substantially reduced competition in the distribution market.	The issues was identified, analysed, and resolved through a method of Competition Advocacy. The Authority raised their concerns with the relevant minister who, after a period of consultation, dropped the requirement to only distribute drugs through pre-nominated wholesalers.
Latvia	A broad range of concerns including the ease of opening new pharmacies, the use of brand-names to prescribe rather than active ingredients, and a system of proscribed minimum wholesale mark-ups.	The issues were identified and analysed through a Sector Study.

Cases in the medical sector appear to be relatively standard, predominantly consisting of restrictions on who can operate where. Respondents used a variety of methods to identify and attempt to remove these restrictions. Impact Assessment processes appear to have been quite effective at preventing harmful restrictions from coming into force. Discretionary Assessment methods appear to have had more mixed success at repealing anticompetitive restrictions that have already been implemented.

*In each case, the relevant agency believed that excessive regulation was being put in place in the name of consumer protection, when in fact the regulation was merely impeding competition and thus preventing consumers from being served high-quality medical goods and services at a reasonable price. The substantive assessment of competition was rarely particularly complicated.*

## **6.2 Cases that involve unnecessary restrictions on the number of market operators**

Of the 53 case studies analysed, almost a third discussed cases that unnecessarily restrict the number of market operators. This was, by a large margin, the single most common restriction of competition that respondents tackled using competition assessment processes.

Figure 26 briefly describes 11 of the cases where some detail was provided.

**Figure 26: Example concerns of restrictions on the number of market operators**

Country	Market	Concern
Bulgaria	Drug distribution	Could only distribute if on approved list
Estonia	Pharmacies	Restriction on new pharmacies in urban areas
Ireland	General Practitioners	Restriction on GP's that could provide public healthcare
Romania	Pharmacies	Restriction on who could own pharmacies, and where they could be located
Norway	Taxis	Restriction on number of taxi licenses
Spain	Coaches	Restriction on who can operate coach services
Romania	Taxis	Restriction on number of taxi licenses
Romania	Notaries	Restrictions on number of public notaries
Chile	Storage	Restrictions on who can supply airfreight storage
Denmark	Airports	Restrictions on competition between terminal operators
Chinese Taipei	Cable TV	Restrictions on regional operators

*As in the medical examples discussed earlier, the above restrictions on competition were all relatively simple. The Toolkit and Recommendation do not need to concentrate on particularly complex areas of analysis to capture the majority of issues identified by respondents.*

### 6.3 *Complex competition concerns*

While the majority of cases described by respondents dealt with relatively simple constraints on competition, respondents described a number of case studies that dealt with more complicated market issues. These more complicated issues were predominantly in network markets that tend to monopoly.

Figure 27 outlines three of the more complex issues raised by respondents when conducting Competition Assessments in network industries.

**Figure 27: Examples of complex competition issues**

Issue	Examples
Whether or not to price regulate	Chile provided cases where the competition authority had intervened in electricity markets to suggest increased price regulation, and intervened in telephony markets to remove unnecessary price regulation.
Excess concentration	Both the European Union and Poland presented case studies discussing concentration and vertical foreclosure concerns in the Electricity generation and distribution sectors. The case studies both described the relatively complex Market Inquiries conducted in order to understand the cause and effects of concentration in the sector, and to formulate appropriate interventions.
Levels of transparency	The Chilean competition authority intervened in the Water sector to increase transparency on ownership of water rights in order to facilitate efficient market operation. While not a natural monopoly, in Latvia the competition authority intervened in the motor-insurance market to prevent government supported exchange of information between insurers on the level of their premiums.

All three issues - whether to price regulate, what is an unacceptable amount of concentration, and what is the correct level of market transparency - are complicated, nuanced, and market specific.

*While the majority of cases involve relatively straightforward competition analysis, the Toolkit may wish to provide more detailed advice on conducting Competition Assessments in network industries and markets that tend towards monopoly. In particular, it could cover issues such as whether or not to price regulate, how to identify and resolve excessive concentration, and how to determine whether market transparency is too high or too low.*

## 7. Conclusion

A number of clear empirical findings emerge from the analysis of respondents' submissions. In turn, these raise possible questions for discussion about the future development of the Recommendation and the associated Toolkit.

