



## POLICY ROUNDTABLES

# Communication by Competition Authorities 2002

### Introduction

The OECD Competition Committee debated communication by competition authorities in October 2002. This document includes an executive summary and the documents from the meeting: an analytical note by Canada, written submissions from Australia, Brazil, Canada, the Czech Republic, Denmark, the European Commission, Finland, Israel, Japan, Mexico, the Netherlands, Norway, Poland, Sweden, Chinese Taipei, the United Kingdom, the United States, as well as an aide-memoire of the discussion.

### Overview

Competition authorities devote substantial resources to communication using a variety of means to reach different target audiences (i.e. the business community, lawyers, public policy makers, and consumers). They emphasize the need to deliver clear, consistent and comprehensive messages. Nevertheless, nearly all competition authorities express the view that it is quite difficult to assess the effectiveness of a communication policy.

The discussion focused on the need for developing a communication strategy, advocating a competition culture, and using the proper communication instruments, such as video, films, or cartoons. A communication strategy depends a lot on the local culture and legal environment that a competition authority is confronted with.

Countries without competition laws or newly adopting such laws must concentrate on different matters than countries having more mature laws. In the former group, the stress must be on building political support for competition law and encouraging the development of a competition culture.

### Related Topics

Evaluation, Actions and Resources of Competition Authorities (2005)

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## **FOREWORD**

This document comprises proceedings in the original languages of a Roundtable Communication by Competition Authorities, which was held by the Competition Committee in October 2002.

It is published under the responsibility of the Secretary General of the OECD to bring information on this topic to the attention of a wider audience.

This compilation is one of a series of publications entitled "Competition Policy Roundtables".

## **PRÉFACE**

Ce document rassemble la documentation dans la langue d'origine dans laquelle elle a été soumise, relative à une table ronde sur la Communication par les Autorités de concurrence, qui s'est tenue en octobre 2002 dans le cadre du Comité de la concurrence.

Il est publié sous la responsabilité du Secrétaire général de l'OCDE, afin de porter à la connaissance d'un large public les éléments d'information qui ont été réunis à cette occasion.

Cette compilation fait partie de la série intitulée "Les tables rondes sur la politique de la concurrence".

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## AUSTRALIA

### 1. Introduction

The publicity accorded to competition law and its regulation has increased in most countries. This reflects greater activity by competition regulators, and increasing public education and awareness of competition law and its enforcement.

The relationship between the competition regulator – in Australia’s case, the Australian Competition and Consumer Commission (ACCC) – and the media is an important one. Regulators have significant relationships with the major institutions in society such as the legislature, the judiciary and the executive arms of government, not to mention business, consumers and other interest groups.

The relationship between the competition regulator and these institutions is dynamic, involving co-operation, conflicts and tensions. Business and economic interest groups complain and sometimes applaud; consumers sometimes applaud and sometimes complain; the judiciary may uphold or override or give effect to regulators’ decisions; the legislature may alter the legislation and take a close interest in its implementation; the executive also has responsibilities for at least oversighting the implementation of competition laws and for proposing changes to the laws.

An independent review is currently examining the competition provisions of Australia’s Trade Practices Act and their administration, and issues regarding the ACCC’s interaction with the media have been raised in many submissions to the review. While most consumers groups and small business are supportive of the ACCC’s media role, some businesses and business organisations have raised concerns, particularly regarding an alleged use of “trial by media”.

This paper addresses the media strategy adopted by the ACCC, examining the reasons for having such a policy and the legal basis that underpins it. It also discusses a number of issues including the impact of publicity on the reputation of companies, and how the ACCC presents allegations of misbehaviour.

### 2. Statutory obligation

Section 28 of the Trade Practices Act requires the ACCC to disseminate information to businesses, consumers and other interested parties regarding the functions and exercise of powers by the ACCC. Among other things, such information would include media releases about enforcement activities and advice for businesses and consumers regarding rights and obligations under the Act.

At the time of the introduction of the goods and services tax (the equivalent of a value-added tax) in Australia in July 2000, the ACCC was also given the power to issue notices to companies that it considered had engaged in price exploitation. The notices were treated as prime facie evidence of price exploitation in subsequent proceedings. Through these notices, the ACCC explained its actions very publicly against those alleged to have breached the Trade Practices Act and those penalised by the Courts

for breaches, and detailed Court enforceable orders to prevent future breaches. These powers ceased on 30 June 2002.

As part of its role to prevent price exploitation accompanying the tax changes, the ACCC also published estimates of expected price changes for every major product, and distributed them to every Australian household and business. While there were a number of significant confrontations with business interests during this period, consumers and businesses developed a strong awareness of “acceptable” price changes that should arise from the changes to the tax system.

### **3. Reasons for dealing with the media**

#### **3.1 *To inform the public***

The primary reason for the ACCC providing information to the media is that it helps keep the public informed about the operation of the Trade Practices Act and the role of the ACCC. Given the complexity of the work of a competition regulator, the task of delivering the message is continuous.

There is a demonstrated need to inform everyone: the public, small business, large business, and consumers, of their rights and obligations under the law and of how the ACCC applies the law. The provision of information to the media helps to promote confidence in the law and its administration, and is also a form of accountability and transparency. It has long been recognised that the public has a basic right of access to the courts. Similarly, it has a basic right of access to knowledge about the activities of a law enforcement agency.

Apart from the need for fair and accurate coverage of cases, the availability of accurate information makes it possible for citizens to discriminate on important issues and act to their own benefit - and to the benefit of their fellows.

Not only does the provision of information promote public understanding; it also enables public discussion and debate regarding the Trade Practices Act and its administration, which in turn helps improve the law.

There are a number of adverse consequences that would result if the regulator failed to provide information to the media and the public more generally. The public would be poorly informed because the media and other sources of information to the public are unlikely to perform the task effectively - particularly given that the issues are often complex and technical. In addition, often the work of regulators is done in private or with few observers present. Even when the work of regulators is fully public, it may be unclear to reporters (for example, during court hearings the communication between advocates and the court is often technical or cryptic and difficult to comprehend). Moreover the media, on its own, is frequently incapable of understanding and reporting accurately, given limited time and resources, and the provision of competing information (sometimes biased or inaccurate) from affected businesses and interest groups.

#### **3.2 *To promote compliance***

Communicating with the media also helps promote compliance with the law and the achievement of desirable economic objectives such as a more competitive economy. Explaining the law and illustrating its various uses and applications spreads the word amongst business and consumers and helps promote

lawful behaviour and eradicate unlawful behaviour. Increasing awareness of penalties also illustrates the possible consequences of failing to comply with the law.

The unfavourable publicity surrounding those who breach the law is a further means of inducing other firms to comply rather than face such publicity themselves.

### **3.3. *To develop a culture of competition***

Publicity helps build a general culture, understanding and support of competition and understanding of and support for the law and its administration and, more generally, for the application of competition policies across the whole economy. It also promotes discussion on critical evaluation of competition policy.

### **3.4 *As an investigative tool***

On occasions publicity directly assists in the proper and effective enforcement of the law. Sometimes an announcement that an issue is being investigated brings forward new witnesses who help provide evidence concerning possible breaches of the law.

## **4. The ACCC's media strategy**

Contact with the media is only one part of a wider policy on a strategy of communications and public relations that a competition regulator may follow. The ACCC engages in a wide range of activities to promote understanding of the law, including the production of publications, and giving speeches and presentations on various issues. Information about the Trade Practices Act and the ACCC's activities is also available through university courses on competition law and economics, law reports, corporate compliance programs whereby firms educate their many employees in their obligations under the law, and by law firms and others who educate business about the law.

In terms of the Internet, the ACCC's website (<http://www.accc.gov.au>) continues to grow rapidly and has also become an important adjunct to the ACCC's extensive print publications program.

In addition to the basic information about the work of the ACCC, and how to contact it, the site includes: on-line versions of the ACCC's main publications; on-line text of media releases and other public statements; drafts and discussion papers on which the ACCC seeks public comment; and links to related sites, especially those of agencies that are often more appropriate sources of information or help to people making inquiries to the ACCC. The web site is updated almost daily to make new and sought after information available quickly to the public.

The main media activities of the ACCC involve issuing media releases, holding media conferences and being available to talk to the media at almost any time. The ACCC typically issues several hundred media releases per year. In 2001, 335 media releases were issued, with 371 in 2000 (the introduction of the goods and services tax inflated the number). Most of the releases and conferences deal with specific cases, and cover the legal outcome and the implications for consumers and the businesses concerned.

Most releases are reported in the general media and about half receive substantial attention. This reflects the significant level of public interest in the ACCC's dealings, many of which may involve well-

known businesses or products. The ACCC generally holds a media conference on an ad hoc basis about once a week, attended by journalists from print and electronic media.

Besides actively issuing information to the media on its own initiative, the ACCC, in particular its Chairman, has a policy of full availability at all times. Any reporter from the major newspapers can get through to the Chairman with a phone call or, if the Chairman is busy, will have their call returned on that day.

In addition, releases, conferences and comment are typically the province of the Chairman rather than a public relations spokesperson or a number of Commissioners or senior staff. This gives the information more authority, more media coverage and leads to the identification of the ACCC in personal terms.

The ACCC is extremely visible on all forms of media. In most weeks the Chairman appears on national television (including current affairs programs) at least once, sometimes more often. Similarly, the Chairman is interviewed for radio news on most stations and networks and is also frequently interviewed or participates in talkback radio. The ACCC is also very heavily reported in newspapers and magazines.

Survey data show there is a very high recognition of the ACCC and its Chairman. The ACCC is generally identified with the strong pro consumer stance. In regional and rural Australia, for example, awareness of the ACCC ranges from 67 percent among consumers to 86 percent among professionals. The media has been identified as the dominant source of initial awareness of the Trade Practices Act among all groups.

The ACCC also undertakes a consumer protection role, and this is seen as a useful complement to its competition related activities. Many of the actions taken in competition policy are unpopular and heavily criticised by business and it is often difficult and complex to convey the key issues to the public. On the other hand, most consumer protection activities are clear and win public approval. This aids the public perception of the ACCC during periods when difficult competition issues, such as mergers and regulation, are being considered.

There is an age-old difficulty for regulators. When they are regulating infrastructure prices such as in telecommunications, electricity, gas, airports, rail, it is often difficult to show the public benefit, particularly when upstream prices rather than prices finally charged to consumers are being regulated. On the other side of the equation, monopolists often have a vested interest in softening the stance of regulation. They may conduct large campaigns, sometimes behind the scenes with politicians and bureaucrats and sometimes through the business press, to get regulation softened. This is usually a big challenge for the regulator.

## **5. Issues arising from the regulator's media activity**

### **5.1 "Trial by media"**

As noted above, some businesses have criticised the ACCC for conducting what is described as "trial by media". These criticisms are based on fear that by publicising the institution of proceedings and cases, alleged offenders are exposed to trial by media - that is, being tried and punished through adverse publicity rather than through the courts.

The vast bulk of information provided by the ACCC concerns matters that have already been resolved. The ACCC also reports the outcomes of its own decisions, such as regulatory and adjudicative decisions or the administrative resolution of matters. It is not “trial by media” to report the outcome of a court case or regulatory decision. That said, most concern regarding reporting of the ACCC’s activities in the media arises from instances where the ACCC is investigating a possible breach of the Act, and has not commenced legal proceedings.

## **5.2 *Presentation of allegations of misbehaviour***

As the public disclosure of allegations and proceedings commenced against a party tends to be sensitive, the ACCC is cognisant of the need to avoid presenting allegations as matters of fact. While the announcement of an investigation may lead some to conclude that the firm concerned is guilty of a breach of the Act, it is the role of the regulator to present the facts, and allow the courts to reach a determination.

The ACCC does not use the media to influence the deliberations of a particular court, or the outcome of a particular trial. It is highly unlikely that Judges of the Federal or High Courts can be influenced in this way. In fact, it is more likely that any attempt to exert pressure on the courts through media comment would provoke a negative reaction.

Traditionally, the main sensitivities of the Courts have arisen in jury trials, though this is not to say that their sensitivities should be ignored in non-jury matters.

In addition, the ACCC has a long established process of comment on investigation or court action. The ACCC’s general approach is not to publicise the fact that it is investigating a suspected breach of the law. The exception is where there is a public policy reason, (for example, where careful comment by the ACCC may induce witnesses to come forward). In a recent matter the ACCC successfully advertised for whistleblowers to come forward because anonymous evidence was incomplete.

The ACCC is currently investigating approximately 200 serious investigations and few, if any, have or are likely to be referred to in a media release before proceedings commence. However, the ACCC may confirm, in certain circumstances, that it is investigating a matter, usually after the investigation becomes known. In other cases, a complainant, someone under investigation, or a third party from which the ACCC has sought information or evidence may tell the media.

In such cases, the ACCC may consider it appropriate to comment, as the public has an interest in knowing whether a matter brought to its attention which is already in the public domain is considered of sufficient merit to warrant investigation by the ACCC. Further, it may be important for the ACCC to comment in order to address any inaccuracies or false speculation about its own views and the investigation. Sometimes a statement by the ACCC emphasising that no conclusion about whether a breach has occurred can reduce the potential for adverse publicity that can arise from inaccurate or speculative media statements.

When the ACCC institutes court action, a media release is usually issued. The purpose is to detail the institution of the action, briefly indicate the nature of the allegations and the remedies being sought, and, if available, provide the date of first court hearing.

Generally speaking, when the ACCC institutes proceedings the papers are lodged in the Federal Court Registry and are publicly available. It is not the ACCC’s practice to publicly provide, independently of court processes, detailed arguments that would support allegations to be made in court.

Because the ACCC understands the processes of the law and the operation of the courts it is necessarily restrained in its comments. Once a case is concluded, the ACCC issues a statement reporting the decision. Its objective is to indicate the decision in law and the lessons that consumers and businesses can draw. Depending on the nature and importance of a particular case, the ACCC may seek further publicity.

In other matters, such as mergers, a media statement may be issued when the companies involved announce a significant merger. Such releases may indicate if the ACCC is reviewing the matter; if there have already been discussions with the company and, sometimes, if there are reasons for concern. In this, our intention is to quickly inform the market of matters relevant to the merger.

It is worth noting that where a notified proposed merger or acquisition could potentially raise competition concerns, the ACCC always insists on it being made public before reaching a decision. This is because the likely economic effect of the merger can only be evaluated by questioning customers, suppliers, competitors and others about its likely effect.

### **5.3 *Impact on reputation***

Publicity surrounding unlawful behaviour can lower a firm's standing and reduce sales. Some argue that a reduction in reputation and standing should result in lower penalties, but the Federal Court of Australia has generally rejected the idea unless it could be demonstrated that 'adverse publicity' was the result of unfair reporting.

A good reputation is highly prized by businesses. Accordingly, those planning unlawful anti-competitive conduct that would breach the provisions of the Trade Practices Act are potentially putting a valuable asset at risk from any resulting publicity.

## **BRAZIL<sup>1</sup>**

### **1. Institutional and Historical Background**

The Brazilian System for Competition Defense is composed by the Secretariat for Economic Monitoring (SEAE) of the Ministry of Finance, the Secretariat of Economic Law (SDE) of the Ministry of Justice and the Administrative Council for Economic Defense (CADE), an independent body administratively linked to the Ministry of Justice.

SEAE and SDE have analytical and investigative functions. Both are responsible for issuing non-binding opinions on mergers and anticompetitive practices cases. CADE is an administrative tribunal and its decisions can only be reviewed by the courts.

Brazil has had an antitrust law since 1962. However, like other developing countries, this law remained unused for many years due to strong state intervention in the economy, high inflation rates, and protection of national industries and price control mechanisms. This implied such an environment in which there was no room for competition policy.

In 1994, a new competition law (Law no. 8884) substituted the previous statute in a context of broad economic reforms, such as trade liberalisation, regulatory reform and macroeconomic stabilisation. With the enactment of that competition diploma, Brazil moved definitively from price control to competition policy.

In the present days, the diffusion of competition values throughout the society and the repression against anticompetitive practices are the main challenges faced by the Brazilian antitrust authorities. Since 1999, important initiatives taken by them were related to anti-cartel enforcement and to competition advocacy. Efforts were also made to increase efficiency and to improve transparency of economic analysis, as well as to reduce budgetary limits.

Currently, a working group is preparing a new structure for the Brazilian System for Competition Defense, at the request of President Fernando Henrique Cardoso. The proposed draft-bill gathers under a National Competition Agency the two investigative and advisory institutions (SEAE and SDE), and it will be organised as an independent body linked either the Ministry of Finance or to the Ministry of Justice. CADE will keep its administrative and financial independence and have the final administrative authority on the subject.

At the same time, an amendment of the Competition Law is being prepared, not only to adapt it to the new conformation of the system, but also making it more agile and efficient with respect to investigation procedures and mergers analysis.

The draft-bills are currently being finished to be sent to Congress. The preliminary project was submitted to public consultation and has received many suggestions during the two years of its preparation.

## **2. Enhancing Advocacy: The Importance of Communications**

As it was previously mentioned, in 1994 a new competition law was enacted and, with that, the seed for a new competition culture was planted.

The price control system that lasted in Brazil for so many years was responsible for the strong belief shared by Brazilian society, that controlled prices were fair prices and, thus, better than those that result from a competitive environment.

This relative unawareness of the competition “question” is also true regarding other government bodies and branches (the Legislative and the Judiciary) and regarding the business community. Apparently, so many years of state interventionism and price control makes it difficult for society to rely upon the free market – competition - as the best means to allocate resources. Moreover, the very notion of the benefits of competition and the existence of a competition law and of competition authorities to enforce it is not widespread.

A great deal of mobilisation was and still is necessary to change these views and substantial competition advocacy work is necessary to strengthen the “competition culture” among consumers, business people, government officials, congressmen and judges. To accomplish this task and, as a consequence, to increase the level of compliance to the competition law provisions, communications play a key role.

During the past three years, SEAE and the other agencies of the SBDC have concentrated efforts in disseminating the value of competition within the government and throughout the Brazilian civil society. The competition advocacy role performed by the SBDC has encompassed a variety of initiatives that ranged from an intensive campaign in the media, to participation in task forces with different governmental bodies.

SEAE has a communications advisor itself and also counts on the Minister of Finance’s communications staff. The SBDC and SEAE, in particular, does not have a formal strategic communications plan but the System has some policies for communications and media relations such as a policy toward transparency and information dissemination through the Internet, which has been adopted by SEAE since 1999. In (<http://www.fazenda.gov.br/seae/>) one can easily access the most important information on competition policy in Brazil and around the world ( through links to worldwide competition authorities). SEAE’s web site also has the Brazilian antitrust legislation, SEAE and SDE’s common merger guidelines, the press releases, articles, papers and annual reports on the Secretariat’s activities.

The three agencies have took on the routine of issuing press releases and giving press conferences to announce relevant accomplishments and important decisions on the most relevant cases. Here, SEAE pays close attention to the press releases language in order to make the messages simple, objective and direct, leaving the sophisticated technical approach for the working papers. This practice has increased the knowledge of journalists on the subject and, as a consequence, the information that is passed on to the general public is significantly more accurate. In addition, the heads of antitrust authorities of the SBDC write occasional articles for the largest newspapers and are frequently quoted by journalists in their news pieces.

It is almost impossible to measure the effectiveness of the communications objectively. One way to assess it might be by the number of media insertions. A study on the number of articles in the print media reporting antitrust enforcement by SEAE alone, indicates that only in the first four months of 2002 there were already more pieces in the press about the agency, than during the entire year of 2001:

66 articles were published in 2001, against 79 from January through June 2002. Although there are not yet numbers for the SBDC as a whole, it seems fair to assume that it follows the same trend.

The initiative of the agencies in promoting antitrust in the media, has been followed by publications by attorneys and former competition officials, including two former commissioners from CADE that have weekly columns in important newspapers. The actual growth in importance of this topic is also reflected on the inclusion of antitrust on undergraduate courses of economics; on the emergence of several graduate courses on antitrust; and on the proliferation of thesis and graduate papers on the subject.

In order to encourage staff participation and also to advocate the competition “cause”, SEAE started, in 1999, the publication of a Working Papers Series, through which the staff is experimenting the opportunity to seeing the result of their jobs in the media. This fact has improved their commitment to work, which led them to greater awareness of the competition relevance and of the antitrust authorities’ role in the economy. Thus, besides enhancing high morale among the working team and creating a positive organisational environment, the media effort helped making of the employees natural competition advocates.

SBDC’s communications strategy includes making live presentations for government officials, business community representatives and external audiences. In this context, almost every invitation to give speeches is accepted. This is viewed as fundamental to improve comprehension and credibility about the antitrust authorities’ job.

In addition to this “road show” strategy, public discussions, both in specialised and non-specialised fora about competition issues are encouraged. The underlying objective regarding discussions in non-specialised audiences is to get as much people as possible being accustomed to debating the subject, so to effectively widespread its importance and potential benefits. On the other hand, discussions and the feedback of specialised audiences aim at fine-tuning the authorities’ action and at improving compliance. Moreover, whenever possible, new procedures and legal changes are made available for public consultation before their implementation.

An illustrative example of this practice was the discussion within the SBDC of the National Competition Agency proposals. The draft-bills were open for public consultation during three months and were presented in various discussion fora, such as the Competition Protection, Environment and Minorities Committee of the Chamber of Deputies (House of Representatives), the Brazilian Bar Association and the Brazilian Institute for Competition and Consumer Protection Studies (IBRAC). A great number of suggestions came from this broad debate and many of the proposed modifications were incorporated, contributing for the proposals’ excellence

The role of public opinion is fundamental in the whole process, and it has the power to include or to remove specific subjects from the Agenda. The discussions for the creation of the National Competition Protection Agency, for example, arose in a context where cartel accusations on the fuel retail market were newspaper headlines, which generated significant public pressure on the Government to solve the problem.

As a final result, since public opinion is so crucial for successful competition policy initiatives and law enforcement activities, antitrust authorities should perceive it as an ally to promote compliance. That is precisely what SBDC authorities have been trying to do, yet much still needs to be done, in the first place, to widespread the “competition culture” among the society.

### **3. Concluding Remarks**

Brazil has a long history of state intervention in the economy. The culture that predominated within the country until recently was one found on price control and anti-market approach. In such an environment there was no room for competition policy.

After only eight years of competition policy, it is still too early to say that competition is a value of the Brazilian society. The communications strategic positioning is perceived by Brazilian antitrust authorities as an important ally. It has been playing a major role both in spreading the very basic notions of competition throughout the society and also in increasing the level of compliance.

**NOTE**

1. Paper prepared by Claudio Monteiro Considera, Secretary for Economic Monitoring of the Ministry of Finance; Cristiane Alkmin Junqueira Schmidt, Deputy-Secretary for Economic Monitoring; Mariana Tavares de Araujo, General-Coordinator for Anti-Cartel Enforcement at the *Secretariat for Economic Monitoring* and Kélvia Albuquerque, Competition Policy Advisor at the *Secretariat for Economic Monitoring*, for the OECD Competition Committee Roundtable on Communications by Competition Authorities, to be held in Paris, October 23-24, 2002.



## CANADA

Competition authorities have five main roles: enforcing the law, providing a deterrence, informing the public, building alliances and influencing policy. Communications strengthens and increases an authority's ability to achieve each of these core objectives. It also contributes to the effective management of the organisation. Canada's Competition Bureau is pleased to outline its communications approach in response to the following questions.

### **1. Who is responsible for public outreach/communications within your competition agency?**

The Competition Bureau takes a strategic approach to communications in order to maximise its compliance efforts. The Bureau's nine member Communications Branch helps all employees realise their communications objectives. The Branch provides fast, reliable and professional service by working with officers and other employees to assess communications needs and by helping to develop strategies, plans and other communications activities and products. In addition to maximising compliance and increasing public awareness, communications ensures that government decision-makers are cognisant of the pivotal role the Bureau plays in the Canadian economy.

### **2. How does your organisation perceive the role of communications policies and programmes and what has been the impact on staff?**

In the past, some viewed communications as a burden on already overworked employees. However, with strong leadership and the support of senior management that view has changed. Employees are proud of the coverage their cases receive and realise the tangible benefit of greater awareness. Now most competition officers seek advice early and factor communications into their work plans. Cultural change takes time and senior management commitment is critical.

While communications has always played a role in the activities of the Competition Bureau and its predecessors, changes to the Competition Act in 1986 resulted in an increased emphasis on communications. Subsequently a small group of Bureau employees, were tasked with encouraging companies to adopt compliance programs, producing publications, responding to media calls and attending business fairs and exhibitions. Additionally, the Commissioner was awarded broader advocacy powers, including the right to intervene before provincial boards. These changes and others represented a major overhaul of the existing legislation and ensured that the Bureau's activities would increasingly attract public attention.

In 1988, the Government of Canada introduced the Government Communications Policy (revised in 1996 and 2002) requiring all of its institutions to provide the public with open access to information about policies, programs, services and initiatives. The Policy recognised that, in Canada's system of parliamentary democracy and responsible government, the public has a right to receive information that is timely, accurate, clear, objective and complete. It also acknowledged that the Government has a duty to explain its policies and decisions, and to inform the public of its priorities for the country.

Today, communications plays a critical role in all Bureau activities. It heightens awareness of the Bureau's role among members of the public and stakeholders, encourages compliance with the law, helps deter those who may wish to break the law, justifies the bureau's resource requirements, and helps recruit and retain employees.

Positive coverage of the Bureau and its enforcement activities can enhance already high morale among employees. Outside recognition and awareness of the benefits of the Bureau's work helps retain highly mobile and employable staff. Internal communications is also important for retaining employees. People want to know what their organisation is doing and feel like they are part of a relevant forward-thinking team. The Bureau has grown over the last few years and internal communications is critical for new employee development and retention.

The primary tool for internal communications is the Intranet, which was launched in March 2002. The Intranet was initially developed to help reduce the silos of information which existed between different branches of the Bureau, increase awareness of regional activities, provide a corporate communications tool and help alleviate e-mail overload.

The Intranet provides employees with a centralised access to corporate policies and procedures, electronic applications, administration services; human resource information and access to all branch web pages. In addition, the Intranet features a corporate calendar of events which outlines Bureau training events, social events, special announcements, holidays and the Commissioner's business travel itinerary.

Sharing information is critical for the Bureau's success. A monthly profile about an employee or team outlining their roles and responsibilities and how they contribute to the Bureau has proved a popular and informal way for employees to learn more about each other.

The Intranet averages over 300 visits a day, with an average viewing time of 11:00 minutes per visit. Given the relative size of our organisation of approximately 400 employees, these numbers are truly impressive. Later this fall, we will begin to evaluate the success and the short falls of the Intranet since the launch in March. The information gathered will be used to enhance the site and ensure that the Intranet meets the on-going information needs and requirements of Bureau staff.

### **3. What policies are in place for handling media relations?**

Early in every case, competition officers work with their communications advisor to complete a communications plan as an integral part of their casework. To complete the communications template (see attached) officers must identify the target audience, key stakeholders and potential partners, the public environment, key messages, time lines and other factors. Media lines and Questions and Answers (Qs&As) are often prepared as part of this process. The proposed spokesperson is also designated at this stage.

Those who are most familiar with a particular issue, regardless of their level, are encouraged to act as the spokespersons. Dealing with journalists requires special skills and an awareness of how the media works. All those who are designated spokespersons have undergone one or two days of intensive training on how to prepare for an interview, respond to questions and avoid common pitfalls.

The Communications Branch maintains a database of all key consumer and business reporters. Journalists tend to change jobs and beats frequently and personalising communications with them demonstrates professionalism and increases the chance that the information will be used. Often communications officers will call key journalists to sell story ideas.

Communications pays careful attention to every Bureau news release, especially the lead paragraph and the quote. A well-crafted news release can grab journalists' attention and increase the chance of coverage. In the past, Bureau news releases tended to read like court documents. Now whenever possible, the benefit or impact on Canadians is included in the first sentence. Quotes are written as emphatically as possible, again emphasising the impact of the particular activity. Often journalists lift the quotes directly from the news release instead of calling for an interview.

News releases are sent over the newswire, posted on the Internet and sent by fax and e-mail to all journalists who have followed the Bureau's activities. Timing is critical. Any release distributed after 2:00 p.m. risks being overlooked because assignment editors have already established the day's priorities.

Media calls are initially directed to communications advisors, who answer as many questions as possible and arrange for a designated spokesperson to elaborate on the more complex questions. The advisors help prepare spokespersons by reviewing difficult Qs&As and simulating an interview when necessary. Often they attend interviews in order to help with quality and deal with any follow-up requirements.

Outside experts analysed the Bureau's media coverage for 2001/2002 and noted the Bureau's ability to ensure consistency of messaging despite the number of people speaking on its behalf. (See attached)

#### **4. What is your target audience? And if it is varying, how do you adjust?**

The Bureau's three-track strategic communications plan targets government decision-makers, employees and external audiences.

The first track of the strategy is aimed at decision-makers and ensures that those who make resource allocation decisions are aware of the benefit of competition work to consumers, businesses, and Canada's international reputation.

The second track of the communications strategy is aimed at employees. Bureau employees are natural ambassadors for the organisation. The goal of track two is for every staff member to be capable of passing the "backyard BBQ test." Ideally every employee should be able to tell his or her friends and neighbours what the Bureau does and how it benefits individuals. They are not expected to explain complex economic theory, but to be able to give a thumbnail sketch of the Bureau. Explaining the Bureau and its impact on all Canadians is every employee's responsibility.

Track three communications target all external audiences. In 2001, the Bureau launched a plan to build new partnerships with its key stakeholders including: business groups, consumer organisations and industry associations. The initiative is improving relationships, enhancing credibility and raising awareness of the Bureau's operations among the key associations and their members.

In order to develop relationships with these key stakeholders, the Commissioner and senior members of the Bureau have met with their executive committees. In an anonymous survey conducted before the launch of this initiative, several participants complained that they did not understand the Bureau, its mandate and how they could work with the Bureau to the benefit of their members. The subsequent executive meetings were designed to develop personal relationships and to educate the associations about the Bureau's goals and activities.

While the strategy has only been implemented for less than one year, the results have been positive. Direct Internet links between several key organisations and the Bureau's Web site have been established, several associations' publications contact the Bureau regularly for story ideas and material, and there has been close co-ordination on media relations activities.

**5. Do you enlist the support of stakeholders to help deliver your message?**

Each of the Bureau's key stakeholders has the means of communicating with its members. The Bureau is working to harness those communications vehicles in order to maximise the reach of its messages. Where appropriate, the use of third party tools is an effective, inexpensive, and credible way to transmit one's message.

**6. How do you measure the effectiveness of your communications activities?**

Evaluating communications is difficult as the discipline is extremely subjective. The Bureau relies on an annual and monthly analysis of its media coverage, one-on-one interviews with key stakeholders conducted anonymously by an independent third party and on public opinion research.

**7. Have communications affected Government support for your organisation?**

Communications has increased the Bureau's profile with public servants and parliamentarians. We have the following objectives in mind when targeting these government decision makers:

- increasing awareness of the Bureau's role in the maintaining a competitive marketplace;
- reinforcing the independent, arms length role of the Competition Bureau in law enforcement issues; and
- ensuring that the Bureau's perspective is considered in the policy formulation of other government departments.

Clear messages about the benefits of the Bureau's work are integrated and often lead speeches and presentations to elected officials and Senators, as well as being in the first paragraph of every Bureau news release. While some decision-makers are familiar with the details and benefits of the Competition Act, it is advantageous to remind them of its impact on their constituents.

**8. What is the role of public opinion?**

Not only does public opinion research play a critical role in benchmarking success, but it also helps fine-tune messages. In order to craft relevant messages, communicators must be aware of the environment into which those messages are being received. Wherever possible key messages play on those issues which are at the top of the public conscience.

Recent public opinion research indicates that the Bureau has been more successful in communicating with larger businesses than those who employ fewer than 50 people. Seventy percent of large and mid-sized company executives claimed knowledge of the Act. Presumably these executives read the business press, where most of the Bureau's stories appear, and have regular contact with

knowledgeable lawyers. In order to reach the attention of smaller business owners, the Bureau will try and attract more radio and print media attention.

## **9. How do you make use of the different media (print, radio, television, the Internet)?**

The Bureau has maintained consistent widespread coverage since it implemented its Strategic Communications Plan in 1998. Most coverage remains limited to the business pages of the print media. The Bureau's current challenge is to widen coverage beyond print media and attract the attention of television and radio journalists. A 2000 public opinion survey found that those members of the general public who knew about the Bureau had learned about it from radio and television. Greater electronic media coverage will also help deepen the business community's knowledge, especially for those who do not normally read the business pages, such as small business owners.

The demands of the electronic media are quite different than those of print journalists. Journalists working in radio and television have very little time to tell a story. Typically radio news items are 60 to 90 seconds. Spokespersons need to be trained to condense a complex story into a 20 or 30 second clip and to distil the essence of a case for the reporter who then has to write the item.

Television stories normally run between 90 seconds and three minutes. Again interviews have to be extremely concise due to time constraints, but reporters also require interesting visual pictures to help tell the tale. This year, in launching a partnership with several key associations, the Bureau paid for and distributed a video with ready-to-air background footage. The resulting coverage was unsurpassed with over 31 television stories, most of which used portions of the pre-packaged video. Careful planning and a thorough understanding of what is required for a television and radio story can result in much wider journalistic appeal and coverage.

The Internet has become the Bureau's principal means of communication. The Bureau abandoned its quarterly print publication aimed primarily at the Bar in 1998 because it did not live up to the rigorous operating principle of timeliness.

The Bureau's Web site averages over 26 000 visits a month. In addition, the site offers an automatic update system to subscribers informing them via e-mail of the latest news releases, information notices, and consultations published to the web site. To date over 2 500 people have registered and the feedback has been excellent.

The Bureau's Web site is constantly evolving to meet the information needs from our various stakeholders. An on-line survey is being conducted and key stakeholders will be interviewed to determine their information requirements when visiting the Bureau's Web site.

Currently the site is easily navigable for that familiar with the Bureau and the Competition Act. The new site will be more intuitive and more accessible for those who are unfamiliar with the Bureau, by providing information portals for various stakeholders. For example, it will direct consumers to published information specific to their needs, outlining the benefits of law enforcement activities for all Canadians.

While the Internet is the principal communications vehicle, the Bureau continues to publish a full series of information pamphlets and an Annual Report. These documents are available in PDF, a downloadable format, (URL info) on the Bureau's web site as well as in printed format. The pamphlets distil complex information in order that those who are not trained in competition matters can better understand the Bureau's activities. They are short, concise and written in plain language.

The Bureau's Annual Report to Parliament is organised along the following themes: Interacting with Canadians, Promoting Competition, Reviewing Mergers, Preventing Anticompetitive Activity and Maintaining a Modern Approach to competition law. Each section demonstrates how the Bureau's work benefits Canadians, continually emphasising the value of an effective competition authority. Those who follow the Bureau's activities rely increasingly on the electronic version of the Annual Report rather than the printed copy.

**10. What kind of public debate has surrounded competition law enforcement activities and who participates in this debate (e.g. business interest groups)?**

In recent years, competition policy and competition law enforcement matters have attracted a significant amount of attention from Parliamentarians, business groups, the legal community and journalists. One study, commissioned by the Competition Bureau, found a 900 percent increase in the number of news stories featuring the Bureau and its activities during the period from 1997-1998 to 2000-2001. Much of this can be attributed to proposed bank mergers, a major airlines merger that captured national headlines and proactive media relations.

Most of the public debate over competition matters has been in Parliament, where we have witnessed a number of recent attempts at amending the Competition Act through Private Member's Bills. Some examples have included Bill C-276 (Galloway), which sought to prohibit negative-option marketing by federally regulated undertakings and Bill C-235 (McTeague), which was designed to protect those who purchase products from vertically integrated suppliers who compete with them at the retail level. Neither bill became law, but their proponents were able to mount significant public support and media attention throughout the legislative process. Much of the attention focussed on how consumers could potentially benefit from competition law "improvements."

In April 2000, the Competition Bureau released a discussion paper entitled "Amending the Competition Act - A Discussion Paper on Meeting the Challenges of the Global Economy." The paper resulted from the introduction of four other Private Members' Bills aimed at amending the *Competition Act*: Bill C-402 (McTeague), Bill C-438 (Redman), Bill C-471 (Jennings) and Bill C-472 (McTeague).

The Bureau engaged the Public Policy Forum (PPF) to conduct public consultations based on the discussion paper. Twelve roundtable sessions were held in six different provinces and over 80 formal submissions were received. The PPF published its report in December 2000 and its findings formed the basis of Bill C-23, an Act to Amend the Competition Act and the Competition Tribunal Act.

Bill C-23 was introduced in the House of Commons in April 2001. The bill's public profile increased significantly in December 2001, when the Industry Committee adopted Government amendments regarding the airline industry. The airline specific amendments came under close scrutiny when the bill was studied by the Senate. These amendments were also subject to intense lobbying by the dominant air carrier and others involved in the airline industry. The legislation came into force in June 2002.

**11. How does your organisation respond to public debate over its activities?**

The Bureau encourages public debate about competition issues. Managers are encouraged to speak to public audiences and almost all invitations to send speakers to domestic events are accepted. As part of its new stakeholder relation's strategy, the Communications Branch liaises with key associations and suggests Bureau participation in events which they have organised.

Before each round of legislative amendments, the Bureau consults widely and holds open meetings across Canada. These debates help frame changes to the Competition Act.

As part of the Bureau's commitment to transparency, all responses to consultation documents are posted on the Bureau's Web site, unless the author explicitly requests that his or her submission not be made public for confidentiality reasons. These also form the basis for discussion and debate over the Bureau's activities and approach to law enforcement.

**12. What issues arise and what criticisms are made of competition agencies participating in media debate?**

Under the Competition Act, the Commissioner of Competition has the right to intervene before various federal and provincial boards. The Commissioner also promotes and advocates greater competition by appearing before parliamentary committees, making speeches and presentations and providing media interviews. While the Bureau's enforcement activities are sometimes critiqued, the Commissioner's participation in debate over competition policy matters is rarely, if ever, the subject of criticism.

**COMPETITION BUREAU**

**Internal: Communications Strategy for the Bureau and its Employees**  
**Ottawa: Communications Strategy for Decision-makers, Federal family, etc.**  
**External: Communications Strategy for the Private Sector and/or Consumers**

**Description of issue under consideration:**

Audience Group	Communications Environment	Objectives and Messages	Delivery and Communications Vehicles
<p>This box would state the target audience and the issue being marketed/communicated.</p> <p><b>Key Stakeholders</b></p> <p>This area would list principal and secondary stakeholders.</p> <p><b>Potential Partners</b></p> <p>This area would list possible partners for a joint release, or initiative.</p>	<p>This box would itemise the public environment - in succinct, bullet form. i.e. It would explain how the current public environment might influence the receptivity of the target audience to the program or issue being communicated and how messaging should be tailored.</p> <p>— Values (What will it do for my community, or for consumer choice? How will it benefit me as a consumer, as a legislator or as a taxpayer?)</p> <p>NOTE: Values cancels out opinions and attitudes.</p>	<p><b>Objectives</b></p> <p>This area would outline the overall objective: the goals to be achieved by launching a public relations initiative. Examples of typical objectives might be:</p> <ul style="list-style-type: none"> <li>— alerting the general public to an xyz scam;</li> <li>— placing a feature story on systemic bid-rigging into a major trade journal;</li> <li>— getting crime reporters to cover a trial in an Ontario Court;</li> <li>— delivering a message to Canadian Parliamentarians and Cdn. taxpayers on the work of the Bureau.</li> </ul> <p><b>Messages</b></p>	<p><b>Responsibility Centre</b></p> <p>This area would define which CB branches would be involved in writing the materials and working with the communications unit.</p> <p><b>Support Units</b></p> <p>Communications, CPEC, Resource Centre; French Editing, Web Management, Industry, etc.</p> <p><b>Regional Considerations</b></p> <ul style="list-style-type: none"> <li>— consider regional impacts;</li> <li>— heads-up calls to region(s) involved (identify); acknowledge work of region(s) in searches investigation and media monitoring of hot local issues. inform and collaborate with the regions.</li> </ul> <p><b>Communications Vehicles</b></p> <p>This space would list the type of medium to be used to broadcast the message: electronic media; national or trade journals; consultations; conference, or ect.</p> <p><b>Dates to Watch</b></p> <p>Important dates affecting the announcement <b>Critical Path:</b> type on a separate page</p>

## **CHINESE TAIPEI**

Chinese Taipei promulgated its competition law, the Fair Trade Law, in 1991 and enforced the Law a year later. It represented an important step in keeping with a long series of efforts to broaden and deepen the liberalisation of the domestic market. To ensure the success of this new Law, the Fair Trade Commission (hereinafter referred to as “the FTC”) holds the belief that the society’s awareness of and compliance with the Law will determine both the quality and effectiveness of its enforcement. Hence, as one of its first priorities, the FTC undertook the task of laying the cornerstone to build a competition culture.

### **1. Who is responsible for public outreach/communications within your competition agency?**

For the most part, the Planning Department of the FTC is responsible for affairs related to public outreach/communications - for example, arranging effective programmes for different stakeholders, including associations, consumer organisations, industrial organisations, and local governments. It is however the responsibility of the Counsellor’s Office rather than the Planning Department for liaison with the media and the Parliament. As for our weekly media conferences, the Vice Chairperson of the FTC serves as the *ex officio* spokesperson, with the Secretary General filling this position should the Vice Chairperson not be available.

Nevertheless, almost every other department and staff member actively plays individual roles in outreach/communications. For one, the Legal Affairs Department exchanges views with the prosecution offices and the judicial system as well as designs classes for in-depth discussion groups with managerial-level business employees and legal professionals. Besides this, from time to time, staff members in all departments are required to provide other government agencies with information and their opinions as to the competition law when such agencies are formulating regulatory reforms and industrial or trade policies. The FTC has also set up an enquiry desk where all staff in turns handles calls and visits from the general public or the business community.

### **2. How does your organisation perceive the role of communications in the delivery and administration of competition law?**

The FTC believes that, to fully embody the purpose of the Fair Trade Law, i.e. to maintain trading order, protect consumer interests ensure fair competition, and promote economic stability and prosperity, the implementation of the Law itself is far from adequate. An atmosphere, one we refer to as a competition culture, has yet to be cultivated in the society as a whole, so that everyone realises what the Law is for, how the Law can be complied with, and why people need to do so.

Based on its experiences in enforcing the Law in the case of a breach, and in its consultation with other government agencies wherever an existing law or a draft is contradictory to the spirit of the Fair Trade Law, the FTC has long known that there is always difficulty in communicating, not to mention persuading. Such experiences remind us that even though the Law has been in effect for a decade, the transformation of the mentality still takes time, no matter it is in the private or public sectors.

It is true, however, that most government agencies now regularly approach the FTC to seek advice when drafting new laws, consumer organisations frequently hold seminars to identify ways in which to improve the Fair Trade Law, and trade associations commonly seek their legal consultants' advice as to whether their new business strategy is in violation of the Law. These changes all indicate that, albeit successful to date, the FTC still needs to continue to reinforce its communication programmes with all stakeholders.

**3. What has been your experience with communication policies and programmes and what has been the impact on staff?**

To effectively formulate and implement communication policies and programmes, the FTC first categorised its target audiences, and these included the business communities, the government agencies, the academic community and the public at large. The next step was to draft different policies and programmes to suit and accommodate the needs of these different audiences.

Compliance educational programmes, through regional or sector specific workshops, are typically used by the FTC to encourage the business community, especially the trade associations which tend to take the lead in the formulation of hard core cartels and supervise their functions, to comply with the Fair Trade Law when developing their business strategies. More focused discussions on a broad range of aspects of the Fair Trade Law are also made available through the FTC's advanced lecture programmes.

To communicate with other government agencies effectively, the FTC is constantly involved in the drafting of laws and the setting up of regulatory reform projects so as to formulate and maintain a market-oriented regulatory environment. Furthermore, the FTC periodically organises task forces to review existing laws, to initiate regulatory reform projects and to co-ordinate with responsible agencies to successfully carry out reforms.

The academic circle strongly affects professional and governmental policies. In order to communicate with these outside experts, the FTC invites scholars to collaborate on research projects on developing issues, convenes workshops to publicise professional opinions, edits an academic journal to cultivate academic interests and awards scholarships to postgraduates majoring in topics related to competition law, thus encouraging maximal involvement on the part of academicians in this newly-developed area.

Mandates of the FTC include helping the general public to better understand what the FTC does for them and urging their continual support for the work of the FTC. In addition to releasing updated pamphlets and annual reports to explain its services, the FTC also manages an enquiry desk where all staff takes turns dealing with calls and visits from the general public and members of the business community. The enquiry desk, which handles more than 10 000 calls annually, provides the most up-to-date professional legal consulting services.

Besides providing face-to-face communication with the public, the FTC has set up a comprehensive website for the society to have full access to its information via the Internet at any time. Aside from the laws and regulations administered by the FTC, the information pages most often visited on the website concern news releases and case decisions. With the widespread use of Internet technology, the society can easily access any information they need from the FTC.

The FTC has been well aware that the public expects services which are all-encompassing. In other words, FTC staff must be capable of communicating with a broad variety of audiences on many issues and in different ways. Apart from just communicating with their counterparts in business, law firms

and other governmental agencies, the staff's servicing the enquiry desk further helps them to learn first-hand reactions from the general public regarding enforcement issues, among others. This has clearly proven to be an effective way to keep the staff focused on the fact that the enforcement of the Fair Trade Law needs to be responsive to the needs of the entire society.

#### **4. What policies are in place for handling media relations?**

The FTC solidly respects and values the functions played by the media in protecting and promoting the people's right to know. Our chief policy in handling media relations is to constantly provide timely, accurate and professional information. The principle behind this philosophy is that the FTC believes the best approach towards the media is to keep its enforcement policies and decisions totally unambiguous so as to minimise any discrepancy between news reports and the facts.

The Counsellor's Office of the FTC is responsible for liaising with the media. The Counselor maintains a very close working relationship with most journalists. In fact, all enquiries from the media have to be directed to the Counselor Office, and then the Office finds the most suitable person to respond to the issue. Not only for regular agenda issues but also for urgent matters, media conferences and press releases are all well organised by the Office to ensure all important messages from the FTC are efficiently distributed.

To provide accurate, up-to-date information to the media, a media conference in conjunction with the weekly Commissioners' Meeting is chaired by a spokesperson of the FTC, the Vice Chairperson or the Secretary General. The timing of the weekly media conference meets the media's schedules to enable them to provide timely news, as provided by a high-ranking selected spokesperson who is able to explain the FTC's decisions or policies with the most competent knowledge and authority.

How and what the media report are also concerns of the FTC. From all the newspapers or magazines published in Chinese Taipei, the Counselor's Office clips and collects daily reports, comments, any information related to the Fair Trade Law and the FTC or any sensitive market information that might cause competition concerns. All the information is then compiled and circulated within the FTC in order to enhance the staff's understanding of the media's comments to their enforcement work. In so doing, we are in a better position to adjust our strategy, thereby enabling the media to better understand the FTC.

#### **5. What is your target audience? And if it is varying, how do you adjust?**

Ideally, everyone in the society should be part of the Commission's target audience. The competition law is fundamental in maintaining and promoting the market economy, and hence, everyone has the right to be aware of the Fair Trade Law's existence and functions.

However, due to limited resources, the FTC has to set up different communication programmes and implementation strategies on the basis of its categorisation of the audience: the business community, government agencies, academia and the general public. In this way, it is anticipated the limited resources are used in the most effective way.

The target audience does vary sometimes on account of changing enforcement priorities, implementation of regulatory reform programmes or unforeseen urgent matters. The FTC identifies which target audience needs to be communicated with the soonest, issues guidelines on certain behaviour or a specific sector, convenes a series of educational workshops or holds special media conferences to draw the targeted audience's attention.

**6. Do you enlist the support of stakeholders to help deliver your message?**

In light of other mandates the FTC must carry out, especially in the area of enforcement, it is not possible to allocate most of its budget and manpower to communication programmes. To better meet the communication requirements with limited resources, the FTC needs to utilise the available social resources, i.e. to co-operate with various stakeholders, including trade associations, consumer organisations, industrial organisations and the local governments.

The FTC usually holds educational workshops together with those stakeholders since it is an effective way to have more members in attendance. In addition to that, if there are cross-sector violations due to some traditional, long-held habits, the FTC is in a better position to request the relevant trade association to inform all of its members to correct their behaviour within a certain period before the FTC, itself, is forced to take enforcement actions.

**7. How do you measure the effectiveness of your communication activities?**

Although the FTC or other parties have never commissioned any research institute or company to measure the effectiveness of our communications activities, whenever the FTC has released an important enforcement message, our enquiry desk has received double or triple the number of calls it normally receives in the following days. It is, therefore, assumed that the communications clearly receive the relevant audience's attention, at least on most occasions.

**8. Have communications affected Government support for your organisation?**

The Government has continuously supported the FTC's work, but one reason for this might be that the Chairperson of the FTC must be a member of the Cabinet. His/Her presence in Cabinet meetings provides an excellent opportunity to communicate directly with other ministers and rally their support or seek their input.

**9. How do you make use of the different media (print, radio, television, the Internet)?**

The FTC typically invites journalists and representatives of the broadcast media to attend its regular and special media conferences to make sure all issues receive broad media coverage. As far as the Internet goes, in addition to some news agents that run their own websites, the portal sites which distribute news normally get the reports from the news agents as opposed to having representatives of their own.