Some findings are clear-cut and do not require much further discussion. These include findings that:

- The Competition Assessment Toolkit was considered helpful in the application of the majority of Competition Assessment methods -even those that were initially implemented before the introduction of the Toolkit and Recommendation.
- The introduction of the Recommendation and Toolkit appear particularly timely, coinciding - and perhaps supporting - a substantial increase in the number of Competition Assessment processes in place.
- The vast majority of respondents felt that the people who conducted Competition Assessments had the technical competence to do so efficiently and effectively.
- The vast majority of respondents felt that their Competition Assessment processes met their objectives and were successful at reducing the amount of unnecessarily restrictive policies that were proposed.

On the whole, respondents appeared content with the Competition Assessment processes in place, and supported the OECD Recommendation and Toolkit. There were some suggestions for the revision of the Recommendation. There were also suggestions for developments to the Toolkit, and the Secretariat will develop proposals for Working Party 2 and the Committee to consider.



## **ANNEX I. COPY OF THE QUESTIONNAIRE**

### **PART I: OVERVIEW OF COMPETITION ASSESSMENT FRAMEWORKS**

Part I of the questionnaire asks for a very brief overview of the main frameworks by which public policies and measures, both existing and proposed, are assessed for their likely impact on competition.

Competition assessment is often conducted by several independent (local or central government) bodies. If different bodies conduct competition assessment, the bodies and the respective frameworks used should be listed below. Even if only one body, for example the competition authority, conducts competition assessment, it may still use different frameworks based for instance on different legal mandates. If that is the case, these should also be listed separately below.

For example, there may be a very formal framework for reviewing the competition impact of proposed new policies (such as a Competition Impact Assessment element in the context of a broader Regulatory Impact Assessment process), and a more informal approach to changing existing legislation (for instance through Competition Advocacy). Both these frameworks may or may not rely on the same legal basis and may not be conducted by the same set of people even if they take place in the same authority. If the frameworks are substantially different, as here, the two frameworks should be listed separately below.

While Part II should be completed only for the most substantial types of assessment frameworks, it would be helpful if as many frameworks as applicable could be entered here (up to a maximum of 10).



A: Please describe the principal ways (frameworks) in which both existing and proposed government policies are assessed for their impact on competition.		
Name or brief description of assessment framework	Primary responsible department / organisation	If Part II of questionnaire is filled out for the respective framework, please give the filename of relevant document.
[e.g. Formal competition impact assessment of proposed policies]	[e.g. Departments developing policies, overseen by Competition Authority]	[e.g. "Part II-1 (Formal assessment).DOC"]
[e.g. Informal advocacy to suggest changes of current policies]	[e.g. Competition authority external affairs department]	[e.g. "Part II-2 (Competition advocacy).DOC"]
[e.g. Legal requirement to review changes in regulations of professional bodies]	[e.g. Professional Services Ombudsmen]	[e.g. "Part II-3 (Legal ombudsman).DOC"]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]
[insert response if appropriate]	[insert response if appropriate]	[insert response if appropriate]

## PART II: DETAILS ON THE COMPETITION ASSESSMENT FRAMEWORKS LISTED IN PART I

This part asks for more detailed information on the competition assessment frameworks listed in Part I. This questionnaire should be filled out for each substantive framework. The framework covered by this questionnaire should match the filename and the name and number given to it in Part I.

Part II A asks some multiple choice questions about the framework. Part II B asks for a brief description of the framework and its institutional context. Part II C asks some quantitative questions about the scale and impact of the framework, along with some qualitative questions. Part II D asks for a brief description of a particularly successful assessment case treated under this framework.