The FTC does not encourage journalists to conduct interviews with case officers. The culture of the media is quite different from that of the public services, and most staff members do not have enough experience to deal with the media's specialised forms of questions and reactions. Competition law issues are normally not black-and-white. We therefore leave the interpretation work to the spokesperson who has better knowledge of communicating with media representatives.

Besides using outside media, the FTC also makes its own arrangements in distributing information. Up-dated news releases and case decisions are provided on its website. Pamphlets explaining specific issues are distributed on certain occasions. Moreover, a bi-monthly Competition Policy Newsletter briefs the general public on recent activities and international trends. The Fair Trade Quarterly aims at the academic circle and, as such, is expected to discuss the competition law and policies at greater length.

Added to this, the FTC publishes an Annual Report which describes the FTC's structure, resources, enforcement priorities and achievements in detail.

**10. What kind of public debate has surrounded competition law enforcement activities and who participates in this debate (e.g. business interest groups)?**

Most public debates regarding the regulation or enforcement work of the FTC take place in Parliament. Normally, legislators invite the business community, the legal profession, the academic community, consumer organisations along with the FTC to participate in the debates. The results of the debates, for the most part, embody the amendments of the Fair Trade Law.

**11. How does your organisation respond to public debate over its activities?**

The FTC always welcomes and encourages public debate over its enforcement activities and the laws and regulations it administers. By actively participating in a series of seminars held by various parties, the FTC can fully express its views and respond to others' requests and suggestions. It is crucial to maintain the transparency of the FTC to the general public via public debate, and the final results can, as a consequence, reflect the society's needs and motivate the FTC to improve its work.



## CZECH REPUBLIC

### **1. Who is responsible for public outreach/communications within your competition agency?**

The Press and Information Department of the Office for the Protection of Competition of the Czech Republic (hereinafter referred to as “the Office”) is responsible for public outreach/communications. Enquiries of Czech and foreign media as well as the enquiries submitted by broad public are daily sent to this Department. The enquiries are mostly answered by the Director of the Press and Information Department. The Chairman of the Office Mr. Josef Bednar provides statements concerning the issues related to the Office’s competition advocacy and to important cases investigated by the Office, mainly in the form of press briefings arranged for representatives of media.

### **2. How does your organisation perceive the role of communications in the delivery and administration of competition law?**

The role of media is becoming more and more important with relation to enforcement of competition law. The Office has began its activities in 1991 when there was generally a very low awareness with respect to the role of competition policy in the market economy in the Czech Republic due to previous period of centrally planned economy. The communication of the Office with media has from the very beginning served not only for providing information on actual cases but also for increasing general awareness of the public about usefulness of the protection of competition and support of competitive principles. It could be said that the awareness of the wide public with respect to the issues of the competition policy has increased significantly and that there is still an apparent increasing trend with this regard, which is comparable to the situation also in other countries. In connection with progressing liberalisation of a number of industries there is also a growing amount of information provided to media by the Office with relation to the competition advocacy activities of the Office with the aim to explain to the wide public the benefits of introducing procompetitive principles into these industries.

### **3. What has been your experience with communications policies and programmes and what has been the impact on staff?**

The Office has developed, using also the experiences from abroad, a rather sophisticated communications methodology that is, nevertheless, still being improved and modified according to the actual needs. The communication is a complicated process and requires certain degree of flexibility. The interaction occurs between the Office, the journalist and the public, which brings some risks with regard to a danger of certain level of misinterpretation of the primary information provided by the Office. The communication policy of the Office is further enriched by suggestions of the officers from individual departments of the Office who are actively interested in the quality of interpretation of the results of the enforcement activities of the Office in media, in particular in television.

**4. What policies are in place for handling media relations?**

Press briefings of the Chairman of the Office are organised in connection with important cases, where at the same time written press releases are provided to the journalists. Information is further disseminated by answering questions sent by journalist, but also by wider public including layers, municipalities, individual undertakings and so on. The Office publishes every year an Annual Report on its activities that is available to media and wider public both in a hard copy and in an electronic version at the Internet site of the Office. On the occasion of publication of the Annual Report, a special press conference of the Chairman of the Office is being organised with the aim to present the results of the activities of the Office for the last year. Furthermore, the Press and Information Department of the Office issues a periodical Information Bulletin. For example this year there have been published four monothematic issues of this Bulletin, of which two have been focused on the questions related to the protection of competition – description of principles of the new leniency programme of the Office and summary of the experience of the Office with the control of concentrations of undertakings under the new Act on the Protection of Competition (the other two issues of the Information Bulletin concerned other areas of activities of the Office – control and monitoring of state aid according to the Act on State Aid and proceedings under the Act on Public Procurement with regard to contracting authorities in areas damaged by natural disaster in connection with the flood in August 2002). The media and the public are also referred to the Internet site of the Office where there are available, apart from the above mentioned Annual Report, also all final decisions of the Office, relevant legislation concerning the activities of the Office, answers to “frequently asked questions”, news about the activities of the Office and a lot of other information.

**5. What is your target audience? And if it is varying, how do you adjust?**

The information provided by the Office is directed to a wide range of audience. The Press and Information Department of the Office co-operates among others with expert law and economics journals both in the Czech Republic and abroad (e.g. Euro, Economist, Profit Public Administration and Wirtschaft und Wettbewerb), through which the relevant information is provided to the professional public. On the other hand daily press is used to inform the general public about the activities of the Office. Naturally, the scope and form of the information provided by the Office is adjusted according to the relevant target audience. The above-mentioned Information-Bulletins of the Office is distributed among others to professional chambers and business associations, universities oriented at economics and law and also to significant undertakings.

**6. Do you enlist the support of stakeholders to help deliver your message?**

The information is primarily provided by the Office itself. By focusing on maximum dissemination of information about the activities of the Office and its views, the Office gains public support of various stakeholders. The Information Bulletin plays a similar role by being distributed to new locations and drawing attention of broader audience to the Office and its activities.

**7. How do you measure the effectiveness of your communications activities?**

The effectiveness of the communication activities of the Office is being followed using the method of active monitoring of news in daily and specialised press (both domestic and foreign) and other media including television, radio and the Internet. A significant support in this area is secured by using services of a specialised information agency that is able to provide very quickly and efficiently news related to the activities of the Office covering also less accessible media such as regional press.

**8. Have communications affected Government support for your organisation? What is the role of public opinion?**

At present it can be surely said that the public is more and more interested in the activities of the Office. This can be demonstrated by growing number of articles in press related to the work of the Office, ranging at present in average between 40 and 50 articles per week. Negative pieces of information, which cannot be avoided by any institution of such importance, are rather sporadic and, especially in connection with important cases, the influence of various lobbies concerned cannot be excluded. In general, nevertheless, the information about the activities of the Office contributes to an overall positive perception of the work of the Office by the public. The influence of media on the support by state institutions cannot be excluded, nevertheless more important in this respect is the direct communication and co-operation of the Office with the state institutions concerned.

**9. How do you make use of the different media (print, radio, television, the Internet)?**

The Office strives to disseminate the information on its activities as widely as possible and uses all available media to this end. For facilitating communication, an accurate interpretation of the information is also very important, the quality of which in case of mass media often depends also on expert knowledge of the particular journalists concerned. As the area of competition policy is rather complex, there have been also cases of certain misrepresentation of information, even though the Office tries hard to provide information in as comprehensible way as possible. In this regard the Office has the best experience with the journalists of the state owned public media. A growing interest in the work of the Office is also shown by the large national daily newspapers, which has led to increasing expert knowledge of the journalists concerned also with respect to these newspapers leading to growing quality of the interpretation of the information provided by the Office.

**10. What kind of public debate has surrounded competition law enforcement activities and who participates in this debate (e.g. business interest groups)?**

An example of the public debate concerning the competition law is the new Act on the Protection of Competition from the year 2001. During the preparation of this Act a wide range of professional chambers, business associations or experts in this area had been asked to provide their opinion, even though the obligatory Legislative Rules of the Government of the Czech Republic do not explicitly provide for such a wide discussion. The Chairman of the Office also participates at conferences, discourses at universities, and discussion broadcasts providing for a wider discussion with regard to individual areas of the activities of the Office, including questions from the audience. An extensive discussion in both specialised and daily press had developed recently for example in connection with the standpoint of the Office expressed within the framework of its competition advocacy with respect to issues concerning the privatisation and restructuring of the electricity sector of the Czech Republic. A number of economists, experts on the area of electricity and representatives of the companies and interest groups concerned took part in this debate. An opportunity for other public debate can be the publication of the commentary on the new Act on the Protection of Competition that has been prepared by a group of experts led by the Chairman of the Office and that is expected to be published by a renowned legal literature publisher in Autumn 2002.

**11. How does your organisation respond to public debate over its activities?**

Conclusions resulting from various comments and views submitted are incorporated into the relevant legislative proposals or used during preparation of the decisions of the Office. Opinions published in media relating to important cases investigated by the Office or to important competition advocacy efforts of the Office (especially with respect to newly liberalised industries such as telecommunications or above-mentioned electricity sector) are carefully monitored and analysed by the relevant experts of the Office with respect to their possible use in the its activities. Such pieces of information are also carefully taken into account for further development of the communication strategy of the Office in the particular instance as they reflect the extent to which the previous communications of the Office have been understood and show what issues it is necessary to point out or formulate better within the framework of future communication. In case of direct polemic with the Office, a direct reaction explaining the opinion of the Office is not excluded.

## DENMARK

### 1. Introduction

This paper is based on the discussion document, which was sent to the delegates on 16 July 2002. By way of introduction, the importance of external communication to the Danish Competition Authority is explained. Thereafter, the communication policies, publications and target groups of the Authority are described. Finally, the Authority's experience with communication is described, including the effects and effectiveness of the information effort.

### 2. What role does external communication play for the Danish Competition Authority?

It is the Authority's opinion that external communication plays an important role in the administration of the Competition Act.

In the first place, the information effort is a service to businesses and lawyers. Good information makes it easier for the businesses to make sure that they act in accordance with the Act, and it consequently contributes to ensuring compliance.

In the second place, effective communication strengthens the knowledge of consumers, citizens and competitors with regard to what is legal in relation to the Competition Act and what is not. Thus, the communication effort of the Authority contributes to raising the level of information about competitive conditions in general. At the same time, we know from experience that effective communication from the Authority has resulted in an increase in information being sent to the Authority as more citizens and competitors have approached the Authority regarding violations of the Competition Act. Thereby, the Authority can use its information effort as a source of information about violations of the Act.

Finally, good information improves the reputation of the Authority, in the general public as well as among political decision makers. The competition policy is an important tool for achieving orderly market conditions and prosperity, and the communication of this message ensures continuous support of the Authority's work from the Danish Government and Parliament and consideration of competition issues when other ministries etc. introduce bills.

The management secretariat is responsible for the information effort of the Authority, and it is also this secretariat which handles the tasks in relation to, for instance, the OECD and the ministry. The management secretariat was established in 1999, among other things with a view to strengthening the information effort. Thus, the management secretariat draws up all press releases and abstracts for merger reports, it handles the current press relations, and it is responsible for the Authority's monthly newsletter KonkurrenceNyt.

### **3. The communication policy of the Authority**

The information effort plays an important role in all decisions and publications. The Authority endeavours to be active and open in its information work. All heads of division have attended a media training course, and they are at the service of the press. It is the policy of the Authority that an employee can make statements to newspapers and magazines within the individual employee's field of responsibility, if required after consultation with the head of division. In the case of statements made to the radio or television or in politically complicated or delicate cases, it is basically the heads of division or the board of directors who can make statements.

The Authority very consciously aims all published material at the press and stakeholders. As an example, all reports and analyses begin with a detailed abstract summarising the main results and conclusions in readily understandable language. In particular, this has turned out to be useful in connection with reports on major mergers where the part of the report containing the actual analysis often is rather complex.

Decisions and the basis for decisions in all cases of public interest are published, with the exception of trade secrets. It is the Authority's aim to issue press releases by 2 o'clock pm on the day when the decision is made. This time has been fixed out of consideration for the print media. Experience shows that it is more difficult for press releases issued later than that to be included in the newspapers the following day as the newspapers will already have decided on the stories for the following day by that time.

In the press releases emphasis is placed on explaining the cases in plain language and without using technical and specialist expressions. In addition to this, it is important to explain what the decision means for businesses and citizens. The Authority's starting point is that the journalist must be able to write a story with real news value with only a negligible effort. Journalists often have a wide range of news items to choose from, and consequently the accessibility may be the decisive factor in the competition for having one's story published.

An important part of the Authority's press policy relates to its relations with the press in connection with control inspections. Control inspections always hit the headlines in the press and can be extremely unpleasant for the businesses concerned. It is the policy of the Authority not to inform the press on its own initiative, neither before nor after a control visit, as the press often equates control inspections with breaches of the Law. A number of the Authority's control inspections thus never come to the knowledge of the general public.

In some instances, the press learns about the case anyway. The reason for this may be that the control inspection has arisen out of tips from or approaches by journalists. It goes without saying that these violations, or suspected violations, are published in the media. However, most of the media coverage of control inspections takes place as the businesses themselves, their employees or customers who are on the premises at the time of the search go to the press. In these cases, the Authority issues a press release confirming the control visit, but the substance of the case is not commented upon.

As a follow-up on the cases which the general public has heard about and which arise out of control visits, a press release is issued when the case is either referred to the office of the public prosecutor for serious economic crimes or is closed.

#### **4. The publications of the Authority**

The Authority issues press releases regarding all cases of interest to the general public. The Competition Council decides the largest cases and test cases, and in connection with these cases press releases are always issued. In addition to this, the Authority issues press releases when a new analysis or report or new guidance notes are published. Analyses and reports can be obtained on the Authority's website or be ordered free of charge.

Last year, the Authority stopped issuing press releases in hard copy. On the Authority's website press releases, news items, decisions, publications etc. can be subscribed to. Today, more than 2 000 subscribers receive news and press releases in this way.

The most important publication from the Authority is Konkurrenceredegørelsen ("the Competition Report"). The Competition Report is published annually and helps generate publicity for the importance of competition as part of industrial policy. The various chapters focus on lack of competition in different industries, and proposals are made for enhanced competition. In addition to this, the Competition Report includes a yearbook part describing the Competition Council's most important decisions of the past year. In the Authority's experience, collecting and publishing major analyses once a year has a large impact and generates much publicity, cf. below.

In addition to this, the Authority publishes a monthly newsletter called KonkurrenceNyt, which contains in-depth articles about the Authority's decisions together with special features on issues of current interest. The newsletter is free of charge and is distributed in a hard copy version as well as electronically.

Furthermore, the Authority issues annual accounts in which the Authority gives an account of its strategy, aims and results.

Finally, the website of the Authority ([www.ks.dk](http://www.ks.dk)) is an important information medium which is used for publishing decisions, press material, organisation charts, notification forms etc. The Authority works on optimising the user friendliness and layout of the website on an ongoing basis.

#### **5. Target groups**

The target group for the Authority's information effort can be divided into three main subgroups. The Authority consciously aims the information at each individual subgroup.

- Political decision makers: In order to obtain support from the political decision makers, the Authority places emphasis on passing on the general information in a way which, to the widest possible extent, secures positive and wide press coverage. In addition to this, the Authority holds recurring information meetings with the Committee for Trade and Industry of the Danish Parliament. The purpose is to give politicians insight into the work methods and working conditions of the Authority and to enhance interest in the area of competition. Moreover, politicians are often interested in other types of information than journalists and citizens, and at such meetings the messages can be targeted.
- Businesses, lawyers and organisations are another target subgroup. The Authority's policy of publishing the basis for all decisions made is in particular aimed at this target subgroup, which thereby gains a deeper insight into the matters which the Authority finds important when making a decision. In addition to this, the Authority issues guidance notes to help businesses etc. interpret the Competition Act. Furthermore, the Authority often attends

information meetings in trade organisations etc. regarding the Competition Act and case law. Finally, the Authority holds a large number of meetings with businesses regarding specific cases.

- Journalists, consumers and citizens. This target subgroup is in particular serviced by means of press releases. In addition to this, the Authority has held information meetings for the press. The purpose of the meetings has been to inform the press of the working conditions and work methods of the Authority and to offer the journalists closer relations with the Authority via a more “personal” knowledge of the Authority’s heads of division and board of directors. In order to ensure that the journalists attend the meetings, the press is also informed of cases of a certain news value so that the journalists feel that they return with a good story.

## **6. Experience with communication policies**

In Denmark, there has been increasing focus on competition policy and competitive conditions over the past three or four years. However, this is an international trend and hardly due to the Authority’s information effort alone. It is clearly of importance that competition provides good stories for the newspapers as there is often a built-in conflict, either in the form of businesses violating the law or the Danish Competition Authority recommending less anticompetitive regulation within the area of responsibility of another ministry. Consequently, it is difficult to measure the effect of the Authority’s information effort specifically. In spite of this uncertainty, a number of indicators of the effectiveness of the Authority’s information effort are specified below, illustrated by two cases.

### **6.1 *Indicators of the effectiveness of the Authority’s information effort***

In 1999, the Authority participated in a survey of the Authority’s corporate image. The survey among other things included questions about “knowledge” and “assessment”. According to the survey, the Danish Competition Authority scored well above average (3.61), which the survey refers to as “famous” (high knowledge and positive assessment).

Another indicator of the Authority’s information effort is the amount of coverage in the media. The Authority subscribes to electronic news monitoring, and even though the exact number of times that the Authority has been mentioned has not been estimated, the assessment is that the number has increased over the past few years. Furthermore, more and more often newspapers paste press releases from the Authority directly into the newspaper columns.

The increasing press coverage of competition problems in Denmark has clearly set the stage for the adaptation of the Danish Competition Act to EU legislation which has taken place over the past years. In 2000 merger control was introduced, and in 2002 the possibility of higher fines was, among other things, introduced. The information effort has secured the understanding of – and support for – the work of the Danish Competition Authority and the importance of effective legislation and policies in the area of competition. The fact that a number of major cases received wide media coverage has also had an effect. The wide media coverage has undoubtedly contributed to ensuring that today the Danish Competition Authority’s voice is heard when other ministries contemplate introducing regulation.

With regard to the Authority’s information newsletter, the Authority regularly surveys its impact among the 2 500 readers of KonkurrenceNyt. The latest survey was conducted in 2001 when 186 readers were interviewed. This survey among other things showed that:

- 72 percent read the newsletter every time, 23 percent read it now and then, while five percent only read it at rare intervals; and that
- the general satisfaction with the newsletter is high (87 percent are “satisfied” or “very satisfied” and 81 percent find that KonkurrenceNyt is an “important” or “very important” information medium in the area of competition).

## 6.2 *Cases*

Two cases are described below which illustrate the effect of the Authority's media strategy.

### 6.2.1 *The Competition Report*

Since 1997, the Authority has issued a Competition Report once a year called Konkurrenceredegørelsen. The Competition Report analyses competition policy issues of current interest and also contains the decisions made during the previous year.

Over the past years, the Competition Report has achieved a large impact. Generally, the national newspapers devote one or two full pages to the Competition Report, just as it is mentioned both on radio and television. Surveys have shown that only a very widely discussed report from the Chairmen of the Council of Economic Advisers on the economic consequences of Denmark's participation in the euro co-operation had more press coverage than the Competition Report for the year 2000.

In particular the chapter in the Competition Report on the development in competitive conditions in Denmark was commented on. Denmark is compared with other EU-countries, and problem industries where competition is not keen are identified. This must be seen in connection with the fact that for several years the Competition Report has pointed out that consumers in Denmark pay up to five percent too much for consumer goods compared with the countries with which we normally compare ourselves and that it has identified up to 65 industries with competition problems.

The extensive coverage proves that competition grabs the headlines, but clearly a conscious media strategy also plays a role.

The Authority's focus on the press starts very early in the process. The writers of the individual chapters are already asked to prepare a list of the three most important messages for the journalists when the analyses begin. This list is only for internal use, but it ensures that focus is on the message from the beginning. The list is also a tool for quick identification of the most important and interesting issues.

In connection with the publication, one general press release and one fact sheet of one or two pages are issued for each chapter. The fact sheet describes the issues, analyses and conclusions of the chapter in question in a readily understandable way, and it thus functions as a press release for each individual chapter.

A couple of days before the publication, the Competition Report is sent to the major newspapers, radio and television subject to an embargo. This gives the journalists a couple of days to study the Competition Report and possibly conduct their own investigations and interviews. This has turned out to ensure optimum impact on the actual date of publication. However, on one occasion there have been media, which breached the embargo in the agreement and carried the story before it was to be published.

Finally, one year a press conference was held in connection with the publication. The Minister of Trade and Industry and the director general of the Danish Competition Authority participated, and this in itself caused some attention.

### 6.2.2 *The book case*

In 1999, the book market in Denmark was characterised by fixed prices according to agreement between the parties of the industry. This agreement was exempt from the Competition Act, but had to be reconsidered according to the new Competition Act from 1998 which introduced the prohibition regime.

The traditional procedure would be to submit the case to the Competition Council, recommending that the existing agreement should no longer be exempt from the prohibition of anticompetitive agreements prescribed in the Competition Act. Thereby, the sector would be liberalised.

The Authority foresaw a strong industry resistance to liberalisation. At the same time, the players in the book market had previously turned out to be good at adducing culture policy arguments in the media and achieving a large impact on the politicians. This was also the experience of most other OECD countries when confronting this sector with liberalisation.

Before the case was submitted to the Competition Council, the Authority consequently chose to launch a project. The main purpose was to issue a discussion paper that would question, in an open and unbiased way, the relationship between the culture policy objectives and the means that had been employed by the industry. In addition to that, the Authority convened a conference on this subject, which was attended by all interested parties.

The result was a far-reaching debate in the Danish media, focusing on the relationship between the aims and the means of the industry.

## FINLAND

### 1. Role of communications in the delivery of competition law

The aim of FCA's external communications is to increase awareness of the meaning of effective economic competition and the arguments involved when individual decisions are made. Communications seeks to support the realisation of the substantial aims of the FCA and to create the basis for the interaction between the FCA and its stakeholders.

FCA's major target groups include the decision-makers of the economy and company representatives both in the private and public sector. Major stakeholders also include trade associations and labour market organisations, political decision-makers, mass media, representatives of universities and research institutes and - due to increasing fight for personnel - the potential employees of the office. It is also important to communicate the benefits of competition to ordinary citizens i.e. the public making consumer and investment decisions.

For example, in the Government and Markets project, which the FCA commenced in 1998, critical attention has been paid to the formulation of the basic messages of the project as well as the communications to various target groups. In addition to political decision-makers, the major target groups included representatives of state officials and state-owned enterprises, such as representatives of the Association of Finnish Local and Regional Authorities, the academia and labour market organisations. The co-operation has e.g. consisted of joint regional seminars and reports.

External communications has played a major role at the FCA for its entire reign. This role was particularly enhanced in 1992, for example, when the competition rules were significantly amended in 1992. Guidebooks detailing the changes were then delivered to companies, in addition to which a major target group was the mass media. In the future, a corresponding major communications challenge will be related to the efficient implementation of the reform of EC competition law.

Successful external communications naturally requires well-functioning internal communications in an organisation. Resources have been invested into its development, too, in recent years.

### 2. Resources and guidelines

The FCA communications was further enhanced in 2000 by establishing the new post of a Chief Communications Officer alongside the previous Communications Officer. At the moment, the operative tasks of communications employ two persons full-time – measured by person-years, three – out of the staff of 67 at the FCA.

From the beginning of 2001, the FCA has had a separate Communications and Personnel Development unit, which, as the name suggests, is not only responsible for communications but also FCA's personnel development and translation and information services. The head of the unit, the Chief

Communications Officer, also participates in the FCA's steering group meetings both as a member and secretary. The FCA communications budget in 2002 was 100 000 euros.

Naturally, all the rest of the FCA employees also participate in communications work. According to the FCA internal guidelines, each research officer is e.g. obliged to issue statements to the press on pending matters. The final responsibility of the contents of communications naturally lies with the Director General. So-called Publicity Guidelines have been issued to the staff, which e.g. incorporates the obligations contained in the 1999 Act on the Openness of Government Activities.

The Guidelines will be further edited within the next few months to better accommodate the points raised in the May 2002 recommendation by the Council of State, which particularly emphasises openness and interaction in dealings with companies and citizens. In the communications of offices producing public services public guidance holds a central role. In addition, the guidelines stress the significance of communications in boosting official action in general.

The communicative skills of the staff are continually improved with the aid of education both with respect to oral and written communications. The FCA has e.g. arranged media training in newspaper and television interview techniques. Almost half the FCA staff have so far participated.

### **3. Operative issues**

The FCA publishes information on its activities and e.g. all its decisions on its website at [www.kilpailuvirasto.fi](http://www.kilpailuvirasto.fi). Additionally, the FCA issues a news magazine, which comes out five times a year, and some other publications. The FCA regularly arranges seminars and communications events, to which representatives of different target groups are invited.