A: Please answer the following questions about the implementation and scope of the process of competition assessment.		
Question	Answer	Comment or note
In what year was the framework first <b>introduced</b> ?	[year]	[comments, if any]
In what year was the framework last substantially <b>updated</b> ?	[year]	[comments, if any]
To what extent is the framework used for the assessment of the impact of a <b>proposed</b> policy on competition?	[click to select]	[comments, if any]
To what extent is the framework used for the assessment of the impact of an <b>existing</b> policy on competition?	[click to select]	[comments, if any]
To what extent is the framework used for the assessment of the impact of policies on <b>areas other than competition</b> ?	[click to select]	[comments, if any]
To what extent is the framework used for the assessment of policies that <b>limit the range of participants in the market</b> , or affect their <b>actions and incentives</b> ?	[click to select]	[comments, if any]
To what extent is the framework used for the assessment of policies that limit the <b>information provided to consumers</b> , or their ability to <b>make choices</b> ?	[click to select]	[comments, if any]
To what extent is the framework used for the assessment of <b>regulatory policies</b> that set up or revise a <b>regulatory body</b> , introduce <b>price or entry regulation</b> , or <b>restructure incumbent monopolies</b> ?	[click to select]	[comments, if any]
Does the application of the framework cover all public policies and measures or are there exceptions?	[click to select]	[please list exceptions, if any]

To what extent is the framework used for the assessment of “ <b>competition for the market</b> ” policies?	[click to select]	[comments, if any]
To what extent does the framework <b>involve a competition authority</b> in the analysis?	[click to select]	[comments, if any]
Are there <b>specific criteria</b> , for example as set out in the OECD Competition Assessment Toolkit, used in assessing the impact on competition?	[click to select]	[comments, if any]
<i>If so</i> are the criteria used in assessing the impact on competition <b>publicly available</b> ?	[click to select]	[comments, if any]
To what extent is the actual analysis and discussion of the competition impact of policies and measures <b>made public</b> ?	[click to select]	[comments, if any]
To what extent <b>was</b> the OECD’s Competition Assessment toolkit useful in <b>developing</b> the framework?	[click to select]	[comments, if any]
To what extent is the OECD’s Competition Assessment toolkit useful in <b>applying</b> the framework?	[click to select]	[comments, if any]
Are other, <b>non-OECD guidance materials</b> used in the assessment?	[click to select]	[comments, if any]
<i>If so</i> , <b>who produced</b> these materials?	[source of guidance]	[comments, if any]
Do the people applying the <i>OECD or non-OECD guidance material</i> <b>receive training</b> ?	[click to select]	[comments, if any]
<i>If so</i> , <b>who provides</b> this training?	[source of training]	[comments, if any]

B: Please briefly describe the framework. If possible, please cover:

The objective of the framework

How the framework is implemented (covering who implements the framework, how policies are chosen or made available for review, and how policy revisions are then negotiated or implemented, including possible conflict settlement processes)

The legal mandate on which the framework is based and the legal powers it entails (both in ability and mandate to review policy, but also detailing the process used to secure revisions of policy)

Whether the framework applies automatically or by discretion (and if so how and under which conditions is it triggered; for *ex ante* screens please indicate the stage at which the assessment is carried out)

The scope of the framework in terms of industry and type of policy coverage (including any exclusions, exceptions or areas of special treatment)

The extent to which non-competition factors (such as industrial policy considerations) are considered in the framework.

You should aim to write no more than 1000 words for your answer to all the points above. If you wish to attach diagrams, documents or web links to better illustrate your answer, then please provide the filenames (if appropriate, also page number information) below in your answer.

[e.g.

C: Please answer the following questions about the scale of the assessment framework and its impact		
Question	Answer	Comment or note
Approximately how many <b>Full Time Equivalent</b> staff work on competition assessment (please exclude staff working on non-competition related elements)	[insert number]	[comments, if any]
Approximately what number of “policies or measures” are substantively analysed under the framework each year?	[insert number]	[comments, if any]
Approximately what proportion of assessment cases raised substantial competition concerns?	[click to select]	[comments, if any]
Approximately what <b>proportion of assessment cases</b> that raised substantial competition concerns <b>were substantively debated</b> with policymakers with a view to possible revision?	[click to select]	[comments, if any]
Approximately what <b>proportion of assessment cases</b> that raised competition concerns <b>were revised</b> subsequent to the assessment?	[click to select]	[comments, if any]
On average, to what extent do the revisions successfully address the concerns raised?	[click to select]	[comments, if any]
The following attitudinal questions will be kept confidential and used in the report in an aggregate form. Please state the amount that you agree or disagree with the following statements		
The <b>current body of legislation and regulation</b> to which this framework applies <b>unnecessarily restricts competition</b>	[click to select]	[comments, if any]
The <b>people who formulate policy</b> to which this framework applies <b>have already a good understanding</b> of what may unnecessarily restrict competition	[click to select]	[comments, if any]
The existence of competition assessment has <b>reduced the number of unnecessarily restricting policies proposed</b>	[click to select]	[comments, if any]
The particular competition assessment framework dealt with here is successful at <b>meeting its objectives</b>	[click to select]	[comments, if any]
The people who apply the competition assessment within this framework have <b>sufficient technical competence</b> to do their job efficiently and effectively	[click to select]	[comments, if any]