The FCA seeks to increase reporters' knowledge of competition issues by arranging regular meetings, to which the editorial staffs of one newspaper are invited at a time. Every few years, the FCA arranges events, which offer background information to the major mass media. The topics of the meetings are chosen from among the current issues of the office. This year, for example, cartel investigations, competition advocacy in the public sector and merger control were regularly discussed.

The FCA issues approximately 30-40 press releases per year. The topics typically include the initiatives and major statements of the office, exemption applications, the second phase and/or conditional decisions of merger control and cases involving major competition restraints. Actual press conferences are nowadays only arranged in the context of massive and complex cases.

Press releases are distributed to all the major newspapers, television channels and the Finnish Broadcasting Company (115 addresses in all). Additionally, the press releases are published on the FCA's website, and part of them – approximately two-thirds – also in English. Editorial staffs also regularly receive the FCA news bulletin and other publications such as the Yearbook.

The FCA website undergoes regular modifications on the basis of feedback received. In the new version, which will be launched in October, a separate section containing helpful hints will be included for the benefit of companies and consumers. It e.g. contains instructions for anybody willing to make a request for action or to report a breach of competition rules.

#### **4. Effectiveness of communications activities**

The FCA requires information on the extent and nature of its target group's knowledge of competition issues when planning its communications activities. One way to do this is to arrange a daily media follow-up, which the FCA does. It monitors the discussion on competition daily; all the major national and economic newspapers appearing in Finland are included. Of foreign papers, the Swedish *Dagens Industri* and the British *Financial Times* are regularly followed.

Obviously, the FCA's press reviews also assist in monitoring the FCA's own public image and perceiving how well the FCA's messages sweep through the media. The press reviews also contain information on the sectors of industry and the development thereof monitored by the FCA.

The FCA's external image has last been examined in the spring of 2000. A detailed questionnaire was addressed to companies, law firms, representatives of the media and political decision-makers. A corresponding study had been made in 1997.

The responses showed that the FCA's work was generally found important. Representatives of law firms attached the most positive images to the office. The FCA staff was estimated to have a good knowledge of competition legislation and to apply it impartially. The FCA's operations were generally considered reliable. Additionally, the assessments of reliability and impartiality have clearly improved from 1997.

In the negative comments, the FCA was even found to distort competition and to prevent the natural workings of the market economy. The FCA was found to over-examine things from the viewpoint of the Finnish market area. More guidance to companies was hoped for, as was more knowledge of business life. More speed and efficiency was generally requested.

The assessments of the media of the office were almost equally positive as those of law firms. The FCA's expertise is valued, as is its reliability and impartiality. The FCA appears an interesting co-operation partner. Over 70 percent of reporters found that they are able to approach the office either extremely or fairly well. The topicality of the press releases was also complimented.

However, the investigation clearly showed that the basic premises of competition policy, competition legislation and the activities of competition authorities appeared obscure and not very well known in general. In several replies, it was hoped that the FCA would report its activities and reasoning thereof more actively.

The reporters' impressions and opinions of the FCA and its communications were tested with a small sample in spring 2002. The feedback received was rather good even then. The reporters found the FCA an interesting topic and were satisfied with the co-operation. The impressions of the FCA's management and employees were positive. -With respect to external communications, the FCA also annually receives feedback from a worldwide survey of competition authorities made by the *Global Competition Review* magazine.

#### **5. To conclude**

It is difficult to assess the effect which communications has on resource allocation, for example. We trust, however, that a public opinion which is favourable to competition and publicity in general increase the decision-makers' and our own administration's goodwill towards us. In the future, partly for

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this reason, our aim is to better argue the initiatives and decisions made by the office, also from the viewpoint of ordinary citizens.

## **ISRAEL**

The media's major role in shaping public opinion and awareness in the era we are living in made it possible for the IAA to establish, in a relatively short period, an awareness of the importance of competition and of deterrence from potential violations (especially those concerning hard core cartels). It turned out that the media has had a profound influence on the public's assimilation of social and legal norms regarding the preservation of competition and the vitality of enforcement efforts to that effect. Today antitrust enforcement activities gain extensive coverage in the media and often gain widespread public support.

In order to understand the environment in which one should examine the linkage, in Israel, between the assimilation of antitrust law and the role of the media, one should remember that competition enforcement has attained its central position in the legal and economic realms in Israel only in the past eight years; although an Antitrust Law was already enacted in 1959, there wasn't an effective body to carry through with its enforcement. Subsequently, the "Restrictive Business Practices Law, 1988" was enacted to reinforce the objectives of the 1959 Act and expand its reach by giving more extensive means of accomplishing the act's aim, that is, enhancing free competition. Despite the legislation modification, enforcement had a long journey till one could say it had reached its "safe harbor".

The turning point was the establishment of the Israeli Antitrust Authority ("IAA") in 1994. At that stage the IAA started to implement an active antitrust policy in the Israeli economy, which is characterised by high barriers to entry, limited elasticity of markets, high levels of concentration in many industries, problems of cross ownership and a tradition of government intervention in business. Against this complex background it was clear that Antitrust Law enforcement must heavily rely on public support.

Hence it is clear that the goal of creating public awareness to its activities is a major target of the IAA and that the media is an important "agent" to that effect. In the Israeli environment, it is obvious that perceiving the media as a tool of conveying the competition messages and as a useful method for assimilation of the importance of preventing monopolies has become even more justified.

The basic tools in working with the media were: personal involvement by the General Director of the IAA; keeping the message very simple and focused; explaining to each reporter the activities of the IAA, its priorities and their justifications; and providing valuable information in real time. Though the nature and frequency of the relationship with the media were affected to a great extent by the individual personality of each General Director, there were common guidelines which led and are still leading our relationship with the media.

### **1. Personal Involvement of the General Director**

Personal involvement of the General Director turned out to be a key for the IAA to gain public recognition. This might seem rather odd at first glance, but the main reason for such involvement was the fact that reporters could not easily grasp the substance of Antitrust law as it had not been enforced in Israel for decades. Antitrust was conceived by reporters (as well as the public in general) as a "complex area" of economy and, as such, a matter for experts. Therefore, the General Directors preferred to establish

personal channels with all reporters, so that these reporters could feel assured that the “competition expert” had explained the core issues to them. The IAA, on its part, made use of these channels to shape a simple message to the public through reporters.

## **2. The Message – “Keep it Simple”**

As Antitrust was an enigma to the public (as well as to reporters) the focus of the media battle was to bring a very simple message to the public: “Antitrust is about preventing monopolies from taking over the market and making you pay more for less” was a simple but powerful message which provided major assistance not only in assimilation of Antitrust ideas in the public opinion, but also played a significant role in competition advocacy battles in the parliament.

## **3. Media Policy – Differential Treatment to Criminal and Civil Enforcement**

The IAA relate to the criminal and civil aspects of antitrust law differently due to the sensitivity we attach to criminal matters: we want to respect the privacy of the people concerned at some of the stages of the criminal procedure and also aim to protect and preserve the effectiveness of the measures which are taken in each procedure, especially in the investigation stage.

Hence, in Criminal Matters the IAA strictly avoids any contact with the media in ongoing investigations.

On the other hand, the IAA does report to the media the conclusion of major investigations and the fact that these cases were directed to the IAA’s Legal Department for a decision whether to indict. Moreover, it is the IAA policy to report extensively the handing down of indictments and each judgment and verdict given in each case. It turned out that the coverage, in the media, of verdicts in cartel cases had a major role in creating deterrence among the top tier of managers & directors. It also built a wide understanding in the public that hard core cartels are “common thefts from consumers” and therefore it was a key to public awareness that “cartel offenders are just like common thieves”. The criminal aspects of the Law were, as expected, simpler to convey to the media and to the public, and they are an important cornerstone to the establishment of an Antitrust enforcement regime. But, because of the gravity of criminal proceeding, the IAA is not a generous information supplier in the early stages of investigations (despite the natural curiosity of the media in these matters). Experience showed that revealing information in these stages had an adverse affect.

The IAA manifests a more liberal approach when reporting civil matters within its jurisdiction, since it views the media as a vital agent of the public’s education in a regime in which the Antitrust principles are not yet fully internalised. Therefore, the IAA reports on a weekly basis about the different issues it is currently dealing with, mainly its decisions regarding mergers and joint ventured transactions and major issues that came before it. In addition, the IAA regularly reports about judgments and decisions given by the Antitrust Tribunal and the different civil instances. Experience showed that it is essential to include in the press releases a basic explanation as to the nature of the possible harm to competition and as to the reasons for the IAA’s decision in a certain case.

Information delivered to the press is of course restricted both as a sound policy and also because relevant laws narrow the data to be revealed too non-confidential data. The right to privacy and the public interest in keeping trade secrets from being revealed or violated through the Antitrust enforcement procedures take precedence.

The IAA usually interacts with the written press. Most of the IAA's announcements and coverage are published in the economic section of the daily and business-professional newspapers. We also recognise the rise in the importance of Internet websites as a method of informing the public and the different sectors we want to address regarding updates in IAA activities. Therefore, we inform the economic oriented Internet websites as well.

In addition, it should be noted that the IAA operates its own website in which announcements and antitrust news are posted on a daily basis with links to the relevant documents.

#### **4. The Insurance Cartel Case**

A vivid example of the media's influence on the assimilation of antitrust principles and on the compliance of Antitrust Law is the response of the media to the Insurance Cartel case, which was tried before the Court in recent years but dates back to 1991 onwards. This case marked a line between two eras: one, in which the Antitrust Law wasn't enforced actively and consistently, and a second, in which the Antitrust Law took on a major role in Israeli legislation of an economic orientation. The investigation of the cartel, which was active in several branches of the insurance sector, began in 1993. The media quickly gave this case comprehensive coverage, which greatly influenced public awareness of the existence of Antitrust Law since the "heroes" of the cartel were senior executives, very well known to the public. One could attribute the reason for the media's broad coverage to the fact that this cartel operated in a very important market, which affected a large part of the population. It can be attributed also to the fact that in this case prosecution submitted indictments not only against the companies but also against the senior managers for the first time. Those managers confessed and were willing to take significant punishments upon themselves in the framework of plea bargains.

The punishments represented a substantial rise in sentencing, and the case in general represented a breakthrough in the compliance of Antitrust Law, since the period before the starting point of this cartel's investigation was characterised with a somewhat forgiving attitude towards antitrust offenders. In fact, there had been only a few procedures conducted against offenders, while part of the offenders had benefited from the lack of widespread compliance on the part of the relevant authorities.

#### **5. Conclusion**

It is clear that the media is crucial in attaining the IAA's objective of widespread awareness of the public to the law and its principles, especially against the backdrop of a recent surge in active antitrust enforcement. Therefore, IAA's tendency is to use the media as an "agent" to reach the public and bring updates of antitrust issues to its awareness.

The IAA's relationship with the media is based on the following characteristics: (a) a direct dialogue between the General Director and the media; (b) making an effort to keep IAA's announcements clear and simple; (c) differential treatment to criminal and civil enforcement; and in most cases, interaction with the written press and economic oriented websites on a weekly basis; (d) furnishing the media with a valuable "real time" information within statutory limitations regarding confidentiality.

Though antitrust enforcement activities have gained widespread interest on the part of both the media and the public the IAA's endeavors in deepening public awareness will continue to be vast and intensive. The support of the media has also been found as valuable in competition advocacy.



## JAPAN

While the Chairman of the Japan Fair Trade Commission (hereinafter “JFTC”) has final responsibility, the Director of General Affairs Division and Director of Local Office are primarily responsible at the General Secretariat and the local offices respectively.

Public understanding of the Antimonopoly Act, etc. and public co-operation with the JFTC are required in order to achieve strict handling and prevention of violations of the Antimonopoly Act, etc. It is therefore important to undertake publicity activities so that the Antimonopoly Act, etc. and its implementation are properly understood by the public.

Further, in order to improve awareness of deregulations promoted by the Japanese government in recent years, it is important to secure public understanding of the competition policy. From this point of view, publicity activities by the JFTC are important.

### 1. The JFTC has been undertaking the following publicity activities

- Publication through the mass media since 1949 of recommendations, warnings, surcharge payment orders against business operators and trade associations who violated the Antimonopoly Act, and cease-and-desist orders against business operators who violated the Premiums and Representations Act.
- Regarding views under the Antimonopoly Act and the competition policy, since at least 1969, whenever administrative criteria such as “Guidelines Concerning the Activities of Trade Associations”, “Guidelines Concerning the Activities of Firms and Trade Associations with regard to Public Bids”, “Guidelines for the Promotion of Competition Policy in the Telecommunications Business Field” were established, official announcements were made through the mass media and explanatory meetings were held as necessary.
- To promote awareness of the activities of the JFTC, meetings were held between Commissioners of the JFTC and local intellectuals to hear their opinions, demands, etc. since 1972.
- Since 1997, the JFTC has operated a website that lists various information publicised by the Commission including the materials of A and B above, and aimed to inform the public, business operators and so on.
- In addition to a publicity brochure for business operators, the Commission prepared an illustrated publicity brochure for general consumers, as well as an Antimonopoly Act brochure and video for children (elementary and secondary school students) in February, 2002, which it extensively distributed to libraries, homes for children, boards of education, and elementary and secondary schools nation-wide.

- The publications use words of a readable size, plain expressions, and are printed in colour to make them easier to understand.

Staff has become conscious of the importance of publicity through involvement in these publicity activities.

While the broad target of publicity is the general public, the Antimonopoly Act and Premiums and Representations Act, for instance, focus on business operators and trade associations in addition to consumers in general (including children in some cases), and the Subcontract Act focuses on parent business operators and subcontractors. Thus, the targets are diversified. The contents of publicity activities have therefore been tailored to the respective targets for greater clarity.

It is not clear which “stakeholders” you are referring to. The JFTC has been performing publicity activities through various means such as trade associations in some cases.

The publicity activities of the JFTC have contributed public understanding to enforcement of the Antimonopoly Act, etc. and competition policy. However, public understanding remains insufficient and needs to be improved, so further publicity is necessary.

The government has decided “to promote competition policy by actively creating a competitive environment, and improving the functions and system of market surveillance through strengthening the functions and system of the Japan Fair Trade Commission” (Cabinet Decision on June 26, 2001). The publicity activities of the JFTC have contributed to increasing the importance of the competition policy. However, greater government support in the future is desirable.

In order to ensure strict enforcement of the Antimonopoly Act and the prevention of violations, public understanding thereof and a critical attitude toward violators are indispensable. Strong public support is also needed if various proposals by the JFTC on competition policy are to be reflected in government policy. Since public opinion is important, the Commission has an important duty to build public opinion through publicity activities.

## **2. Publications**

- Annual Report  
This is published annually for the general public, giving details and data on the implementation by the Commission of the Antimonopoly Act, Premiums and Representations Act and Subcontract Act during the previous year, and on the operation of the competition policy.
- Various explanatory materials such as administrative criteria, results of investigations, etc.  
These are distributed to business operators, consumers, and experts who have participated in the meetings held by the Commission and the explanatory meetings.
- Pamphlets  
Illustrated pamphlets on the Antimonopoly Act, Premiums and Representations Act, Subcontract Act, Prior Consultation System for Trade Associations, etc. are created and distributed to metropolitan and prefectural governments, chambers of commerce, commerce and industry associations, consumers associations, etc. as well as to business operators, consumers, and experts who have participated in the meetings held by the Commission and the explanatory meetings.

- General regular publications  
Commentaries on decisions, cease-and-desist orders, administrative criteria, etc. are listed in magazines as necessary and explained to legal and compliance officers, etc. of enterprises.

### **3. Television, radio, newspapers**

Recommendations, warnings, surcharge payment orders against business operators and trade associations who violated the Antimonopoly Act and cease-and-desist orders against business operators who violated the Premiums and Representations Act Publication have been published in the mass media since at least 1969 as well as whenever administrative criteria were established concerning the Antimonopoly Act and the competition policy (239 announcements were made in the newspapers in 2001).

### **4. Internet**

The roles and activities of the JFTC are explained and various informations is provided to facilitate searches.

- Since 1997, whenever an announcement was made in the newspapers, the full Japanese text has been listed, as well as the text in English for those items which are of concern to foreign countries.
- In order to educate elementary and secondary school students, a pamphlet using cartoons to explain the Antimonopoly Act and Premiums and Representations Act was prepared and listed.

While the JFTC does not hold public debate, there is a system called public hearings in the Antimonopoly Act and Premiums and Representations Act. Public hearings under the Antimonopoly Act are held when considered necessary for the duties of the Commission (Article 42, Article 71, Article 72-2), and in 1991 a public hearing was held on the cancellation, etc. of the designation of commodities whose resale prices are permitted to be maintained (Article 23 of the Antimonopoly Act). The Commission then made its decision after hearing the views of the industries concerned, consumers, experts and so on. In case of public hearings under the Premiums and Representations Act, when it is necessary regarding premiums and representations to make a restriction or abolishment under the Act, public hearings have been held to seek the opinions of consumers, experts, administrative institutions concerned and so on.

As mentioned above, the JFTC has not held public debate.

The JFTC has not participated in media debate.



## MEXICO

### 1. **Who is responsible for public outreach/communications within your competition agency?**

It is incumbent upon the Chairman to issue guidelines regarding dissemination of the performance of the functions of the Commission, and authorise the participation of commissioners, the Executive Secretary and public servants of the Commission in events or conferences related to the authority of the Commission, paying attention to the uniformity of criteria and policies of the latter, except as regards dissenting votes.

It is incumbent upon the General Directorate of Information Media to execute the information media and public relations policy determined by the Chairman, in accordance with legal provisions on the matter. Also the General Director has the attribution to formulate and propose to the Chairman the media communications program that complies with the established policy.

The General Directorate on Information Media has attributions to design the publications determined by the Chairman and to collect, analyse and process the information from the media regarding events of interest to the Commission.

The Executive Secretary compiles the resolutions of the Commission and publish them in co-ordination with the General Director of International Regulation when the Chairman so indicates.

It is incumbent upon the General Directorate of International Regulation to prepare, on the instructions of the Chairman and with the support of the Executive Secretariat, the draft annual report of the Commission, as well as special reports required to attend to administrative obligations and international commitments.

### 2. **How does your organisation perceive the role of communications in the delivery and administration of competition law?**

The role of communications responds to the needs of transparency and clarity for the interpretation of the Federal Law. It helps the public understand the guidelines and criteria that the Commission applies to its resolutions. The objective of this information is to prevent and deter possible violations to the competition law, as well as to inform enterprises affected by monopolistic conducts of the mechanisms they have to defend their interests.

### 3. **What has been your experience with communications policies and programmes and what has been the impact on staff?**

The Commission has implemented different programmes with the objective to impact the public. It is worthy to name two programs, the Regional Co-ordination Program and open consultation.

### **3.1 *Regional Co-ordination Programs***

The objective of the communications policy is to build relations with the different States that conform the Mexican Republic and to spread of the Federal Law and its rulings between the economic agents that operate in Mexico.

On the other hand the Commission subscribed administrative co-operation agreements on training, technical assistance and registration information with the local governments in order to provide training and assistance to the local public servers as well as the public in general.

There are other agreements that provide the necessary tools for the application and interpretation of the Federal Law in matters of investigations, summons, consultations, merger notifications and the participation in auctions and bidding.

### **3.2 *Open Consultation***

In order to satisfy quickly and effectively the orientation needs of the economic agents, the Commission has established a communication policy that facilitates the outlining of competition matters by making oral or written consultations.

The consultation mechanism has identified the Federal Law aspects that present problems of interpretation and assimilation and allows to adjust the information mechanisms used by the Commission.

## **4. *What policies are in place for handling media relations?***

The CFC has sought to ensure absolute transparency, in due time to the information that guides its activities, while observing confidential restrictions required by the law. This approach has strengthened the understanding of this agency's objectives and tasks, and has worked in favour of consolidating competition culture. It also allows interested agents to acquire acknowledge of competition issues and to monitor CFC's actions.

In order to make information available to the public, the Commission issues the following publications:

Economic Competition Report, which presents the CFC's annual enforcement performance and the results of its actions. By means of this report, the President of the CFC complies with the obligation established in Article 28 of the FLEC.

The Gazette containing final resolutions of CFC cases, without disclosing information deemed to be confidential because of its commercial value or strategic nature for firms and economic agents. This publication, issued on a quarterly basis, also contains the criteria applied by this agency and has thereby enhanced knowledge of competition analysis principles, criteria and tools. Currently, 1 000 issues are published for interested public and private agents.

A summary of decisions is included on a weekly basis in the CFC's website.

An extract of the latter decisions is published in the Official Gazette of the Federation (OGF).

Extracts of the agreements on the initiation of investigations are published in the OFG in order to allow collaboration of interested parties, thereby complying with Article 27 of the Regulations to the FLEC.

The CFC also provides continuous support to the general public by means of its Internet website, in order to facilitate consultation of its decisions and the information it generates. This page is constantly updated and attention is paid to consultations by means of the electronic mail, thus strengthening transparency of CFC's actions.

## **5. How do you measure the effectiveness of your communications activities?**

The CFC evaluates its communication activities through a yearly survey conducted by an independent marketing firm (assigned through an auction) to determine the perception of its performance among domestic and international media<sup>1</sup>. The survey covers several leading domestic newspapers, magazines and radio stations, including those specialised in business and finance issues, and international information agencies and newspapers.

The survey reports on whether these means actually give account of the CFC activities; the types of cases addressed, an assessment of the CFC performance; its effectiveness *vis à vis* other government agencies; the autonomy of this agency and whether in their view it should be granted further powers to perform its functions; whether red tape hampers its effectiveness and on its relationship with judicial authorities.

In addition, the CFC has implemented a Program on continuous quality improvement and quality assurance certified under the general outline of international standard ISO 9002. This system gives a significant support to CFC work and particularly certification under the 2002 standard underway is intended to facilitate direct access to citizens to information regarding CFC activities and to serve as a link between this agency and the users of its services.

## **6. Have communications affected Government support for your organisation?**

Communications have helped build support for the CFC mainly at the federal government there is a wider comprehension of the benefits of the market mechanisms. The public enterprise privatisation policy of the last ten years denotes this. In contrast, in local levels of government there is not a broad use of market mechanisms to deliver public services.

The FLEC gives functions to the FCC to emit opinions about the federal administration public policies and their programs. Besides, the FCC can emit an opinion on laws and their regulations upon federal government request. In general, the FCC has the faculty to emit opinions when it considers adequate to do so, about laws, regulations, agreements and administrative procedures. The FCC opinions do not have judiciary effects.

The FCC judgements are presented to the agencies responsible for a policy. However, the FCC does not provide its specialised judgement in detail to the media. It only provides them the general criteria that regulates the competition policy under discussion, these are available in the FCC web page. Those responsible for policy reform (either the executive or the legislative) determine the level of confidentiality and openness of the processes.

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<sup>1</sup>. Please refer to annex 1.

**7. What is the role of public opinion?**

The lack of consumer or other social organisations limits the role of public opinion in Mexico, while agents affected by the Commission's decisions usually have a considerable economic power. The CFC thus faces obstacles in trying to inform, convince and gain public support for the benefits of competition policy.

A successful example in raising public awareness are markets where services are widely demanded by the population. This is the case of the FCC role in the analysis of the LP gas-market, which is the main fuel for domestic consumption in Mexico and was widely reviewed in newspapers and TV and radio stations. In other markets, the FCC intervention does not have immediate or visible benefits for the population but it has been the application of competition criteria by the FCC, such as in the case of long distance calls, that has fostered better tariffs and services.

The FCC has exercised its legal functions to apply competition criteria in some public policies design. The FCC decisions have affected some interest groups that seek to limit the current FCC responsibilities and functions. For this reason, the FCC promotes a clear separation between the FCC functions and objectives and those of other governmental authorities.

**8. How do you make use of the different media (print, Radio, television, the Internet)?**

Media are basically used to publish all CFC decisions and to ensure different audiences have access to the main actions undertaken. Therefore, all of the media enlisted above are used. There is a permanent information system by means of which summaries of all the final decisions are posted on the CFC web site on a weekly basis and are simultaneously sent to newspapers having an economy/finance section. Likewise, extracts of all CFC decisions are published in the Official Gazette on a monthly basis.

**9. How does your organisation respond to public debate over its activities?**

The CFC reviews all newspaper articles referring to its activities and takes these opinions into account in order to respond to any doubts or enquiries that may arise as to the reasons and criteria used in drawing its decisions in major cases with impact on the public opinion. For this purpose the CFC issues press releases explaining the reasons that support the meaning of its decision based on consistent and general criteria adopted and developed since the Commission initiated its activities.

However, decisions are not influenced by the public debate itself but in view that the competition legislation contains specific provisions establishing the proceedings for the filing of appeals or consultations as appropriate.

**10. What issues arise and what criticisms are made of competition agencies participating in media debate?**

As explained in the preceding question the CFC does not actively participate in media debate but follows a policy intended to spread knowledge of its activities and the criteria used in law enforcement regarding specific cases.

## NETHERLANDS

### 1. General communication strategy for competition issues

#### 1.1 *Introduction*

Over the last ten years The Netherlands learned that communication about competition policy is complex. We are learning by doing, listening better to critics, and seriously investigating the complaints and suggestions from target groups. When undertaking new measures, we ask ourselves: “For whom do we introduce competition? What information do they need from us?” Communication about competition increasingly got the character of a dialogue.

#### 1.2 *A few years ago*

In the eighties and the beginning of the nineties, we experienced the success of a simple and effective new formula. Structural policies were popular. Political leaders could be successful by pointing at inefficient monopolies, the costs of non-compliance to competition law and promoting “healthy competition” in general.

Members of parliament and journalists were easily convinced about the need to change, by the argument that competition was not allowed to do its work sufficiently. If companies with vested interests protested and argued against that, few people took their complaints serious. In the Dutch context anyone could see that so called competitors made price deals and were not to be trusted. We were known as a cartel paradise. Competition: the word itself was a success.

Promoting regulatory reform and/or the introduction of competition in specific markets was easy. Such as in the case of the revision of the Shop Closing Hours Act, giving permission for retailers to open a fixed number of hours per day instead of strictly from nine till six. When parliament proposed to investigate the petrol market and the possible illegal deals made in that sector, the media and the public opinion were also favourable.

#### 1.3 *Times are changing*

During the last few years, however, we realised that the applause for competition and regulatory reform diminished. No longer only vested interests and their organisations were critical. The media and the opinion leaders in the media recognised the Ministry of Economic Affairs as an active, innovative ministry if it concerns competition policy. They were, however, not convinced about our influence. More than that: they often did not agree with the stated goals and objectives of the government, arguing that competition may not be the most effective tool to realise public interests. What often followed, was a debate on public interests and their relative priorities as well as the most efficient ways to realise them.

Simultaneously parliament and media became impatient. When are things going to change in practice? How long does it take to introduce competition in a market? When will the people in the street profit from competition policies? The management of expectations about competition policy appears difficult. The results are either hard to show, experiences are mixed - especially if the measures undertaken are compromises - and usually take a considerable amount of time.

Target groups like starters on the market, that we would expect to share a positive attitude towards competition, did not have organisations that supported the Ministry. The consumer union (“de consumentenbond”) and several scientists were our critical companions. They, however, wanted to stay independent.

We started a discussion within the Ministry about the necessity to change our communication strategy. The public discussions that we held with scientists, politicians and interested people, did not have the impact that we hoped for. So we did some research. We had to analytically separate our interest in convincing consumers (end users in markets) and intermediate target groups, such as the media and politicians. The target groups, whose (political) support we need, often base their opinions on their impression of public support. We could only be successful in creating support for our policies, if we were able to convince a larger audience, being the consumers, that we were effectively serving their interests. So we had to ask the following questions:

- What is our message? Did that message correspond to the preferences of consumers?
- Were they asking for competition? Were they conscious of a lack of choice in many markets? Did they believe competition would solve their problems? What did they think was the role of the government in introducing competition?

#### **1.4 The results**

After an internal discussion we decided that our message should be “the Ministry of Economic Affairs pursues more competition to give the consumer the opportunity to choose”. If new policies do not directly offer more choice we use a different message: “the Ministry of Economic Affairs pursues more competition to give the consumers more value for their money”. Corresponding to the public opinion - and in coherence with our policy objectives - we promoted the consumer to be the most important target group of our market-oriented policies.

We tested this message, specified for the following markets: taxis, day nursing, notary, house-brokers and energy. Consumers and entrepreneurs told us they weren't exactly asking for more choice. But confronted with the messages, they agreed that “the opportunity to choose” and “more value for their money” were important to them. Immediately they added: “Does someone take care of public interests?” And claimed: “I expect the government to do so.” Their perception was that more competition also introduces more risks for them as consumers. This was even worse in markets where they thought they couldn't control the supplier, such as most oligopolies. More than that, they felt they lost control because of liberalisation of markets and introduction of competition. So the response of the public to our message differed depending on the market. Energy was less a problem than the markets for taxis, day nursery and house-brokers.

### **1.5 *The consumers monitor***

In a so-called consumers monitor we regularly follow the opinions of our major target group. We focus on:

- markets in which we recently changed the regulation for the benefit of more competition (taxi's, energy and in particular environmentally friendly energy (called green energy), notary, accountants, house-brokers); and
- markets where we intend to change the rules in order to introduce more competition (health care, energy in particular for private households).

We learnt that there are two kinds of consumers: a critical minority and a passive majority. To our surprise people are satisfied with the policy of the government to give them more choice. From a choice of 15 policy fields and subjects (ranging from health care, information, competition to safety) we asked their opinion. In this rating of 15 policy fields competition scored 2nd.

Asked what they themselves saw as the main problem, consumers answered "prices". Prices are much too high and it is not clear how they are composed. One hasn't any possibility to control them. Taxis haven't any quality and the administration of (health care) insurance companies are slow and chaotic.

Consumers expect that we find a solution to these problems, which offers them lower prices and more quality. This could be more competition. In this context they recognise the changes in the market for "green energy". Proposed measures to separate advice and control in the accountancy sector are less known, but much appreciated. People consider changing from Taxi Company and house-broker, but will most likely remain faithful customers of other service providers.

The consumer is especially concerned about control. Won't the number of providers grow out of control? Will the information required for making good choices be available? Who will be in control in the market and who will guarantee the reliability of providers in the new constellation? Surely, it should be an independent organisation, as independent as the government. The role of the government should be control, in order to guarantee the public interest. Therefore the government should see to it that there is an independent organisation for complaints and questions.

### **1.6 *Our conclusions for our communication***

We conclude that when we intend to reform the regulation of a market by introducing more competition, we have to inform the public about:

1. Why is something changing (i.e. what is the original problem we want to solve through our policies)?
2. What are the consequences, especially for consumers?
3. How does the government safeguard the public interests? How is control provided?
4. Interaction needs to be organised: who will answer consumer questions and handle complaints?

Besides that, we have to convince the press, politicians, interest groups of consumers and employers, scientists that we listened carefully to our most important target group, the consumers. And we have to show that we draw the right conclusion from their responses.

In the first big campaign for the liberalisation of the complete energy market (2003), we want to show that in practice. Therefore the campaign not only has a mass media part, but also a public relations part. The second part focuses on the consumers and on our intermediate target groups. Furthermore, the message of the campaign stresses the free choice of suppliers in combination with public interest issues. In the energy market the main public interest issue is a guarantee of delivery (universal service obligation). As our minister says: "The gas will continue to flow and the light will stay on". How the government controls this is an important element in our message on energy.

### **1.7 *Managing expectations***

Another important lesson is that we have to manage the expectations of our target groups. The results of the implementation of a policy do not show as fast as one might hope. This is especially true for the introduction of our new Competition Act. Consumers and entrepreneurs need to know how long it takes, when exactly their position on the market has changed and when they need to change their behaviour.

We also have to manage our own expectations. Our intention is to use the above lessons and conclusions regarding communication every time we reform regulations or liberalise markets. But this implies that all parties involved, the policy department, the competition enforcement agencies, and other institutions have to give the same message. It will take time before everyone is convinced of the need to synchronise messages.

Finally, an important lesson is that it will take time before more consumers take their role in a competitive market. They not only have to be informed they can make choices. It is necessary they also want and can make choices.

## **2. *The positioning of the NMa***

The NMa has since 1 January 1998 supervised compliance with the Dutch Competition Act (CA) which also came to force on that date. It has, during the past five years, dealt with a host of issues, especially requests for exemption (over 1 000) and mergers (1 150). Many fascinating issues have crossed our path and have been given plenty of attention in the media. Communication with the business community as well as the broader public started at the day the NMa was officially grounded. The upshot of this has been that many different parties have approached the "cartel watchdog". In 1 July 1999 the Netherlands Office of energy Regulation (DTe) formally became a chamber of the NMa<sup>2</sup>. This further underscored the synergy between the two supervisory authorities. DTe faced the task of setting up the key elements of its regulatory system and the implementation of this system in the energy sector.

As much of a challenge as the avalanche of issues with which the NMa found itself confronted, this situation has prompted, us at the same time, to set clear priorities and to communicate those priorities to the outside world. Competition monitoring is a textbook example of a people's business. The Competition Act simply is not suited for 'mechanical application' because each individual case is unique and conditions vary from case to case.

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<sup>2</sup>. In this document we will speak of NMa when we mean the NMa incl. DTe.

## **2.1 *The first years***

In the first years the NMa dealt with cases from various sectors, thus gaining an insight into a variety of products and markets and exchanging ideas with representatives from all echelons of the Dutch business community. This has given the compilation and deepening of know-how within the NMa a tremendous boost. The years 1999 till 2001 can be primarily defined as the years in which it processed the many requests for exemptions having been submitted in the context of the transitional regime. Over the five past years it has emerged that NMa's customers require greater transparency with regard to (possible) action that the NMa may take and the consequences of regulations for various sectors. In 1997 and 1998 the NMa held roadshows and public relations shows by a NMa-promotion team. The rulings of the NMa, in which for example applications were approved or rejected, set clear boundaries in a number of sectors and give substance to the legislative framework; which agreements are and which agreements are not permissible. The guidelines about co-operation between companies provide clarity to others in all sectors. Where this is necessary and useful the NMa will set out the dos and don'ts in guidelines to provide companies and consumers with maximum transparency and develop important brochures about the CA.

## **2.2 *Emphasis on communication***

In 2002 the vast majority of applications under the transitional regime have been cleared. The NMa has a greater scope for conducting investigations of its own and put emphasis on communication, because the NMa cannot be effective without communicating with the "outside world". For the NMa, communication involves two-way traffic, from the inside to the outside and *vice versa*. In 2001 the NMa set up a Strategy & Communication Department which extended its communication activities considerably.

## **2.3 *Make activities transparent***

The basic aim of the NMa public information activities is to make its own activities transparent. The NMa also regards it as its duty to explain the operation of the Competition Act and to make the resulting activities visible. NMa wishes to make clear what it does, why it does so, and how it does it. This is countered by the fact that decisions are being made public by the NMa website ([www.nma-org.nl/www.dte.nl](http://www.nma-org.nl/www.dte.nl)). Visitors can subscribe to the site, and are notified automatically whenever new information is added. Information is updated weekly. Visitors can also order brochures at the site or submit questions to the NMa, both by website (considered as a key tool for communications) or e-mail ([info@nma-org.nl](mailto:info@nma-org.nl)). In 2002 the website will be further optimised to improve public information and communication.

## **2.4 *Provision of Information***

In 2000 and 2001 the NMa intensified activities relating to the provision of information. Besides developing guidelines, brochures and lectures for various target groups, such as branch organisations and educational institutions, information is given, free of charge, by the NMa/DTe Information Line, which was set up in October 2001 (0800-0231885). It illustrates the two directional flow of information in the NMa communication policy. Through the Information Line two public information officers provide information on the activities of the NMa/DTe. This information includes explaining the Acts and regulations supervised by the NMa. If necessary, the inquirer is referred elsewhere. Whistleblowers can also give notification of alleged infringements of the legislation, such as in the construction industry, using

the same Information line. Besides this there is a separate line and officer for leniency applications (070 - 330 1710, faxnumber 070 - 330 1700 en per e-mail [NMa\\_clementie@minez.nl](mailto:NMa_clementie@minez.nl)).

These services are widely used. By this Information line low threshold access to NMa is not only of importance in providing the outside world with information, but also for receiving warnings of the weakened competition within of markets.

## **2.5 Consumer-focused information**

The questions and complaints of consumers may be a reason to initiate law-enforcement activities. NMa provides consumers with consumer-focused information through the “Consumer Desk” that is accessible through the website. An SME desk (for small and medium sized companies and also accessible through NMa’s website) , has also been set up. Here SME companies can give notification of the practices of other large companies that restrain competition. A SME co-ordinator has been appointed to especially provide SME companies with low-threshold access to the NMa.

## **2.6 Consultation and accountability**

Through consultation and accountability, the NMa wishes to maintain an open relationship with the outside world, including consumers, companies and politicians. These past years several consultation documents have been published on the website. The NMa is also preparing a more general method of consultation to be used in setting its priorities. The NMa wishes to consult the society with regard to its desirable activities. It wishes to do so, of course, without losing sight of its statutory duties, independence and interest of investigations. Politicians, of course, give important signals concerning the desired direction of NMa activities. For instance, the Lower House of Parliament has called in 2001 on the NMa to be more active in carrying out its regulatory activities.

The past few years politicians, companies and social organisations are increasingly inclined to give their response to action taken by the NMa. As a result of the increasing number of decisions the NMa has taken over the five past years, the new competition regime has become more visible. Since major interest are regularly at issue and it is not possible to satisfy all parties (particularly those parties that have violated the CA), the action taken by the NMa naturally elicits reactions and questions, and will continue to do so. Some of these reactions have been negative. For this reason the NMa commissioned a customer satisfaction survey in 2000. The results give a different, more positive impression. One remarkable feature is that lawyers and companies regard the NMa as an expert, an honest regulator with a customer-friendly attitude. The criticism particularly related to the transparency in various stages of proceedings. The NMa continuously strives after further professionalisation and quality improvements. The customer satisfaction surveys will be repeated. In addition the NMa will consider the way it operates and how its effectiveness can be analysed on a more permanent basis by means of the Balanced Scorecard method. This method identifies a number of critical factors from four perspectives, namely the customer (political bodies and society), the owner (the central government), the internal organisation (personnel) and the customers (those who have an interest in decisions). It is the NMa’s ambition to report on the Balanced Scorecard in forthcoming annual reports.

## **2.7 Transparency**

Whoever critically follows events in the outside world is him-self followed critically by the outside world. The NMa is aware of this not only due to articles in different media, but also because of questions asked at the Information Line. NMa is therefore at the moment improving the transparency of

decision-making within defined boundaries (for instance, those of confidentiality). The NMa want's to give insight into its plans and into what may and may not be expected of it. One important instrument to archive this is the website. The NMa is keen to account for itself, for what it does and for what it attends to do. By doing so, the NMa aims to clarify what effective regulation of competition means. Central to this, at all times, is the idea that it is ultimately the consumer who should benefit directly or indirectly from activities of the NMa. This means that the NMa gave substance to legal and other norms, by means of decisions and guidelines.

DTe also carried out a customer satisfaction survey in 2001. These measures include giving additional attention to communication. DTe has already taken concrete action in relation to the point of improvement contained in the final report based on this survey. For instance steps have been taken to improve the communication with the energy sector, for example by publishing the EnergieFocus Newsletter (four times a year).

In 2002 the NMa will introduce a magazine for external communication. The NMa wishes to keep the environment informed of developments regarding to decision-making, consultation and investigations.

The NMa regularly receives invitations to provide speakers for meetings. Based on a strategic speech policy the NMa accepts these invitations in cases it considers that it has a duty to explain the CA to a sector, or if key-issues are being discussed.

The past five years, the organisation has answered numerous questions from journalists, mostly on cases that are in procedure. Pioneering decisions or decisions on issues that attract widespread interests are announced in press releases that also are being published at the NMa- website. In some cases decisions as well as the annual report are being explained at press conferences. The NMa also receives requests for interviews in with it is asked for explanations about its work, activities, decisions, reports etc. This results in articles in inter, national and regional newspapers/magazines that provide professional or sometimes sector-specific information. Hence, the NMa press officers are available for journalists 24- hours a day.

## **2.8 Collaboration with other Supervisory bodies**

The NMa has made contact at a range of levels with (inter) national supervisory bodies including the Dutch General Bank, the insurance Supervisory Board and the Social Security Supervisory Board, OPTA, the Public Broadcasting Commission etc. With these bodies the NMa now exchanges general information and collaborates where appropriate. The various organisations also keep one another up to date on any resolutions passed which have relevance for the supervisory body in question. European competition authorities and regulators strengthened their co-operation in 2001. The energy regulators were already united in CEER (Council of European Energy Regulators), and the association of competition authorities, ECA (European Competition Authorities) had already been established. The European Competition Authorities together with the European Commission aim to strengthen their co-operation further through informal contacts. In 2001, for instance, guidelines were approved for the relationship between national leniency programmes.



## NORWAY

The framework and conditions from which the NCA and other civil service departments work, are dependent upon how these departments approach and deal with their workload and problem solving. We do not exist in a vacuum, but within an ever changing political environment with many participants. An organisation's reputation influences how it is perceived by governmental administration, amongst politicians, the media, and also the public.

### 1. Strategic means

External communication is a strategic device, which ensures the NCA receives publicity and creates an understanding of the meaning of competition politicise, and there by the means for a good basic framework. The media is, in itself, a target group. It is therefore important to have a professional media strategy.

Our concentration on media profiling has given good results. The number of mentions in the press rose by 76 percent last year. It is not, however, our main goal to achieve a great number of media references. Quality is more important than quantity, and we are selective in our choice of cases to be profiled in the media. Our focus, when it comes to media profiling, is on cases which have have fundamental and principled importance within the field. It is necessary to use certain cases to illustrate the NCA's activities. We also participate in debates where more important competition and consumer political matters are on the agenda. As a competition authority, it is important that we avoid making premature statements concerning any given case. As a competition authority, it is important that we provide information regarding which cases we are able to resolve, and those we are not.

It is important that competition rules and regulations are understood within both trade and industry, and that consumers have enough information to make conscious choices. This is essential in order to achieve effective competition. Publicity can also be used as an instrument for obtaining information on cartels and prohibitive practices.

### 2. Professional Players

The "industrial giants", who are often our opponents in larger cases, often use professional consultants to enable them to gain desired results in the media. It is therefore paramount that we, as an authority, are as professional in our approach. This requires vast resources, but we feel that we are, largely, on the same technical level as them in this. The NCA is often actively involved in the media, answering case enquiries, when this is prudent, whilst at the same time being careful, not to be seen to be actually dealing with/solving cases via the media.

The way in which the NCA portrays itself in the media, affects the public's perception of, and confidence in, the authority. It is therefore of great significance that the content of articles and reports, where the authority's or an employees name is involved, is correct and in accordance with the authority's responsible position and its strategy. All those who seek information from the NCA, should have the same

access to it. Information should be given as quickly, completely and efficiently as possible, within given boundaries. Enquiries concerning the wish to view documentation, should be dealt with, within the confines of given guidelines regarding governmental documentation. Consideration of the use of communicative measures is an integral part of current case handling within the NCA.

### **3. Media Choices**

Which media approach we choose is reliant upon the type of case being handled and at which target group we are aiming. Often when a case is of common interest to the public, we would send out a press release and publish it on our web-site. In other cases, we might choose to give the case exclusively to one journalist, thereby ensuring we gain maximum column space in newspapers and “air time” on TV/radio. We are also focusing our attention more on the use of local papers and trade publications in order to spread information to a greater degree. We are more involved with writing articles and contributions to seminars and debates within the field, than we were previously. It is important to publicise our competence and to increase the media’s knowledge and consciousness of competition law and its political implications, and we therefore use time and effort courting our network of journalists. This includes arranging seminars for journalists, which include current competition subjects on the agenda.

In addition to the media, the NCA’s most important channel for information externally, is its homepage. This contains current news and information both in English and Norwegian, links to our important collaborators in Norway and Europe, and it shows a comprehensive picture of our alliance with other country’s competition organisations. We issue ten news publications annually. This is distributed to 1 700 subscribers in trade and industry, governmental administration, to the political environment and to journalists

### **4. Handling of the media**

Media enquiries are directed to our Information Department, who either deal with them directly, or who find a specialist to handle queries. Daily media contact occurs through our Information Department. They are responsible for media appointments, press releases, contributions to seminars, features, articles and analysis, and for arranging and carrying out press conferences. The Information Department is notified, as a rule, should journalists contact our departments directly.

### **5. Who makes statements?**

The Director General of the NCA and the head of the Information Department are able to respond to queries regarding the NCA. Heads of departments can answer queries regarding their own department’s specialist field or product/service range. Executive Officers cannot, as a rule, make statements to or answer queries from the press.

Our experience with this type of media strategy is good. We have straightforward guidelines, so that employees know how to respond to media enquiries. With only a limited few who answer media enquiries, we can ensure a professional approach from those who do. Dealing with the press is the responsibility of the Information Department and managers. They are given frequent media training, thereby making sure they convey our messages clearly, whilst maintaining high quality communication skills. We have a high rate of media enquiries, and since these are dealt with mainly by our information team, we ensure that journalists receive exceptional service.

**6. Principles for media contact**

- Our head of information should always be available for press enquiries. Information should be given as concisely, unambiguously and efficiently as possible, within the guidelines of the NCA's normal case handling procedures.
- Those giving statements on behalf of the NCA are responsible for making sure that the information given is correct and justifiable.
- Action plans are being outlined for concrete media initiatives *vis a vis* the NCA's strategies. We plan to use the media as a way of channelling information, whilst at the same time retaining a positive yet also defensive stance, in our communication with the press.
- We shall endeavour to keep our colleagues up to date on the information we intend releasing to the press. On principle, our colleagues should not be informed via the press, but through our internal channels.
- Our media policy will be accessible and common knowledge to our colleagues in the NCA, and all contact with the press will occur according to its guidelines.



## **POLAND**

### **1. Communication with media as one of the priorities of overall activities of OCCP**

The aim of the Polish Office for Competition and Consumer Protection is to ensure development of competition, protection of entrepreneurs exposed to monopolistic practices and protection of consumer interests. The President of the OCCP is acting as competition and consumer protection authority. Thus communication is one of the most important tools to reach the goals of OCCP – effectively promote and disseminate the knowledge on the consumer rights and fair competition. As a result through all communication activities we create a competition culture in Poland.

### **2. The role of communications in delivery and administration of competition law**

The communication in the field of competition culture should be always analysed and rooted in the context of democratic changes in Poland as well as in the context of Poland's preparation to accession to European Union. From the beginning of Poland's application for the membership to the European Union the OCCP has been intensively carrying the works of approximation of the Polish antitrust provisions to the Community regulations and, after assuming the function of state aid monitoring authority, also in the field of rules governing the public aid for entrepreneurs. Polish legislation in the field of competition is generally compatible with the Community regulations. However, once basic legal provisions are already in place and are harmonised with the EU legislation, the most important issue remains their efficient enforcement as well as improvement of procedures. Thus it is necessary to raise awareness and disseminate knowledge on competition rules for the benefits of business and consumer.

### **3. Department of Information and Communication**

Department of Information and Communication is responsible for internal and external communication of OCCP. The Department carries on information policy of the Office, co-operates with domestic and international bodies, organisations (including social ones) and other institutions dealing with consumer or competition protection. It handles matters related to public aid granted to entrepreneurs, as well as the matters relating to protection of collective rights of consumers and complaints, and deals with the press service of the Office. The Department is relatively new division of OCCP – since March 2002. There are eight persons who work in the Department. It consists of Press Office, Promotion and Information Division and International Co-operation Division.

#### **3.1 Target audience**

OCCP obligation is to provide information and disseminate knowledge on competition rules. We tailor our information activities to fit the main target groups:

- Business organisations;

- Trade associations;
- Companies:
  - Large companies;
  - Small and medium sized companies;
- Commercial lawyers;
- Media:
  - Media – print, broadcasting, television;
  - Media – national and regional level;
  - Media – trade or other professional journalists;
- General public.

#### **4. Use of different media for communication purposes - examples**

The general objective of the communication projects with media is to raise media ability and interest in informing about competition policy in the context of the European Union regulations, accession process and the consequences of European integration for competition. The objective is to motivate journalists to responsibly inform public about the impact of competition policy both for business and consumers. OCCP develops various activities towards media in order to broaden their knowledge and understanding of the present situation.

Press conferences, press briefings and press breakfast – organised on the special occasions – presentation of the reports concerning competition policy or to inform about new regulations (example: antitrust or state aid regulations). Conferences are organised to explain the state of the negotiation with EU within the competition chapter. Sometimes we organise the meetings for media to mark the important events on the international level – example: the European Competition Day on 17<sup>th</sup> of September (the seminar organised in co-operation with the Delegation of EU Commission in Poland and Danish Embassy). Then we plan to organise the panel discussion with media on each competition day – twice a year. Approximately we organise one conference per month.

Press conference to support the events – we also organise the press conference during the event – conferences on competition issues. Example 1: we are organising the conference “Why competition is regulated” (November 2002) – the conference is aimed to business, thus we invite media of economic profile to convey the message. Example 2: experts from the OCCP participate in the conferences organised by different business organisation and law firms to promote competition culture.

Inserts to print media on competition or competition related issue. These are the inserts which are prepared in co-operation with media – usually leading newspapers. Example: as we have new regulation concerning state aid we are preparing an insert to one of the most important for our audience “Rzeczpospolita” – it is both on regulations and practical outcome of the regulation (what’s in it for our target). At the same time we plan to issue an insert on antitrust regulations within the leading newspaper (law – profile).