**D) Successful case assessment**

Thinking about the most successful recent competition assessment case, please describe:

- The originally proposed policy or measure, including information on the markets that would have been affected and, if possible, the rough volume of trade
- How you became aware of the policy or measure
- Why the policy or measure was considered a concern
- How any possible revision of the policy or measure was discussed

What analytical tools were applied and how

- What the outcome of the process was

You should not write more than 500 words. If you cannot identify any successful competition assessment case, please use the available space to describe why, in your opinion, no such case has been successful.

[e.g.

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## ANNEX II. DATA TABLES AND ANALYSIS METHODOLOGY

This section of the report provides detailed data tables for all the questions asked in the Questionnaire, and gives further detail on the categorisation methodology used.

### 1. Coverage of the Recommendation

The implementation data in Figure 4 were calculated using the following methodology which assessed to what extent the Recommendation described the processes detailed by respondents.

- *Cover proposed actions.* If, in answer to the question "To what extent is the framework sued for the assessment of the impact of a proposed policy on competition", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned to *covers proposed actions*.
- *Cover existing actions.* If, in answer to question "To what extent is the framework sued for the assessment of the impact of an existing policy on competition", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned to *covers existing actions*.
- *Has a specific mechanism for revising.* Following analysis of the whole of Part II of the questionnaire, the process was assigned a positive value where the method either had its own specific method for revising policy, or was closely linked to the normal policy creation process such that competition concerns would be given a high level of attention. Where the method was not closely linked to the normal policy making process and did not have its own specific method of creating change we assigned a null value.
- *Has transparent screening criteria.* If, in answer to the question "Are the criteria used in assessing the impact on competition publicly available?", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned to *has transparent screening criteria*.

- *Covers supply side constraints.* If, in answer to question "To what extent is the framework used for the assessment of policies that limit the range of participants in the market, or affect their actions and incentives?", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned to *Covers supply side constraints*.
- *Covers demand side constraints.* If, in answer to question "To what extent is the framework used for the assessment of policies that limit the information provided to consumers or their ability to make choices", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned to *covers demand side constraints*.
- *Covers government price and industry regulation.* If, in answer to question "To what extent is the framework used for the assessment of regulatory policies that setup or revise a regulatory body, introduce price or entry regulation, or restructure incumbent monopolies", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned *covers government price and industry regulation*.
- *Covers competition for the market.* If, in answer to question "To what extent is the framework used for the assessment of competition for the market policies", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned *covers competition for the market*.
- *Substantially involves the competition authority.* If, in answer to question "To what extent does the framework involve a competition authority in the analysis", respondents answered "moderately", "exclusively", or "substantially" then the relevant method was assigned *substantially involves the competition authority*.
- *Is generally "integrated" into the process.* Following analysis of the whole of Part II of the questionnaire, the method was assigned a positive value where the method was automatically triggered in some way. Where the method was employed at the discretion of the body that undertook the method and was not otherwise linked to the policy process, a null value was assigned.

## 2. Effectiveness

Figure 28 provides further detail on respondents' assessment of the effectiveness of different processes.