Radio and television – we arrange meetings for the most important economic editions.

Daily relations with media – the Press Office is working with media on daily bases: answering the media inquiries, arranging interviews with Management of OCCP as well as with the others OCCP experts.

Training and seminars for media – as the competition issues are crucial in the context of Poland's future membership in EU; we applied for the seminars and workshops for media that could be organised with the support of EU Commission.

Internet – through our web site we provide information for those who are well informed (experts, media, business organisations) as well as to less informed (general public - consumers). On the Internet we publish decisions taken by the Office. The most important is the subject of press releases. At the same time, all documents and publications are available on our web site.

## **5. Public debate/role of public opinion/ effectiveness of communication activities**

Although OCCP developed a very pro-active and intense program of communication with media it is difficult to assess the effectiveness of information activities. We have not taken any action to measure the effectiveness of our communication. However, we have a really good press impact (national and regional). And competition issues are always present in media debates – in this context our Office is perceived as an effective “market regulator” who stands for fair competition.

As we are still developing and perfecting our communications activities - we are planning to take some actions to measure the effectiveness of communication (surveys, analyses). It will surely help us to focus on the competition issues that need to be explained.

## **6. Policies for handling media relations**

Department of Information and Communication has developed the guidelines on how the Office communicates with media. The general rule of the guidelines is that message disseminated by OCCP should be clear and consistent. Thus all relations with media are managed by Department of Information and Communication which is always the “first contact” for media. The Department (Press Office) advises to whom journalist should talk to on a specific matter and usually Press Officer assists meetings with media and OCCP Management/ experts.

External communication of OCCP should be understandable, actual and comprehensive (information always up-dated) and also objective-focused (should convey the OCCP long and short term priorities and goals).

For OCCP the internal communication is as important as external communication. Only well informed staff with a clear objectives of activities taken the Office can effectively communicate with the external public.



## SWEDEN

Communication with the media and public outreach is an active and integral part of the overall activities of the Swedish Competition Authority. In our opinion communication is a strategic tool, which the Authority uses to reach its goals. We strongly believe that no case is closed until our decision has been communicated to the public.

The Authority's obligation to provide information is laid down in the Letter of Instructions from the Government. The main responsibility for external and internal communication rests with the Head of the Information Department, who reports to the Director General. The staff of the Information Department includes one Press Officer as well as five Information Officers.

### **1. Official communication policy**

However, our integrated approach demands that all members of staff are involved in our communications with the public. To guide our staff in their contacts with the public and to make the public aware of their rights in this respect we have adopted an official communications policy (attached), which is made public on our web site, [www.konkurrensverket.se](http://www.konkurrensverket.se). As a complement to that we have also adopted internal guide lines or a "code of conduct" to advise our employees in their contacts with the media. Every employee has to have a good knowledge of the policy. To that end the Information Department is organising seminars informing new employees about the external communications policy and discussing our approach to the media. We are also embarking on a new media-training programme for senior officials and directors.

### **2. The employee is our ambassador**

Our overall communications policy states that every employee is also an ambassador of the Authority and that everyone has a responsibility for communication. To be a good ambassador you have to be well informed about the overall goals and the activities of the Authority. Thus, a strong linkage between external and internal communications is absolutely necessary.

Competition advocacy is also one of the main tasks of the Director General, who takes an active part in ongoing public debates on competition related issues and usually makes some twenty public speeches a year. Most of the speeches are made public through our web site.

### **3. Openness is our key word**

The Government has defined our four main areas of activity, and one of them is to disseminate knowledge of the rules of competition and work towards establishing a competition oriented view in society. Fulfilling this task "openness" is our key word. Our "code of conduct" stresses that responding to requests from the news media must always have the highest priority. Generally, there is a high

understanding of this among the staff, although it may sometimes be a source of frustration to a hard working case officer. In such cases the Information Department is there to relieve the pressure.

All media are treated equally, whether provincial or national dailies, trade or other professional journals, broadcasting or television. Of course you always have to take into account that their needs will often differ due to their different approaches to the issue, different working conditions and different deadlines. We are also trying to give extra attention and service to a few journalists and media, who take a greater interest in competition issues.

Our conviction is that fulfilling our law enforcement activities in an efficient and professional manner is the best way of disseminating knowledge and promoting a competition oriented view in society. Thus, our decisions, investigations and reports are the main sources of information when planning our external communication activities.

Much of the Authority's activities are being carried out in projects. When planning a project it is important to consider how to communicate the result of the project. To that end we have introduced a communication plan for every project. The project leader has a responsibility for communicating the result of the project to the public. He/she is therefore advised to make an early contact with the Information Department to discuss media and other communication activities.

#### **4. Decisions on the web**

The Government is actively promoting the idea of developing Swedish authorities into "24/7 agencies", i.e. 24 hours a day and seven days a week for public agencies that provide electronic services. The purpose is to simplify and improve the delivery of public services to citizens and companies and to make it easier to get access to public information.

The Swedish Competition Authority is actively involved in these efforts to provide round the clock services. Even before the Government launched its "24/7" initiative in June 2001 we were publishing decisions taken by the Authority on our web site, and the most important ones will also generate press releases. Media activities are planned in advance of the final decision. The case officer prepares speaking notes, and the Director General or the Head of Department concerned, the official in charge and the Information Department are on standby to comment on the press release.

Press conferences and press briefings are organised on certain occasions, such as the presentation of a new report on competition conditions. These meetings are open to all media. Generally we do not direct our invitation to the individual journalist. Exceptions may be made for a few journalists, with whom we have established a closer relation.

On-going cases demand a different approach. Pending the final decision the staff is advised not to speculate on the possible outcome to avoid hampering the investigation. Speaking notes are made available to case officers.

The ultimate target group is the general public. However, with a limited budget for competition advocacy it is of course impossible to direct our external communication efforts to the general public. To a great extent our communication efforts have to be directed to certain interests groups. To that end we have identified our most important stakeholders.

Our various communications efforts are designed to fit the chosen target group. Our monthly newsletter *Konkurrensnytt* is mainly directed to those who take an interest in competition issues, such as

commercial lawyers, opinion makers and representatives of the corporate society. Our web site takes a broader approach, trying to provide useful information to the well-informed expert as well as the less informed. Participation in conferences and exhibitions and arranging seminars are other ways to reach our interest groups.

## **5. Opinion polls among stakeholders**

For the last nine years the Swedish Competition Authority has commissioned a market research institute, SIFO, to conduct a survey of some of the most important interest groups.

The interest groups can be categorised into large companies (more than 200 employees), small and medium sized companies (less than 200 employees) trade associations, municipalities and county councils, commercial lawyers and journalists. A special survey is conducted among parties and their representatives to assess the Authority's handling of cases.

The surveys serve as the basis for determining whether the Authority has achieved the goal of its activities as well as for internal activity planning.

Last years survey indicates that the awareness of the Competition Act is almost complete among all groups, with the exception of smaller companies, where 84 percent state that they are aware of the Act. It is difficult to assess to which extent (if any) the strong support of the Government for the Authority is the result of communications or media exposure. We are more inclined to believe that this is an effect of the way we are fulfilling our law enforcement tasks. Luckily, we have so far been blessed with a generally good press impact. Setbacks may sometimes occur but usually the media coverage is positive or neutral.

## **6. A core consumer issue**

Although the awareness is almost complete among stakeholders, competition is still not a matter on top of mind of the general public. However, in the last few years it has been generally accepted that competition is a core consumer issue, and consequently we have noticed that complaints from individuals have been increasing.

A couple of issues have been frequently in focus of the recent public debate on competition. Members of all political parties have been involved in a debate on the possibility of bringing criminal charges against individuals who engage in cartel agreements. (This was not included in an amendment to the Competition Act, which was adopted by the Parliament this spring).

Fresh reports by the Swedish Competition Authority were the sparks that set off public debates on a couple of issues. The high Swedish consumer prices, due to concentrated markets and lack of competition, have been widely discussed, involving politicians, consumer groups, trade unions and business groups.

The lack of competition within the public sector was still another of these issues. This mainly rose the concern of business groups and politicians to the right.

In all three cases representatives of the Authority have contributed to the debate by providing facts and stressing that competition is not a goal in itself but a means to achieve economic growth and prosperity to the benefit of the consumers.

Generally there is a high understanding that competition is good for the national economy, the companies and the consumers. A few voices from the corporate society and some political circles have argued that the Competition Authority is not putting sufficient emphasis on our mission to eliminate obstacles to effective competition in the public sector. A couple of editorial writers have even been suggesting that we may be too obsessed with fighting cartels. The handling of certain merger cases by the Commission has aroused criticism, the essence being that the EC competition rules are discriminatory to big companies in small countries.

## ANNEX

### COMMUNICATIONS POLICY

#### 1. Overall communications policy

The task of the Swedish Competition Authority is to work for effective competition in both the private and public sectors for the benefit of consumers. The Competition Authority disseminates knowledge on the rules of competition and works towards establishing a competition-oriented view in society.

Communication is a strategic tool which the Authority uses to achieve its goals. Guidelines on how the Authority works with communication, both internally and externally, shall be clear and consistent. The Communications Policy applies to all staff at the Authority, since everyone has a responsibility to keep themselves informed and deal with questions within their area of competence, as well as provide information about the work of the Authority.

The Communications Policy sets out the framework for the Competition Authority's communications and the means by which this is to be achieved. More specific instructions on how the work is to be carried out in practical terms can be found in the guidelines set out in the policy.

#### 2. Communication should be open, understandable, objective, rapid and appropriate

"Open" means that the person(s) asking for information shall wherever possible receive it. "Understandable" means that the language we use should be simple and clear. The information provided should be correct and relevant. The information requested should be given as rapidly as possible. "Appropriate" means that we should be active and study the interests and needs of different target groups for information and communication.

#### 3. Both internal and external communication are important to the Competition Authority

Effective internal communication creates the preconditions for effective external communication.

Internal information and communication are intended to provide the staff with an overview of the Authority's work, increase the competence of staff so that they can better provide a sound basis for the Authority's decisions, increase motivation, work satisfaction, a sense of belonging, as well as facilitating communication between different parts of the Authority.

#### 4. Members of staff are Ambassadors and everyone has a responsibility for communication

Each member of staff is the Authority's face to the outside world. How we are understood by the outside world is largely related to how we act as an authority. Each and everyone play an important role - we are all ambassadors for the Competition Authority.

Each member of staff also has responsibility for keeping up-to-date with information about important events taking place, both inside and outside the Authority. By being well informed we convey a clear and objective view of the Competition Authority and the work we do.

**5. Communication is an instrument for achieving our goals**

The Authority's obligation to provide information is laid down in the Letter of Instructions from the Government. The goals of the Authority are formulated in its activity plan. Achieving these goals requires that we maintain a dialogue with those who are affected by our work. It is they rather than ourselves who determine to what extent we are successful in achieving our goals.

**6. Communication is an active and integral part of all our work**

Internal and external communication is an active and integral part of the Authority's work. This also means that communications planning is integrated in annual activity planning.

Working with questions concerning communications inevitably requires that a judgement be made in each individual case as to how a specific issue should be handled in the most appropriate way. This is the reason why the judgement of each and every member of staff is of vital importance.

## UNITED KINGDOM

### 1. Communications responsibility

The main responsibility for public outreach and communications within the Office of Fair Trading (OFT)<sup>1</sup> lies with its Communications Division. The Division is also charged with internal communications and IT. Its main elements directed towards external relations are the Press Office (handling the media), the Publicity and Marketing team (producing material for consumers and intermediaries such as lawyers) and the Business Information Unit (BIU) set up in June 2001 to concentrate resources devoted to liaison with companies of all sizes to increase their knowledge and understanding of competition and consumer law. But external communications and outreach are seen very much as a task for everyone across OFT (including the Competition Enforcement (CE) division's group of speakers).

### 2. The role of communications

Communications is seen as one of the three cornerstones of OFT's Statement of Purpose, alongside enforcement and investigations, in achieving its goal of making markets work well for consumers. One key element of this is spreading information, awareness and understanding of competition law to business, the legal profession, the media etc. The greater their knowledge, the less likely that companies will transgress the law accidentally or by ignorance of it. We have an overall communication policy of being as open and transparent as possible including highlighting infringement of the law as a deterrent to other companies. We see advocacy as playing a key role - we publicise the outcomes of our market investigations and the benefits of our activities to consumers. We learn from and listen to business and law, (eg via consultation) just as we like to keep them informed and increase their awareness of their responsibility - it is a two-way process.

### 3. Experience with communications policies

We have an overarching general communications strategy which covers objectives, key messages and all our target audiences, including business. This is constantly revisited and reviewed. But we need to reach out to all levels and sizes of business and this is not always easy, especially to reach the very smallest ones. We are continually looking for ways to improve targeting. We 'track' knowledge of competition law through annual research of over 1400 businesses across the country. We do not have regional offices, and so are deliberately raising awareness of the OFT in the regions through greater volume of "local stories" and Roadshows visiting parts of the country one after another - eight a year.

CE, in liaison with the BIU, has a positive policy of getting staff out across the country and speaking about competition law. This has undoubtedly increased awareness and understanding of the law and helped us learn of local issues and problems.

#### **4. Handling media relations**

There is a general OFT policy of increasing the transparency of our operations. We have become more accountable within Government and to Parliament as our powers and budget have grown. Beneath the overarching Communications Strategy, on the “free media”, we have Press Office protocols on media handling, including guidelines on when to publicise stages of the CA98 process against infringing businesses. The media is used (via briefings, press notices, features etc.) to spread awareness and understanding of competition law and of our powers and of our actions under competition law.

We also use wider media routes to reach business and parties interested in competition laws – e.g. booklets/leaflets on aspects of the law, a whole business information section on our website, our CE speakers network, and our Regional Roadshows – full-scale information campaigns are initiated/maintained on competition law and also (shortly) to help consumers understand better the importance of competition.

#### **5. Target audience**

Target audiences for competition law information include businesses of all sizes (the smallest are the hardest to reach); business organisations; the legal profession; consumers/the general public; key government departments, including the Treasury and DTI; and, of course, the media – either those dealing with competition generally or with specific issues (eg health, holidays) – national and regional – TV, radio, the press and the world-wide web. Obviously we have systems in place to target the media likely to be most interested in/concerned with the announcement we are planning to make. We have many media lists used across central government as well as those we ‘purpose-build’ for a one-off story.

#### **6. Stakeholders**

We work with stakeholders including business organisations and the legal profession to spread the word on competition. It is in all our interests to ensure that the law and OFT powers are well understood. The greater the knowledge among business and their legal advisers of the law and penalties for transgressions, the fewer infringements are likely. Markets become better balanced and the consumer is better served. Healthy dialogue with stakeholders both on the competition side and amongst consumer organisations is encouraged (eg via conference platforms etc.).

#### **7. Measuring effectiveness**

The effectiveness of our communications activities are measured in several ways. We have annual tracking research of business awareness of its responsibilities and obligations under competition law, beginning with the Competition Act 1998 (CA98). Over 1 400 businesses of all sizes are questioned (also about consumer law). There is also annual consumer tracking research, which started in 2002, which includes questions on their knowledge of their legal rights and of the value of effective competition. Both also include questions on knowledge of OFT and of routes by which they prefer to receive information, which enables us to enhance our targeting and distribution policies and practices. The effectiveness of our Press Office operation is measured by monitoring media coverage in national and local press, TV and radio – we are particularly looking to improve and increase regional coverage.

## **8. Government support**

We do receive considerable support from fellow Government Departments. The Treasury has increased OFT's total budget from £30 million to over £50 million over the last three years to accommodate our increasing powers. Departments like the Treasury and DTI want us to communicate strongly, and they study closely media coverage of us. New money for communications allocated to OFT last year for the first time led to the Regional Roadshows initiative which the Treasury sees as a valuable channel for enhancing media and business awareness of OFT and competition law at local/regional levels.

## **9. Public opinion**

OFT, in common with other Government Departments and Parliament, is keen to "feel the pulse" of public opinion, for example via annual tracking research of consumers and business, and also how we are rated by business and fellow competition authorities (for example, the Global Competition Review annual survey).

## **10. Different media**

We use existing media both for day-to-day announcements and major campaigns. For the media we deploy press notices (national and regional), press briefings on major stories, individual interviews, and features. For our many other targets we use general or subject specific leaflets and booklets (ranging from a general Business Guide on all competition and consumer law, to consultations on draft guidance for important new powers under the Enterprise Bill presently being debated in Parliament); exhibitions (for example at Government-wide Business Advice Days); our quarterly magazine "Fair Trading"; advertising linked to campaigns (for example, on debt or extended warranties); and our website (newly redesigned to make it simpler to use) carries all our hard copy material and more. It offers especially good value for money where some material need only be available in electronic form – it helps speed responses on consultations, for example.

Finally, the Regional Roadshows involve a day in a key business centre and include seminars for local business on competition/consumer law, as well as training for trading standards officers, a consumer exhibition and liaison with the media. They enable us to spread the word effectively at local level about OFT and its powers, but also helps us to learn more of local problems and give businesses and consumers greater confidence in us, so that they are more likely to let us know if they are aware of any law-breaking.

## **11. Public debate around competition law enforcement**

There is continuing dialogue in UK in public and private on competition law with and among business organisations, law firms, in-house counsel, economic consultants etc. There is now increasing debate in the serious press, especially in competition areas arising from our powers under the 1998 Competition Act and the upcoming Enterprise Act. Benefits of competition for consumers are not yet fully appreciated, but initiatives are being developed to heighten awareness of these benefits, for example by a publicity campaign and through the Regional Roadshows.

## **12. Responding to public debate**

We respond to public debate through various "routes". Via the media we place features in key newspapers and inspire interviews with the Director General either in the press or on TV/Radio, picking up

on specific themes. The Director General, OFT Directors and some other staff are active speakers at conferences, seminars and debates on topical issues surrounding competition law (e.g. on business/legal platforms). Some of these speeches are on the OFT website.

### **13. Criticisms of competition agencies in media debate**

Using the media can be risky – we cannot always guarantee the story will be written up in the way we want. If the story is over-written or adopts an angle different from what we expected, it can lead to unsatisfied expectations or a less than positive reaction among our stakeholders. A recent issue we have raised through the media is actually how much more transparent and open should we be (for example, by publicising the fact of a Competition Act investigation at the Statement of Objections stage). The Director General raised this question in a speech seeking views and a journalist was briefed – in the event she slightly exaggerated our position. More generally, there are from time to time leaks of announcements or policy considerations both in the UK itself and from Brussels to which we need to respond.

**NOTE**

1. This note concentrates on OFT's competition responsibilities. OFT also has other important responsibilities including consumer protection and advice to Government on regulations.



## UNITED STATES

### 1. Office of Public Affairs

The FTC's Office of Public Affairs (OPA) is located at the Commission's Headquarters in Washington, D.C., and is staffed by a director, deputy director, four full-time public affairs specialists, a public affairs assistant, and two student interns. The primary goal of the OPA is to secure accurate and comprehensive coverage of FTC initiatives on both the national and regional level.

The work of the FTC's OPA is designed to promote Commission activities, programs, and accomplishments through information provision and reporter education. Because many reporters are not well-versed in antitrust law or how the Commission operates, the educational aspect is as important as the dissemination of factual information. Accordingly, competition press releases are frequently used to illustrate and explain changes to legislation and regulations related to the Commission's antitrust mandate.

The program priorities of the OPA over the past year have been to expand media outreach, including: 1) the development of expanded electronic contact lists, extensive reporter call-outs, and increased news release dissemination via e-mail; and 2) the electronic tracking of media coverage and the posting of electronic "clips" on the agency's Intranet Web site every day.

### 2. Policies for Handling Media Relations

Nearly all competition-related matters – including mergers in which the FTC takes an enforcement action, staff comments, advocacies, Congressional testimony, and public workshops – are announced through a press release issued from Headquarters. Speeches by the Chairman and four other FTC Commissioners are announced via press release at their request. Major antitrust decisions may be announced at a press conference – typically held at Headquarters – with a media advisory issued prior to the announcement to encourage media attendance. Transactions that receive early termination of the antitrust waiting period or are closed following an investigation with no action taken are not publicly announced. In most of these cases, the relevant parties publicly announce that their transaction has been "cleared" by the FTC, and the press office will respond to queries following such announcements with public information only. The FTC also maintains the list of "early terminations" that are published daily. OPA will confirm that a particular transaction is included on this list (which also is available on the Web site), but will not disclose whether the FTC or the Department of Justice reviewed the transaction.

During the pendency of Commission investigations, all antitrust matters are nonpublic. Unless an investigation has been revealed by the parties, the FTC does not confirm or deny even its existence. Based on the deadline needs of reporters, embargoed press releases on certain competition-related matters are provided to trusted members of the press with whom OPA has an established relationship. The exception concerns merger action releases, which under no circumstances are provided to the press until after the Commission vote has been received and the Office of the Secretary has notified the parties and their counsel. The public versions of all competition-related press releases are posted on the Commission's Web site as a link to the respective release. This is especially important in matters where the public has an

opportunity to provide comments, e.g., a conditionally approved transaction or an application for divestiture or order modification.

### **3. Target Audiences/Stakeholders**

The target audiences and stakeholders of OPA products are as varied as the products themselves. Of course, press releases and advisories are targeted at international, national, regional, and local media, including television, newspapers, trade publications, wire services, Internet news sites, and talk/news radio stations. In addition, competition-related releases often are directed to antitrust lawyers and legal publications, as well as to industry groups.

While some competition releases are designed to announce Commission action regarding a proposed merger or divestiture, others concern more industry-specific information, such as changes to the HSR Act. It therefore is essential for the FTC to provide updated and accurate information to members of the Bar to ensure they are informed and able to submit the correct documentation to the Commission in the future. Further, press releases often concern antitrust education efforts, such as the ongoing FTC workshops on merger best practices and the second-request process. Providing information on these workshops to the Bar is essential both to educate members and to open a dialog on how to improve the current system.

OPA also prepares speeches for varied target audiences, including businesses, consumers, lawyers, associations, and national and international organisations. It is through these speeches that young attorneys may first hear of the FTC's work and become interested in a career with the Commission's Bureau of Competition. Similarly, press releases are developed to publicise staff comments and advisory opinions regarding antitrust issues such as Internet commerce.

Finally, as millions of consumers are affected by the competition decisions the Commission announces, they – as well as their elected representatives in Washington, DC and their home states – are a vital audience for all competition-related communications. These consumers are also stakeholders, as are the corporate counsel, board members, and employees of the companies in the particular transactions being considered. When the Commission considers international mergers, other antitrust authorities and their members also are important stakeholders and at times are consulted during the communications process.

### **4. Managing the Media/Dissemination Methods**

The media outlets interested in FTC antitrust decisions, actions, workshops, and opinions fall into two main groups: mainstream press and economic/business press. The mainstream press is generally interested in any action that will affect a large number of consumers directly, such as a major merger, or one affecting consumers in their area. The business press is more interested in the economic effects of such actions, such as how stock prices are impacted, changes in market conditions, etc. For each of these two groups, the FTC's OPA maintains targeted media lists and has developed excellent working relationships with members of particular outlets. In addition, each public affairs officer is responsible for two regions of the country, and works closely with the regional director to ensure competition-related information relevant to consumers in those regions is presented efficiently and accurately to appropriate media outlets.

Communications information such as press releases and media advisories are posted on the FTC's Web site ([www.ftc.gov](http://www.ftc.gov)), with links to the relevant supporting documents. The OPA also maintains targeted lists that are routinely sent to reporters either by fax or email to get this information to specific

reporters who have expressed interest in the Commission's antitrust work. For highly newsworthy issues, such as major mergers, public affairs officers call the reporters who follow antitrust issues to alert them of the Commission action. Following this initial dissemination, OPA will set up interviews with key FTC staff at the request of the media. For announcements of national significance, press conferences may be held at Headquarters; for less significant announcements that are still important to a specific sector of the economy, less formal, roundtable-like events called "media availability's" are held. At both press conferences and media availability's, conference call-in lines are made available for reporters who are unable to attend. While these press events are open to the public, only members of the media may ask questions. Senior FTC officials may take questions from the media following speeches, at seminars, during workshop breaks, or after giving Congressional testimony, at their discretion. Antitrust reports, advocacies, and staff comments are posted on the Commission's Web site in PDF format, along with a press release summarising them.

## **5. The Role of Public Opinion and Public Debate**

All mergers, acquisitions, and other antitrust matters in which the Commission takes law enforcement action are subject to public comment. Therefore, the announcement of such actions is essential, as is their coverage by the media, to ensure that the public is aware of the decision and can provide informed comments if they desire. The Commission considers and responds to all public comments. These comments may lead to altering the terms of a proposed consent order prior to its finalisation, or influencing the Commission's decision regarding a proposed divestiture or order modification.

Similarly, comments and feedback provided during or following a publicised antitrust workshop or seminar may affect existing regulations and/or Commission policies. As the FTC is committed to gaining the widest range of public input, it is in its best interest to publicise these workshops and seminars broadly. By publicly announcing the issuance of a report summarising the proceedings, the FTC not only provides those who were unable to attend the event with an overview of the workshop or seminar, but elicits additional comments on these results. Agency communications contribute significantly to the evolution of the FTC's policies and regulations regarding antitrust enforcement. This is also true of the press releases issued to announce a particular competition staff/bureau comment. The announcement alerts the public and interested parties may seek further information on the Commission's policies. By encouraging public interaction and feedback, the FTC ensures its antitrust policies are not developed and implemented without sufficiently understanding "real-world" considerations.

## **6. Assessing Accomplishments: Communication's Effect on Support for the Organisation**

Each week, OPA provides the Commissioners, regional directors, and other senior managers with an update of agency communications over the prior seven days. Each month, the OPA develops a summary of the news items written about the Commission, and posts these clips daily on the FTC Intranet site. FTC's media lists are tracked and constantly updated, continually increasing the number of reporters provided with antitrust information. Errors and/or misquotes in media items about the Commission are addressed as quickly as possible by the appropriate staff member. The result, since June 2001, has been the addition of more than 550 reporters to the FTC's media lists (both antitrust and consumer protection), and the strengthening of OPA's relationships with local, regional, and national media.

The attendance at FTC's competition-related workshops, seminars, and testimony is another indication of the success of the agency's communications outreach initiatives. Overflow rooms are often needed at these events, illustrating not only that the word is getting out, but that the public, antitrust bar,

and others appreciate this open forum for feedback and interpretation. The larger result of the increasingly focused communications efforts by the Commission is a greater understanding and appreciation of agency activities by the public at large, as well as by other stakeholders such as Congress, which provides budget appropriations.

## **7. Education and Communications in the FTC's Mission**

The Commission's education and communication activities are an integral part of the agency's strategy to preserve competition. Like most federal agencies, the Commission prepares a series of plans and reports that explicitly state what the agency seeks to accomplish and provide measures of whether the agency has accomplished its goals. The FTC's three strategies for preserving competition are:

- identify anticompetitive mergers and practices that cause the greatest consumer injury;
- stop anticompetitive mergers and practices through law enforcement; and
- prevent consumer injury through education.

The Commission thus intends that education, and hence communications, should play a key role in preserving a competitive marketplace.

The FTC's competition-oriented education and communication activities advance both antitrust enforcement and competition advocacy. To advance antitrust enforcement, the principal target audiences are the legal and business communities. When communicating with these audiences, our goal is to raise awareness of applicable legal standards and enforcement policies to facilitate compliance with the law. Speeches before the antitrust bar and business groups play a significant role in articulating principal themes; more detailed guidance is available through guidelines and advisory opinions.

All antitrust-related documents are available through the FTC's web site. One key measure of the success of our educational efforts is the number of "hits" on these documents. Web hits help measure the user's response to our education efforts, rather than just measuring the amount of our own activity. A web hit indicates that someone has decided that one of our documents is at least potentially useful enough that they want to look at it. This measure is helpful not just because antitrust attorneys frequently turn to the Internet to search for information, but also because web hits can provide an indirect measure of the success of other education efforts. For example, when an FTC official gives a speech or presents congressional testimony containing especially useful information, antitrust attorneys and other interested parties will likely visit the FTC web site to download a written copy of the speech. Similarly, a Commission decision or advisory opinion will likely generate more web hits the more significant or useful it is. Counting web hits thus helps us assess the impact of our broader education and communication efforts, rather than just the effectiveness of the web site itself.

To advocate procompetitive policies, the principal target audiences are policymakers and those who advise them, including both staff and others whose opinions policymakers respect. Each advocacy document is actually intended to reach two groups of policymakers and advisors: (1) those involved in the particular decision on which we have been asked for our views, and (2) others who are not involved in the particular debate in which we have intervened, but who are making decisions on similar issues in other government agencies or other states.

The Commission or its staff offer their views on competition policy directly to the decision makers by letter, formal testimony, legal brief, or other appropriate document. We assess the success of competition advocacy communications in four ways:

- Because each advocacy piece is produced and sent to a particular decision maker, subsequent discussion with the decision maker or others involved in the policy debate often reveals the extent to which our analysis influenced the decision. When the advocacy involves a court or regulatory proceeding in which the decision maker must explain the reasons for the decision, favourable citation to FTC documents in the written decision is an obvious indicator of success.
- “Repeat business:” This occurs when a policymaker we advise returns to us for advice on another issue, or when other policymakers consult our advocacy documents or seek our input because they see that we have already given advice on that topic. Perhaps the best recent examples of this are FTC staff letters assessing state legislation purporting to create antitrust exemptions for physician collective bargaining; several different states have asked FTC staff for its views over the past several years, often noting our previous advocacy letters on this topic.
- Web hits on competition advocacy materials help us assess the extent to which policymakers, the news media, and others find our advocacy materials useful.
- Media coverage, and direct feedback from officials and interested parties in response to the media coverage, also help us assess the extent to which our advocacy projects are having their intended effect.

## ANNEX

### OECD Roundtable on Media Relations - DOJ Submission

The Department of Justice's Media Relations Policy (US Attorneys' Manual, 1-7.000 (available at [http://10.173.2.10/usao/eousa/foia\\_reading\\_room/usam/title1/7mdoj.htm](http://10.173.2.10/usao/eousa/foia_reading_room/usam/title1/7mdoj.htm)), and governs dissemination of information related to DOJ antitrust enforcement. Overall, the Department's approach with regard to communication is to balance three principal interests: the right of the public to be informed, the right of an individual to a fair trial, and the government's ability effectively to enforce the administration of justice. (1-7.110).

The Department of Justice has an Office of Public Affairs (comprised of approximately 15 employees) that is primarily responsible for co-ordinating media relations. This Office works closely with the Assistant Attorneys General responsible for each Division. One individual within the Office oversees Antitrust media relations, and each litigating Division within the Department has a corresponding media representative within the Office.

The Office of Public Affairs, as part of the Department of Justice, approaches media relations from the perspective of a law enforcement agency. The Office bases all communication on the law and facts at hand. The Office believes that effective communication can have a significant effect in deterring illegal conduct. In particular, it is crucial that the public and the business community understand antitrust laws, and that they be aware of the fines and penalties that may result from violation of these laws.

To disseminate relevant information, the Office of Public Affairs primarily uses the Internet and print media, but also occasionally will rely upon radio or television. The Antitrust Division's web site is a particularly substantive resource for the public. It includes links to relevant court documents, press releases, and Division policies and guidelines. In 2001, the Antitrust Division issued 93 press releases; in 2000, 103 were issued. The Office of Public Affairs routinely e-mails press releases and relevant documents to reporters, and prepares a daily press guidance sheet for reporters. Print media upon which the Division relies to state and explain its actions and views include press releases, interviews, press conferences, and court documents. Occasionally, the Assistant Attorney General will do a radio interview or a press conference that will be televised; generally, these appearances relate to cases that have a national interest. The Antitrust Division avoids use of particular "stakeholders" to convey a message, since those stakeholders could at a later point themselves be subject to inquiry by the Department.

The Office of Public Affairs has a variety of target audiences, including reporters, industry associations, professional associations, and the general public. To measure the effectiveness of media relations, the Office of Public Affairs regularly reviews press articles and follows up with reporters or media contacts as necessary. In addition, the Department contracts for a service that monitors news articles which appear in the press. Each litigating section also has responsibility for monitoring media developments that pertain to its specific issues, and the Antitrust Division contracts with a clippings service that focuses on antitrust matters. When appropriate, the Department clarifies the grounds for its actions via op-ed pieces, editorials, or interviews.

The Department believes that a well-informed public will support the role of competition and effective antitrust enforcement in benefiting consumers. At the same time, however, the Department must make decisions based on the facts and the law. Public debate regarding antitrust policy occurs in legal and business venues, such as the American Bar Association, the Conference Board, and the National Association of Regulated Utility Commissioners, and also occurs in academic settings, seminars, and

conferences. Individuals from the Department frequently participate in panel discussions on competition policy; other panellists at these discussions typically include legal practitioners, economists and academics. Another important method of disseminating the Department's views regarding competition policy is through public testimony and speeches, and through advocacy work at all levels of government.



## **EUROPEAN COMMISSION**

### **1. Who is responsible for public outreach/communications within your agency?**

The Commission makes a clear distinction between the relations with the press and with the public and investors.

The relations with the press are carried out by two spokespeople with two secretaries which are part of a wider Commission press service (= the Press and Communication Directorate General). Although the spokespeople's role is to handle relations with the press they are often called to answer investors' questions when these relate directly to alleged spokespeople's comments.

Non-press queries are dealt with by an information officer within DG Comp itself.

### **2. How does your organisation perceive the role of communications in the delivery and administration of competition law?**

The communication to the press and, therefore, to the outside world is given a high importance as a way to disseminate news in a rapid and widespread manner. This is achieved mainly through press releases - circa 450 in 2001 -, but also in a variety of other ways: speeches, website, regular publications (Competition Newsletter), brochures and the Official Journal

The press releases are given special attention because they are often the first and possibly only document on the case concerned. For example, when the Commission announces a merger clearance, the opening of state aid proceedings or a cartel decision, it will often be months before the merger or cartel decision is published in the OJ and on the Competition website. In the case of the closure of a case there will not even be a decision.

Therefore, by communicating its decisions and policies the Commission achieves a dual aim: informing the wider public about the benefits of competition policy and providing businesses and the legal community with guidance on the application of the different rules in competition field.

### **3. What has been your experience with communications policies and programmes and what has been the impact on staff?**

The experience is that when the communication is well prepared and the message clear there is a greater understanding of the competition policies and decisions.

**4. What policies are in place for handling media relations?**

The Commission's policy in the competition field is to inform the press in a timely way. This means primarily after a decision has been taken: a press release is issued, usually at the time of the daily midday briefing or by an urgent fax/e-mail procedure, sometimes accompanied by a press conference if the subject is important enough.

The Commission can also organise technical briefings to answer a particular need for information in a complex field (telecoms) or of a wide public interest.

But most of the time is spent on the phone or answering e-mails from the Brussels-based press corps (circa 900 journalists accredited, making Brussels together with Washington one of the biggest concentration of media) as well as the outside world.

**5. What is your target audience? And if it is varying, how do you adjust?**

The target audience in the competition area is primarily the specialised press, i.e. a core group of about two dozen journalists comprised of financial agencies and financial newspapers as well as a number of big general newspapers. But of course, at one point or another every single journalist is interested in competition law either because the subject interests a wider public (e.g. car distribution), the regional press (e.g. state aid in the Basque region) or a group of countries (competition chapter of the enlargement negotiations).

The two types of journalists – specialists and non-specialists – require a different handling. The latter ones need a lot of explaining of the rules and procedures, they need perspective and background. The first ones go straight to the point and are usually after breaking, market-moving news.

**6. Do you enlist the support of stakeholders to help deliver your message?**

N.a.

**7. How do you measure the effectiveness of your communications activities?**

By the press coverage both in terms of output and quality.

**8. Have communications affected Government support for your organisation?**

N.a.

**9. What is the role of public opinion?**

N.a.

**10. How do you make use of the different media (print, radio, television, the Internet)?**

The emphasis is mainly on print media. But special attention is also devoted to television or radio when the Commission makes big announcements (e.g. rules applicable to car distribution) or takes important decisions (prohibition of merger between General Electric and Honeywell) by giving press conferences by the Competition Commissioner, TV interviews, recorded addresses and even TV spots illustrating a particular topic.

The Internet is used to inform the business and legal communities as well as the wider public about legislation, cases and other documents, publicise consultation papers, advertise conferences, speeches, etc.

**11. What kind of public debate has surrounded competition law enforcement activities and who participates in this debate (e.g. business interest groups)?**

Merger control is certainly one of the aspects of EU competition law which has triggered the biggest debate in the last two years. This is due to the high activity in this field (merger wave between mid 90s and 2001), but also more spectacularly to the prohibition of GE/Honeywell (the biggest industrial merger ever attempted), the Green Paper on the Merger Review of Dec 2001 and the annulment by the Court of First Instance in June 2002 of the Commission's prohibition of the Airtours/First Choice merger. The debate is carried out in the financial press and fuelled by comments by governments, lawyers and other sources.

State aid control has also been the subject of sporadic debate, namely on the issue of re-directing state aid to more horizontal schemes such as research & development, employment, venture capital, etc.

**12. How does your organisation respond to public debate over its activities?**

As the debate is often based on misperceptions, headline-grabbing assumptions and use of the Commission as scapegoat, most of the task consists in putting the debate or the criticism into perspective, explain what stakes are and generally educate the press about the rules and the procedures. This is done through press releases, conferences, press conferences, speeches and, above all, through direct contact with journalists, occasionally others, on the phone and by e-mail.

**13. What issues arise and what criticisms are made of competition agencies participating in media debate?**

If the debate is about competition policy, decisions or procedures, participation of the agencies in the debate can only help steer the media debate.



## **BIAC**

BIAC welcomes the opportunity to provide its preliminary comments on the relationship of competition authorities with the public and the media.

- I am pleased to be here to reflect the views of Messrs. Plompen, Rill, and Goldman, as well as my own views and reflections.

Two very positive goals we believe can be, and should be, advanced through the effective interaction by competition agencies with the public and the media.

- First is the goal of increasing transparency of agency decision-making.
- Second is the goal of reinforcing the role of the competition agency as a competition advocate and proponent for market-based solutions.

BIAC has long supported the principle of transparency, most notably in its Recommended Framework for Best Practices in International Merger Control Procedures, presented jointly with ICC last year to this Committee's Working Party No. 3.

- Included are the following best practices relating to transparency.

Consideration should be given to using speeches, press releases, information bulletins and/or other tools to disseminate information regarding precedential interpretations of statutes, regulations, policies or practices, or regarding the basis for the agency's conclusions with respect to high profile or important cases.

An excellent example of transparency and the use of the media on the part of a competition agency is the recent case decided by the U.S. Federal Trade Commission (FTC) relating to the cruise line industry [Royal Caribbean Cruises, Ltd./P&O Princess Cruises PLC and Carnival Corporation/P&O Princess Cruises PLC, FTC File No. 021 0041].

- Upon the conclusion of its inquiry, the FTC issued a public statement providing a detailed explanation of its decision.

Included was an overview of the cruise industry, an analysis of the relevant product and geographic markets, and a detailed assessment of the likely competitive effects of each transaction.

- Helpfully, the statement also detailed the work which was completed by the FTC in reaching its conclusions (including, in particular, empirical analyses of massive amounts of quantitative data.)
- The public statement thus provided some useful parameters for those who later appear before the agency.

Transparency of agency decision-making also should be seen as contributing to a second important goal of the interaction of a competition agency with the public and media – establishing itself as a competition advocate.

- By competition advocate, we mean the central role that competition authorities can and should play in the privatization and deregulation process, as well as their appropriate role as primary advocate for the removal of government-created impediments to the operation of efficient market mechanisms.

Competition advocacy by agencies includes, as an important component, creating among economic agents and the public at large more familiarity with:

- The benefits of competition; and
- The role competition law and policy can play in promoting and protecting welfare enhancing competition, wherever possible.

Vital to creating this “competition culture” is an effective communication strategy, which serves to make competition policy more transparent and understandable.

In conclusion:

- BIAC supports transparency and the creation of a competition culture as important goals in the context of the relationship of competition agencies with the public and media.
- The generally enthusiastic support of the business community is not, however, without qualification. Competition agencies should be sensitive to a legitimate concern that communication strategy not be used to politicize particular enforcement actions or unfairly to characterize the actions of any economic actors.

In the end, competition authorities must be seen by all as acting with a great deal of objectivity and integrity.

## SUMMARY OF THE DISCUSSION

The Chairman began by stating that, unlike what often happens in our roundtables, there are many commonly held views among competition authorities on the issue of communication. Among frequently mentioned arguments favouring a proactive communication policy for competition authorities are:

- ensuring better compliance with the law;
- reacting to and countering the arguments of powerful lobbies;
- boosting the morale of the authorities' staff members;
- winning political support;
- facilitating enforcement;
- justifying the resource requirements of the competition authorities etc....

Competition authorities devote substantial resources to communication using a variety of means to reach different target audiences (i.e. the business community, lawyers, public policy makers, and consumers). They emphasise the need to deliver clear, consistent and comprehensive messages. In most countries the number of references in the press has been increasing. Most competition authorities commission research institutes to measure the level of awareness of businesses, lawyers or consumers of competition law and/or to assess their opinion of competition authorities. They also monitor press articles. Nevertheless, nearly all competition authorities express the view that it is quite difficult to assess the effectiveness of a communication policy.

The Chairman outlined a number of questions worth exploring during the roundtable namely:

- From the point of view of communication, is antitrust like any other law enforcement activity or are their specificities?
- How to formulate a communication strategy for a competition authority?
- Are there codes of conduct that competition authorities should follow in their communication strategies?
- Is developing a "competition culture" the same thing as developing awareness of law enforcement?
- How can one measure the effectiveness of the communication policy of competition authorities? How can one measure the effectiveness of different ways of communicating?

## 1. On the importance of communicating

The Chairman noted that the Australian contribution states that: “There are a number of adverse consequences that would result if the regulator failed to provide information to the media and the public more generally. The public would be poorly informed because the media and other sources of information to the public are unlikely to perform the task effectively- particularly given that the issues are often complex and technical” (para. 13). It also states that: “Publicity helps build a general culture, understanding and support of competition and understanding of and support for the law and its administration and more generally of competition policies across the whole economy” (para. 16). Finally, the contribution notes that, “While the announcement of an investigation may lead some to conclude that the firm concerned is guilty of a breach of the Act, it is the role of the regulator to present the facts, and allow the courts to reach a determination” (para. 31). The Chairman pointed out that some of the other contributions have a more qualified view of whether publicity regarding enforcement of the competition act necessarily leads to support for competition, or whether one should report on cases before there has been a final decision. Be that as it may, the ACCC and its Chairman are extremely visible in all forms of media and enjoy very high recognition, probably more recognition than any other competition authority in the world. The Chairman asked the Australian delegate whether it follows that there are comparatively fewer violations of the Competition Act. What evidence is there that media exposure for the ACCC brings increased support for the enforcement of the Competition Act?

A delegate from Australia commented that a high level of publicity powerfully increases compliance, and leads to greater support for competition law and policy. Adverse publicity about firms stimulates a lot of compliance. It is strongly disliked by business and often seen as an additional penalty and punishment. Another effect of greater publicity is to attract more people to provide information concerning breaches of the law. The evidence on this point though is very unclear.

Australia argued that the most important form of communication is raising awareness through publicising individual cases. General information about the law does not disseminate widely but cases do get through to the public and businesses. Competition law is a form of economic policy but it is a little unusual in that the main emphasis is on individual cases. Competition authorities need to communicate results of individual cases to the whole society through television, radio as well as newspaper. Australia believes it is important to win media trust, and for that accessibility is critical. When doubts are raised, the competition authority should be available to clear up issues. Regarding pre-trial publicity, Australian courts have clearly said that it is highly desirable that the regulator explain to the media what the allegations are when cases are initiated against firms.

The Chairman next turned to Canada noting that the Competition Bureau also has a very active communication policy including advocacy, encouraging companies to adopt compliance programs, producing publications, and responding to media calls. One strikingly different feature of the Bureau’s communication activity is that after having undergone proper training and having worked with their communication advisor: “Those who are most familiar with a particular issue, regardless of their level, are encouraged to act as the spokespersons” (para. 13).

Bureau employees are also considered to be natural ambassadors: “Explaining the Bureau and its impact on all Canadians is every employee’s responsibility” (para. 21). In contrast, in the Australian contribution one reads: “...releases, conferences and comments are typically the province of the Chairman rather than a public relations spokesperson or a number of Commissioners or senior staff. This gives the information more authority, more media coverage and leads to the identification of the ACCC in personal terms” (para. 24). The Bureau contribution states, *inter alia*, that “...communication ensures that government decision-makers are cognisant of the pivotal role the Bureau plays in the Canadian economy” (para. 2). The Chairman asked whether such a rationale for a pro-active communication policy applies to

all other government offices with economic responsibilities in Canada or is something specific to competition law enforcement.

A Canadian delegate stated that communication is extremely important to filling each of the Competition Bureau's four main roles: enforcing the law; informing the public; building alliances; and influencing policy. Communication is also key to the Bureau's ability to abide by five guiding principles, which should apply to every competition authority: transparency, timeliness, fairness, predictability and confidentiality.

The Canadian delegate noted that communications is the glue that links together the different parts of the conformity continuum, including enforcement, and reiterated the view that informing the public is every employee's responsibility. Employees should be able to explain to their friends and neighbourhoods what the Competition Bureau does, not in a manner involving "complex economic theory", but simply pointing out how the Bureau helps them make their dollars go further.

For external communications, the Bureau's target group is consumers, the legal community, business (especially small business) and the media. In relation to building alliances, the Canadian delegate stated that alliances help to enhance credibility, raise awareness and improve enforcement. As part of this work, the Bureau helps companies develop corporate compliance programs. Finally, as with all competition authorities, the Bureau needs sufficient resources to do its work. It therefore has a strong interest in getting its message out to politicians, always remembering that they will tend to support what matters to their constituency.

Although in the past there was some internal questioning about why the Bureau should devote resources to communication, now the assistance of communications staff is actively sought after by case officers.

Another Canadian delegate stated that communication is important to anti-trust since a competition culture is not universally seen as a good thing. Competition makes mostly an indirect, somewhat unseen contribution to economic welfare. In contrast, the competition authorities' opponents hire the most capable communicators to undermine the significance of competition policy. In this context, there are two reasons why communication is a vital and essential tool. First, a competition authority has to defend its very existence and has to demonstrate its indirect contribution to well being. Secondly, a competition authority must defend itself against people who seek to distort or interfere with the positive message it is trying to convey.

## **2. Quality of communication by competition authorities**

The Chairman next turned to Germany noting that it emphasises the qualitative aspect of communication and states that: "In pursuing the aim of promoting competition it is important to inform the public in an unbiased, truthful and comprehensive manner" (para. 11). It also states that it pursues a policy of non-discrimination in its public relations work meaning that exclusive arrangements with individual media are ruled out. The German contribution states that conflicts with individual interest groups should not "...be allowed to become a central feature in its public relations work" (para. 36). The Chairman sought more information about this view.

A German delegate stated that his country shares Canada's objectives but there are differences in implementation. In principle, the Chairperson deals with communications together with the press office. In order to diminish the risk of being misunderstood, staff persons do not communicate to the press. In addition, information is given not to single journalists but to the broad public. Giving information to single journalists might lead to accusations that such journalists enjoy inside knowledge. Thus, information is

given to all the journalists and over a universally accessible web-site so that everyone receives information at the same time. Germany also emphasises right timing, by publishing reports in the summer break when the press is looking for additional news.

Germany believes that success in communications is necessary in order to influence politicians and succeed in budget negotiations. When the competition authority is present in the press, this is noticed by politicians, ministers and all the people who make budgetary decisions.

The Chairman next turned to Norway noting that the Norwegian Competition Authority (NCA) is often "...actively involved in the media, answering case inquiries, when this is prudent, whilst at the same time being careful not to be seen to be actually dealing with/solving cases via the media" (para. 5). However, the NCA, contrary to the Bundeskartellamt, in some instances, might "...choose to give the case exclusively to one journalist, thereby ensuring...maximum column space in newspapers and air time on TV/radio" (para. 7). The Chairman asked Norway to explain this point.

A Norwegian delegate stated that giving the case to one journalist is not completely in contrast with Bundeskartellamt practice. The NCA makes it a rule to inform participating parties before issuing a press release, even when announcing a cartel investigation. Giving information to one journalist has to do with the question of what kind of coverage is adequate. Some media are specialised in presenting important studies to consumers about specific prices and markets etc. In practice, Norway gives very little advantage to one journalist over another. For example, it might happen that a journalist calls the NCA just half an hour before something is put on its web-site. In other cases, Norway releases case information in normal press releases.

The Chairman next turned to Mexico noting that the CFC has implemented a program on continuous improvement and quality assurance certified under the general outline of International standard ISO 9002. Another feature specific to Mexico is that it has established "regional co-ordination" and "open consultation" programs (para. 7) to build relations with the different states that form the Mexican Republic. The Chairman requested more detail concerning those programs and asked how successful Mexico has been.

A delegate from Mexico noted that their communication strategy varies by target client. In the case of direct clients, the main objective is to make sure clients know that the procedure conforms strictly to the law, thus reflecting ISO 2000. For the general public, Mexico tries to create a competition culture. Concerning confidentiality, the general policy is to make information public only after the interested party is directly informed of the Commission's final resolution of a matter.