**Figure 28: Self assessed effectiveness of Competition Assessment processes**

	The process met its objectives					The existence of the process has reduced the number of unnecessarily restrictive policies proposed			
	Sample	No answer	Disagree	Neither agree nor disagree	Agree	No answer	Disagree	Neither agree nor disagree	Agree
<b>Processes that directly engage with policy development</b>									
Impact Assessment	27	11%	11%	11%	67%	15%	7%	15%	63%
Discretionary Assessment	13	8%	8%	0%	85%	8%	8%	8%	77%
Market / sector inquiry	10	0%	0%	10%	90%	0%	0%	10%	90%
<b>Total</b>	<b>50</b>	<b>8%</b>	<b>8%</b>	<b>8%</b>	<b>76%</b>	<b>10%</b>	<b>6%</b>	<b>12%</b>	<b>72%</b>
<b>Processes that are separate from policy development</b>									
Commissions with a broad remit	2	0%	0%	0%	100%	0%	0%	0%	100%
Systems of Challenge	6	17%	0%	33%	50%	17%	0%	17%	67%
<b>Total</b>	<b>8</b>	<b>13%</b>	<b>0%</b>	<b>25%</b>	<b>63%</b>	<b>13%</b>	<b>0%</b>	<b>13%</b>	<b>75%</b>
<b>Processes that focus on discretionary action</b>									
Sector regulatory review	4	0%	0%	0%	100%	0%	0%	0%	100%
Review of subsidies	3	0%	0%	0%	100%	0%	0%	33%	67%
Government procurement oversight	2	0%	0%	50%	50%	0%	50%	0%	50%
Zoning and planning	1	0%	0%	0%	100%	0%	0%	100%	0%
<b>Total</b>	<b>10</b>	<b>0%</b>	<b>0%</b>	<b>10%</b>	<b>90%</b>	<b>0%</b>	<b>10%</b>	<b>20%</b>	<b>70%</b>



### 3. Efficiency

Figure 29 provides further detail on the FTE calculations used. Note the relatively small sample size of respondents who provided sufficient detail for these calculations.

The average number of FTE's to review each case is calculated by dividing the number of FTE's reported by the number of cases reviewed each year.

Where respondents reported exactly the same number of cases, and FTEs, for multiple methods the numbers are scaled pro rata. For example if a country claims 10 FTEs and 200 cases for two different methods, five FTEs and 100 cases are reported for each method.

**Figure 29: Self assessed efficiency of Competition Assessment processes**

	Sample	Min of FTE per case	Average of FTE per case	Max of FTE per case
<b>Processes that directly engage with policy development</b>				
Impact Assessment	11	0.004	0.17	0.83
Discretionary Assessment	2	0.04	0.77	1.50
Market / sector inquiry	6	0.29	1.10	2.40
<i>Total</i>	<i>19</i>	<i>0.10</i>	<i>0.52</i>	<i>1.40</i>
<b>Processes that are separate from policy development</b>				
Commissions with a broad remit	1	0.08	0.08	0.08
Systems of Challenge	3	0.11	0.93	2.50
<i>Total</i>	<i>4</i>	<i>0.11</i>	<i>0.72</i>	<i>1.90</i>
<b>Processes that focus on discretionary action</b>				
Sector regulatory review	1	1.00	1.00	1.00
Review of subsidies	3	0.03	0.17	0.43
Government procurement oversight	2	0.51	2.26	4.00
Zoning and planning	1	0.50	0.50	0.50
<b>Total</b>	<b>7</b>	<b>0.37</b>	<b>0.93</b>	<b>1.54</b>

#### 4. Impact

Figure 30 provides further detail of the extent to which the different processes succeeded in changing government policies.

The numbers are calculated by taking mid-points for the ranges given by respondents, and then aggregating across each process:

**Figure 30: Extent to which different processes succeeded in changing government policies**

Answer given by respondent	Percentage figure used for calculation
<10%	5%
11%-40%	25%
41%-60%	50%
61%-90%	75%
>91%	95%

Relatively few countries were able to accurately report the statistics.

**Figure 31: Self-assessed impact of Competition Assessment processes**

	Sample	Average % of cases that raised concerns	Average % of cases that raised concerns that were revised
<b>Processes that directly engage with policy development</b>			
Impact Assessment	14	38%	27%
Discretionary Assessment	6	58%	42%
Market / sector inquiry	7	77%	50%
<b>Total</b>	<b>27</b>	<b>53%</b>	<b>36%</b>
<b>Processes that are separate from policy development</b>			
Commissions with a broad remit	0	n/a	n/a
Systems of Challenge	3	73%	35%
<b>Total</b>	<b>3</b>	<b>55%</b>	<b>26%</b>
<b>Processes that focus on discretionary action</b>			
Sector regulatory review	1	95%	95%
Review of subsidies	2	15%	60%
Government procurement oversight	1	95%	5%
Zoning and planning	1	5%	5%
<b>Total</b>	<b>5</b>	<b>48%</b>	<b>41%</b>

## 5. Extent to which current legislation impedes competition

Respondents were also asked to what extent current legislation to which the process applied impeded competition, and to what extent they felt that the drafters of current legislation understood the competition implications of their proposals.

**Figure 32: Assessed state of current legislation**

	Sample	The current body of legislation unnecessarily restricts competition				The people who formulate policy have a good understanding of what restricts competition			
		No answer	Disagree	Neither agree nor disagree	Agree	No answer	Disagree	Neither agree nor disagree	Agree
<b>Processes that directly engage with policy development</b>									
Impact Assessment	27	15%	19%	44%	22%	11%	11%	11%	67%
Discretionary Assessment	13	8%	15%	62%	15%	8%	8%	0%	85%
Market / sector inquiry	10	10%	20%	60%	10%	0%	0%	10%	90%
<b>Total</b>	<b>50</b>	<b>12%</b>	<b>18%</b>	<b>52%</b>	<b>18%</b>	<b>8%</b>	<b>8%</b>	<b>8%</b>	<b>76%</b>
<b>Processes that are separate from policy development</b>									
Commissions with a broad remit	2	0%	0%	0%	100%	0%	0%	0%	100%
Systems of Challenge	6	17%	17%	33%	33%	17%	0%	33%	50%
<b>Total</b>	<b>8</b>	<b>13%</b>	<b>13%</b>	<b>25%</b>	<b>50%</b>	<b>13%</b>	<b>0%</b>	<b>25%</b>	<b>63%</b>
<b>Processes that focus on discretionary action</b>									
Sector regulatory review	4	0%	0%	0%	100%	0%	0%	0%	100%
Review of subsidies	3	0%	0%	67%	33%	0%	0%	0%	100%
Government procurement oversight	2	0%	100%	0%	0%	0%	0%	50%	50%
Zoning and planning	1	0%	0%	100%	0%	0%	0%	0%	100%
<b>Total</b>	<b>10</b>	<b>0%</b>	<b>20%</b>	<b>30%</b>	<b>50%</b>	<b>0%</b>	<b>0%</b>	<b>10%</b>	<b>90%</b>

## 6. Technical competence

Figure 33 provides more detail on the reported technical competence of those undertaking competition assessments.

**Figure 33: Percent of respondents who believed people carrying out Competition Assessment had the technical competence to do so, filtered by whether or not they had received training**

	No training	No answer	Have training	Total
<b>Processes that directly engage with policy development</b>				
Impact Assessment	70%	25%	77%	67%
Discretionary Assessment	83%	100%	100%	92%
Market / sector inquiry	100%	100%	67%	90%
<b>Total</b>	<b>79%</b>	<b>60%</b>	<b>81%</b>	<b>78%</b>
<b>Processes that are separate from policy development</b>				
Commissions with a broad remit	100%			100%
Systems of Challenge	67%	100%	100%	83%
<b>Total</b>	<b>75%</b>	<b>75%</b>	<b>75%</b>	<b>88%</b>
<b>Processes that focus on discretionary action</b>				
Sector regulatory review	100%		100%	100%
Review of subsidies	0%	100%	100%	67%
Government procurement oversight	100%		0%	50%
Zoning and planning		100%		100%
<b>Total</b>	<b>60%</b>	<b>40%</b>	<b>70%</b>	<b>80%</b>



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### ANNEX III. RECOMMENDATION OF THE COUNCIL ON COMPETITION ASSESSMENT

22 October 2009 – [C\(2009\)130](#)

**THE COUNCIL,**

**HAVING REGARD** to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

**HAVING REGARD** to the agreement reached at the 1997 Meeting of the Council at Ministerial level that restrictions on competition are often costly and ineffective in promoting public interests and should be avoided [[C/MIN\(97\)10](#)];

**HAVING REGARD** to the OECD Guiding Principles on Regulatory Quality and Performance [[C\(2005\)52](#)], which call for governments to review proposals for new regulations, as well as existing regulations, with reference to competition;

**RECOGNISING** that competition promotes efficiency, helping to ensure that goods and services offered to consumers more closely match consumer preferences, producing benefits such as lower prices, improved quality, increased innovation and higher productivity;

**RECOGNISING** that higher productivity is essential to economic growth and increased employment;

**RECOGNISING** that public policies serve a variety of commercial, social, health, safety, security environmental and other objectives;

**RECOGNISING** that, at times, public policies unduly restrict competition;

**RECOGNISING** that such undue restrictions can occur unintentionally even when the public policies in question are not focused on economic regulation and not intended to affect competition in any way;

**RECOGNISING** that public policies that unduly restrict competition often may be reformed in a way that promotes market competition while achieving the public policy objectives;

**RECOGNISING** that regulation and reform of regulated industries usually require detailed competition assessment of likely effects;

**RECOGNISING** that, other things being equal, public policies with lesser harm to competition should be preferred over those with greater harm to competition, provided they achieve the identified public policy objectives;

**NOTING** that a number of countries already perform competition assessment; and

**NOTING** that the OECD and a number of OECD Member countries have developed competition assessment toolkits;

**I. RECOMMENDS** as follows to governments of Member countries:

**A. Identification of Existing or Proposed Public Policies that Unduly Restrict Competition**

1. Governments should introduce an appropriate process to identify existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for performing competition assessment, including the preparation of screening devices.
2. In performing competition assessment, governments should give particular attention to policies that limit:
  - i) The number or range of market participants;
  - ii) The actions that market participants can take;
  - iii) The incentives of market participants to behave in a competitive manner;
  - iv) The choices and information available to consumers.

- 
3. Public policies should be subject to competition assessment even when they pursue the objective of promoting competitive outcomes and especially when they:
    - i) Set up or revise a regulatory body or regime (e.g., the assessment could make sure that, among other things, the regulator is appropriately separated from the regulated industry);
    - ii) Introduce a price or entry regulation scheme (e.g., the assessment could make sure that there are no reasonable, less anticompetitive ways to intervene);
    - iii) Restructure incumbent monopolies (e.g., the assessment could make sure that the restructuring measures actually achieve their pro-competitive objectives);
    - iv) Introduce competition-for-the-market processes (e.g., the assessment could make sure that the bidding process provides incentives to operate efficiently to the benefit of consumers).

#### **B. Revision of Public Policies that Unduly Restrict Competition**

1. Governments should introduce an appropriate process for revision of existing or proposed public policies that unduly restrict competition and develop specific and transparent criteria for evaluating suitable alternatives.
2. Governments should adopt the more pro-competitive alternative consistent with the public interest objectives pursued and taking into account the benefits and costs of implementation.

#### **C. Institutional Setting**

1. Competition assessment should be incorporated in the review of public policies in the most efficient and effective manner consistent with institutional and resource constraints.
2. Competition bodies or officials with expertise in competition should be associated with the process of competition assessment.
3. Competition assessment of proposed public policies should be integrated in the policy making process at an early stage.



## **D. Definitions**

For the purposes of this Recommendation:

“Public policies” means regulations, rules or legislation;

“Unduly restricts competition” means that restrictions on competition needed for achieving public interest objectives are greater than is necessary, when taking into account feasible alternatives and their cost;

“Market participants” means businesses, individuals or government enterprises engaged in supplying or purchasing goods or services;

“Competition bodies” means public institutions, including a national competition authority, charged with advocating, promoting and enhancing market competition and not limited in these roles to a specific sector;

“Competition-for-the-market processes” refers to the bidding processes organised by government for allocating the right to supply a given market or for using a scarce government resource for a distinct period of time;

“Competition assessment” means a review of the competitive effects of public policies including consideration of alternative and less anti-competitive policies. The principles of competition assessment are relevant to all levels of government.

**II. INVITES** non-member economies to associate themselves with this Recommendation and to implement it.

**III. INSTRUCTS** the Competition Committee:

To serve as a forum for sharing experience under this Recommendation for Member countries and non-member economies that have associated themselves with this Recommendation;

To promote this Recommendation with other relevant Committees and Bodies of the OECD;

To report to Council in three years on experience with this Recommendation.