### **3. Developing a communication strategy**

The Chairman began this section of the roundtable by commenting that New Zealand emphasises the importance of defining a communication strategy and relating it to the other strategies of the organisation. New Zealand states that: "The communication strategy fits under an umbrella strategy that will assist the Commission achieving its business strategies and organisational objectives." and immediately adds: "Whatever activity an organisation undertakes, communications is involved between internal parties and between the organisation and external parties. The role of the communications is to enhance the success of those interactions" (paras. 9-10).

The Chairman next turned to Sweden noting that it adopts an "integrated approach" to communication and emphasises the importance of the employees in communication by stating that "...every employee is also an ambassador of the Authority... and has a responsibility for communication." (para. 4) Thus, in Sweden a strong linkage between external and internal communication is necessary.

For the last nine years the Authority has commissioned a market research institute to do a survey of some of the most important interest groups (including lawyers and journalists). It seems that awareness of the Competition Act is almost universal (with the exception of smaller companies) but that "...competition is still not a matter [uppermost in the minds of] the general public" (para. 20). The Chairman asked why this is so. Does it mean that notoriety of the Authority and support for its activity (or compliance with the Competition Act) do not necessarily go hand in hand?

A Swedish delegate stated that it is difficult to find why competition is not of prime importance to the general public. The strongest support comes from the general public and the media they contact. Competition is regarded as good for economic efficiency but not necessarily for consumers. Consumer organisations are more interested in consumer issues and consumer protection and competition is not on their agenda at all. Thus, Sweden is trying to put greater stress on consumer issues in communications.

However, there have been some recent changes in attitudes to competition. This is reflected in a public opinion poll conducted by an independent survey institute in falls 2002. Some 70 percent of the public considered competition to be a positive word meaning lower consumer prices etc.

Sweden plans their communication activities when cases approach the final stage and sometimes even from the very beginning because it does not follow Germany's approach. Officials are free to speak to the press.

The Chairman remarked that Poland mentions that: "...internal communication is as important as external communication. Only well informed staff with a clear [perspective] of activities of the Office can effectively communicate with the external public" (para. 17). Poland also states that the general objective of the communication project is to motivate journalists to responsibly inform the public about the impact of competition policy both for business and consumers. The Chairman asked about the means used to achieve this goal in Poland and whether there are signs or indicators that the journalists have a better understanding of the competition law.

A delegate from Poland stated that there are signs that journalists have a better understanding of competition law since March 2002, when the Polish competition authority established its press office. Now, there is news regarding competition issues in every newspaper.

The Chairman commented that Ireland is quite active on the communication front even though the Irish authority describes itself as "a relatively small competition body" and even though it states that on at least one occasion it has been described as a "toothless tiger" with insufficient resources to have any real impact. Ireland follows a dual approach to communication pursuing "a proactive and vigorous advocacy policy" and a reactive and cautious communication policy regarding its enforcement activities (para. 5). It also emphasises that: "Reacting to and countering the arguments of powerful and well resourced lobby groups is a major challenge for the Authority" (para. 25). The Chairman requested detail on Ireland's dual approach.

An Irish delegate stated that the Competition Authority is quite conscious of the fact that its legislation carries criminal sanctions and its communications policy is tempered by that reality. Accordingly, its communications policy regarding enforcement is necessarily cautious and guarded to ensure that cases are not jeopardised by injudicious publicity.

On the advocacy side, the Competition Authority has a specific legislative remit to actively champion competition. It uses this and its publicity function to counter the influence of powerful lobby groups by putting as much relevant information as possible into the public domain. The Authority publishes papers and makes them available to the media and on its web-site to highlight and champion

competition. It also delivers speeches, provides comment on proposed legislation relating to target sectors, particularly in regulated areas like electricity, telecommunications, pharmacy and health care. In addition, the Authority participates in government committees addressing competition issues in the regulatory and legislative framework, specifically the 'High level Group on Regulation' set up in the Prime Minister's office. Finally, the Authority actively participates in and organises conferences and follows up press and media initiatives.

The Chairman next turned to Chinese Taipei noting that, unlike in some other countries, academic circles "...strongly affect professional and governmental policies" (para. 10). The Chinese Taipei Fair Trade Commission (FTC) classifies different target audiences as the business community, government agencies, academics and the general public and has set up different communication programs for each category. The aim of the FTC's communication policy is to develop a competition culture and we are told that "...even though the law has been in effect for a decade, the transformation of the mentality still takes time, [in both the private and public sectors]" (para. 5). The Chairman asked Chinese Taipei to explain what kinds of communication programs are targeted at academics and how effective they have been.

A delegate from Chinese Taipei noted that it uses many different ways to communicate. Principally these have involved: arranging effective programs for the different stakeholders, including business community, consumer organisations and local governments; holding a weekly media conference, in order to release all the commission's decision instantly; setting up an enquiry desk where all staff take turns handling calls (more than 10 000 annually) and visits from the general public or the business community; instituting lecture programs, in order to help businessmen comply with the law; inviting scholars to undertake joint research on competition issues; setting up a web-site for people to have full access to information through the Internet; and publishing an annual report describing in detail the FTC's structure, resources, enforcement priorities, and achievements.

The Chairman noted that in Israel, as in Australia, it is said that the: "Personal involvement of the General Director turned out to be a key for the IAA to gain public recognition" (para. 6). The Chairman asked whether it is because of the personal communication talents of the General Director or is it because, as Australia argues in its contribution, there are advantages (from the communication standpoint) to promote an identification of a competition authority with its head officer.

An Israeli delegate pointed out three main advantages of the Chairman's direct dealing with media. First, dealing directly with media helps anti-trust to compete with other good stories that the media have. Second, the chairman's direct dealing mitigate the scepticism of reporters. Reporters are sceptical when talking to a spokesperson but less sceptical with the chairman. Finally, it enhances accessibility. Reporters very much like to be able to pick up a phone and pose hard questions directly to the final decision maker rather than dealing in a more indirect manner.

#### **4. The impact of communication on the internal thinking of the competition authority**

The Chairman commenced this part of the discussion by noting that the Hungarian Competition Authority, "...does not have a real, express policy in place for handling media relations" (para. 11). However it has some experience and communicates mainly on finished proceedings. Among other comments, the Hungarian contribution states that communication is a two way process, pointing out that: "...sometimes it is the public communication of a given matter that makes it necessary for the staff members of the GVH to rethink and clarify their own point of view, because their task is to communicate the matter to people unfamiliar with competition law and policy" (para. 10). The Chairman asked the Hungarian delegation to elaborate on this point and, if possible, give examples of this interactive process.

A delegate from Hungary stated that such feedback is an exception rather than a rule. In principle, all communications is based on cases and is only available after the decision has been made. Exceptionally, some kind of information is provided essentially in response to questions put by some association, the press or interest group. In those instances, the Hungarian Competition Authority prepares a background paper on the issue and then starts proceedings and advocacy, with cases perhaps following later. One example arose in connection with municipal government competition distorting commercial activities. Another example concerns the Authority's annual report. In preparing this report, the Hungarian Competition Authority may conclude that it should do things differently and better next time.

## **5. How effective is communication?**

The Chairman kicked off this part of the discussion noting that the United Kingdom details its communication with the media and warns us that using the media can be risky because, "...we cannot always guarantee the story will be written up in the way we want" (para. 16). But the UK mostly emphasises the importance of communication with businesses for which it uses a variety of elaborate methods including regional "road-shows". Since 1998, the OFT also has an annual tracking program of business awareness of its responsibilities and obligations under competition law. The Chairman sought more information concerning the methods used, the measurement of the effectiveness of the communication policy of the OFT, and how things have changed since 1998.

A delegate from the United Kingdom stated that the Office of Fair Trading (OFT) has established a business information unit within its communication division in order to co-ordinate and focus on all internal activities related to delivering information to business. One of the things OFT initiated in the course of 2002 was "road-shows" in which a small team meets with business and delivers seminars on the latest legislation. As well as talking to consumers, they also talk to media and key media intermediaries. The road-show idea has so far been very effective.

Since 1998, OFT has been researching businesses' understanding of the Competition Act passed in that year. OFT has developed a list of continually updated questions to find out what businesses understand about competition law and policy. At present, some 1 400 –1 500 businesses of varying sizes are surveyed annually. OFT is particularly interested in the small business sector and is working to improve its survey in this regard.

In a recent consumer awareness survey, OFT asked what competition means to both consumers and businesses. Consumers came up with a long list of positive things about competition while businesses came up with an approximately equal length list of negative things.

The Chairman next turned to the Netherlands stating that it is a country where the initial enthusiasm for competition (and regulatory reform) decreased after a few years. In particular, it seems that consumers did not recognise the benefits they could derive from competition, or considered that more competition would lead to more risks for them, or would make them more dependent on a small number of oligopolists in certain markets. This led to a discussion within the Ministry about the necessity to change its communication strategy. We are told that "Communication about competition increasingly [took on] the character of a dialogue" (para. 1). The Chairman asked about how this dialogue has proceeded and how effective it has been.

A delegate from the Netherlands stated that they increasingly communicate with their target groups. A successful competition policy requires winning the support of politicians, the press and various interest groups. Most important of all are consumers. When the Dutch Authorities, including the NMa, begin an investigation or start to monitor or re-regulate a market, they consider the specific consequences it

is likely to have for retail consumers. If there are conflicting interests, the authorities have to convince politicians, the press and interest groups of the fact that they promote the public interest and consumer welfare. By organising conferences together with various interest groups, the Dutch Ministry of Economic Affairs engages in a dialogue with them and thereby increases their understanding of competition. Such interaction is essential for the success of competition policy.

The Chairman commented that in Denmark, contrary to the situation in the Netherlands, there seems to be a fair amount of support for competition and the Danish contribution suggests that the, "...the information effort has secured the understanding of - and support for - the work of the Danish competition authority" (para. 24). The Chairman asked questions about how one knows that this result has been achieved because of the Authority's communication policy. Could it also be that the public was convinced of the benefits of competition independently of the communication efforts of the authority? Why is the situation different from that of the Netherlands?

A Danish delegate stated that they try to time press releases in order to match individual media deadlines. Denmark also emphasised accessibility; i.e. the chairperson should be personally available to the press. The Authority holds regular background meetings with journalists to explain about concrete cases and the general workings of the Danish Competition Authority. The result has been solidified political support partly evidenced in the Danish competition law being strengthened three times in recent years. Good communication has also assisted in improving compliance and assisted the Authority in recruiting. Denmark mentioned that in dealing with the press. The Authority has to avoid promising too much and appearing to conduct trials through the press. The Authority should inform interested parties beforehand and avoid spin doctoring.

The Chairman next turned to Finland noting that its contribution discussed the results of surveys the Finnish Competition Authority (FCA) conducted in 1997 and in the Spring of 2000 and shows how such surveys can help the Competition Authority change its ways and be more effective. A distressing fact seems to be that while the image of the FCA was generally positive both with lawyers and with the media, "...the investigation clearly showed that the basic premises of competition policy, competition legislation and the activities of competition authorities appeared obscure and not very well known in general" (para. 22). The Chairman asked how one could explain such apparently contradictory results.

A Finnish delegate stated that the legislators may sometimes face a very challenging task to understand the meaning of competition and competition law. One of the reasons the FCA established an advocacy unit was to improve such understanding. In general, the FCA's publicity has borne positive results.

The Chairman pointed out that although, the American authorities are not the only ones to use the Internet to communicate, the US contribution suggests that analysing the consultations of the web site of a competition authority can be a useful tool to assess the effectiveness of its communication. Specifically the contribution states that: "All antitrust-related documents are available through the FTC web site. One key measure of the success of our educational efforts is the number of hits on these documents" (para. 17). The Chairman asked about the lessons learned from such an analysis. What does it tell us about the effectiveness of the communication policy of the competition agency?

A delegate from the United States mentioned that the Internet has become a key channel to communicate what the antitrust authorities are doing and why they do it. However, measuring the effectiveness of Internet communication is difficult. The reference to 'hits' was an attempt, perhaps a crude one, to get a handle on how effective this tool is. The FTC is starting to collect data on the frequency of public access to anti-trust related content on the web-site last year. It found that the anti-trust

portion of its web-site had some 2.6 million hits over a one year period. Attempts are being made to learn more about what visitors look at and how navigable they find the site.

## **6. Developing a competition culture**

The Chairman commented that Brazil is a country with little in the way of a competition culture (either in government or among consumers) and where communication is particularly important after years of price controls. But there seems to be encouraging results such as the fact that antitrust has been included in undergraduate courses in economics, that several graduate courses on antitrust have been created and that many academic works on the topic have been undertaken. The Chairman invited Brazil to comment on this.

Brazil argued that the price control system that lasted for so many years was responsible for the strong belief shared by Brazilian society, that controlled prices were fair prices and, thus, better than those that result from a competitive environment. Apparently, so many years of state intervention and price control makes it difficult for society to rely upon free market competition as the best means to allocate resources. For this reason, during the past three years, the Brazilian competition authorities have concentrated on disseminating the value of competition within the government and throughout Brazilian society. The competition advocacy role performed by the Brazilian System for Competition Defense (SMDC) has encompassed a variety of initiatives that ranged from an intensive campaign in the media, to participation in task forces with different governmental bodies. After only eight years of competition policy, a competition culture is still a work in progress. It may be too early to say it is already a value widely cherished by Brazilian society. For this reason, the communications strategy is perceived by the Brazilian antitrust agencies as a very important tool playing a major role both in spreading the vary basic notions of competition throughout the society and also in increasing compliance.

The Chairman next turned to the Czech Republic stating that, as in Brazil, there was a very low level of awareness of the role of competition policy in a market economy whose competition authority only began work in 1991. The contribution from the Czech Republic notes that there has been a growing interest in competition by the national daily newspaper "...which has led to increasing expert knowledge of the journalists concerned leading to growing quality of the interpretation of the information provided by the Office" (para. 9). The Chairman asked whether this result was achieved through a specific effort of targeting some journalists and educating them over time.

A delegate from the Czech Republic stated that better communications society translates into better protection of consumers. Competition advocacy is a very useful communication instrument. It is also important to not only explain the meaning of case decisions but also the general rules of competition policy and the meaning of competition. The delegate also noted that sometimes communication with media plays a role similar to a sanction.

The Chairman next turned to Lithuania commenting that: "To successfully present the relevant provisions of the European Communities and the process of the negotiations in the area of competition, the Competition Council used the methodological and organisational assistance provided by the European Committee under the government of the Republic of Lithuania. A special program was developed to spread the relevant ideas in the public. The implementation of the measures under the program was constantly monitored and accounted for" (para. 4). The Chairman sought more information about this program and asked how successful it was in convincing the public of the benefits of competition.

A Lithuanian delegate explained that each agency responsible for a specific part of the accession negotiations has drawn up a plan to convey a better public image of the negotiations. The Competition

Council started this and organised seminars and meetings with business communities and governmental officials. During these meetings, the business communities tend to pay more attention to anti-trust issues while governmental officials pay more attention to state issues.

## **7. Communicating in hostile environments**

The Chairman began this part of the discussion by noting that the Japanese contribution states that: “Recommendations, warnings, surcharge payment orders against business operators and trade associations who violated the Antimonopoly Act...have been published in the mass media since at least 1969...” (para. 10). But it also states that, “...public understanding remains insufficient and needs to be improved, so further publicity is necessary” (para. 7). The Chairman asked Japan to explain why the understanding remains insufficient in spite of a long-standing tradition of publication of sanctions against violation in the press.

Japan explained that public understanding has been very much improved through the Japan Fair Trade Commission’s continuous publicity activities. For example, about ten or fifteen years ago, many people said that bid rigging is a necessary evil. The JFTC no longer hears such comments.

However, Japan admitted that one cannot conclude that the public understands what competition law is all about and why it is important and what its role is. This is partly because it is difficult for most of the public to understand the Antimonopoly Law and the JFTC’s publicity activities have not yet offered sufficient help.

The JFTC has responded to the problem by, among other things, introducing two new activities. First, the Secretary General of the JFTC holds a press conference every Wednesday and explains in plain language what has happened over the past week. A nation-wide cable TV network broadcasts this press conference. Second, the JFTC provides various education programs to children. The JFTC distributes brochures written in plain language to elementary and secondary schools. In addition, the JFTC invites elementary and secondary school students to the JFTC offices to meet with a Commissioner who explains the activities of the JFTC.

Finally, the Chairman noted that the European Commission responded to the Secretariat question, “How does your organisation respond to public debate over its activities?” with: “As the debate is often based on misperceptions, headline-grabbing assumptions and use of the Commission as a scapegoat, most of the task consists in putting the debate or the criticism into perspective, explain what the stakes are and generally educate the press about the rules and the procedures” (para. 21). The Chairman asked whether this situation is likely to change over time. If not, why?

A European Commission delegate explained that one of the reasons it is in this situation is that the negative side of Commission decisions is often easier to understand and communicate than the positive. For example, the press will report that the EC has forbidden a subsidy, but fails to explain why that will have good effects on consumers and prices etc. In addition the Commission is often invited to react to speculation about how a decision will be made, but it generally confines comment to resolved cases. One reason for that is that the EC must preserve the confidentiality of information it has received. There are also problems stemming from the EC being a supra-national agency which makes it seem more distant and difficult to understand. To cope with all this, the EC is engaging in general education on ongoing issues and is increasing accessibility by phone and e-mail. It also holds regular press briefings.

## 8. General Discussion

A BIAC delegate pointed to two very positive goals they believe can and should be advanced through effective interaction by competition agencies with the public and media. First is the goal of increasing transparency of agency decision-making. Second is the goal of reinforcing the role of the competition agency as a competition advocate and proponent of market-based solutions, i.e. a competition culture. BIAC supports both goals, but not without qualification. Competition agencies should be sensitive to the legitimate concern that communications by competition authorities not be used to politicise particular enforcement actions or to characterise unfairly the actions of any economic actors. In the end, competition authorities must be seen by all as acting with objectivity and integrity.

A Canadian delegate underlined Canada's view that communications should not be the sole preserve of the head of agency. This would take too much of the Chairman's time and would tend to give the mis-impression that decisions are made by the Chairman alone rather than by many persons working collectively. A properly designed communications strategy would have the favourable effect of empowering many employees and contribute to their development.

A United States delegate stated that developing transatlantic dialogue in competition is an important aspect of improved communications. European Commission officials now communicate more frequently with audiences in the US and *vice versa*. The delegate underscored the importance of the head of agency's role in communications, and re-iterated that confidentiality must always be protected. This is one reason competition officials in the US are not permitted to communicate with the media while investigations are pending.

A German delegate stated that each country has a different culture and different journalists. The delegate did not agree with using cartoons (as a Korean delegate mentioned was done with some success on the Korean FTC's web site) because he thinks that communications must be more serious in the field of competition. He also clarified that giving prime responsibility for communications with the media to the president of the Bundeskartellamt does not mean this is the only way Germany communicates with the public. Other officials also engage in communication work, only not with journalists.

A delegate from UNCTAD mentioned that from the point of view of countries that have recently introduced competition legislation, it is very important to know how to implement the law. At the early stages, both the business community and other government agencies want to know what particular provisions will be implemented and how this will be done. For this, guidelines are a very important communication tool.

A delegate from Australia commented that in relation to the electronic media, the head of the organisation has a more powerful effect than staffs and can more easily deal with a number of different issues. However, Australia emphasises balance. Concerning information about the launching of investigations, Australia pursues a selective policy. The delegate proposed that this sensitive area be taken up in a subsequent OECD Global Forum on Competition.

## 9. Chairman's closing remarks

The Chairman returned to some points raised by Australia and Germany before closing the roundtable. He noted that three things had been emphasised in the discussion: strategy, culture, and instruments. As for instruments, perhaps it would be good for countries to exchange materials they have used such as video, films, or cartoons. The Chairman agreed with Germany about strategy. A communication strategy depends a lot on the local culture and legal environment that a competition authority is confronted with. On this score, it is clear that countries without competition laws or newly

adopting such laws must concentrate on different matters than countries having more mature laws. In the former group, the stress must be on building political support for competition law and encouraging the development of a competition culture.

## **RÉSUMÉ DE LA DISCUSSION**

Dans le domaine de la communication, note avant tout le Président, les autorités de la concurrence sont d'accord sur un grand nombre de points, contrairement à ce que l'on constate souvent lors de nos tables rondes. Selon elles, la politique de communication doit être active, ce qui présente plusieurs avantages, dont voici les plus fréquemment cités:

- elle entraîne une meilleure observance de la législation ;
- elle permet de mieux répondre et le cas échéant contrer les arguments des puissants groupes de pression ;
- elle a un effet favorable sur le moral du personnel des autorités de la concurrence ;
- elle contribue à renforcer la légitimité politique des autorités de concurrence ;
- elle facilite l'application des mesures disciplinaires ;
- elle permet de justifier les besoins en ressources des autorités de la concurrence, etc.

Les autorités de la concurrence consacrent une part importante de leurs ressources à la communication et font usage de moyens variés pour atteindre différents publics (entreprises, avocats, décideurs politiques et consommateurs). Elles soulignent l'importance d'une communication claire, cohérente et complète. Dans la plupart des pays, elles sont de plus en plus souvent citées dans la presse. De nombreuses autorités de la concurrence chargent des instituts de recherche de mesurer le niveau de sensibilisation des entreprises, des juristes et des consommateurs sur le droit de la concurrence et/ou de sonder leur opinion sur les autorités de la concurrence. Elles sont également attentives au traitement que leur réserve la presse. Toutefois, presque toutes s'accordent à dire que, malgré ces efforts, il est difficile d'évaluer l'efficacité d'une politique de communication.

Le Président recense les points qu'il serait intéressant de traiter lors de la table ronde :

- La communication en matière de politique anti-trust présente-t-elle des caractéristiques particulières ou est-elle comparable à d'autres activités de régulation ?
- Comment concevoir la stratégie de communication d'une agence de la concurrence ?
- Existe-t-il des codes de déontologie qui s'appliquent aux autorités de la concurrence dans leur stratégie de communication ?
- Est-ce que développer une « culture de la concurrence » revient à mieux informer le public sur l'activité de régulation ?
- Comment mesurer l'efficacité de la politique de communication des agences de la concurrence ? Comment mesurer l'efficacité des différents vecteurs de communication ?

## 1 De l'importance de la communication

Le Président cite un passage de la contribution de l'Australie : « Il est essentiel que les organismes de régulation communiquent en direction des médias et du grand public. L'information du public ne peut pas être bonne si elle n'est faite que par la presse et les autres sources d'information, car les questions en jeu sont souvent trop complexes et techniques. » (Paragraphe 13) « La communication permet de construire une culture, une compréhension et une adhésion aux principes de la concurrence, à la législation et à son application, et plus généralement aux politiques de la concurrence dans tous les domaines de l'économie » (paragraphe 16). « Si l'annonce d'une enquête peut laisser croire à certains que l'entreprise concernée est coupable d'une atteinte à la législation, le rôle du régulateur est de présenter les faits et de laisser la justice faire son travail » (paragraphe 31). Le Président précise que, selon d'autres contributions, il n'est pas aussi évident que la communication sur les affaires en cours soit forcément bénéfique en termes d'adhésion du public aux principes de la concurrence, et qu'il faille communiquer sur les dossiers avant le prononcé de la décision finale. Cela étant, l'ACCC et son Président ont une forte visibilité dans les différents médias et jouissent d'un indice de notoriété élevé auprès du public, probablement le plus élevé du monde pour un responsable de la concurrence. Le Président demande au délégué de l'Australie s'il en résulte un meilleur respect de la loi sur la concurrence. Y a-t-il des éléments qui prouvent que la notoriété médiatique de l'ACCC entraîne une plus grande adhésion à l'égard des actions disciplinaires liées à la loi sur la concurrence ?

Un délégué de l'Australie observe que la publicité tend à améliorer l'observance de la loi et l'adhésion du public à l'égard du droit et de la politique de la concurrence. La publicité négative faite à certaines entreprises induit un meilleur respect des règles du jeu. Pour celles qui se voient ainsi stigmatisées, c'est une sanction qui vient s'ajouter à la peine prononcée. Il se peut aussi que la publicité incite des personnes à apporter leur témoignage lorsqu'elles ont connaissance d'infractions à la législation. Ce dernier point est toutefois difficile à prouver.

L'Australie précise que la principale forme de communication est de sensibiliser le public en donnant un large écho à des cas spécifiques. L'information générale sur la législation ne passe pas très bien, mais les cas individuels marquent davantage les esprits du public et des entreprises. Le droit de la concurrence fait partie intégrante de la politique économique, mais il est un peu à part dans la mesure où il porte essentiellement sur des cas particuliers. Les autorités de la concurrence doivent communiquer en direction du grand public sur l'issue donnée aux affaires dont elles ont été saisies et utiliser pour cela tous les médias à leur disposition : télévision, radio et presse écrite. Selon l'Australie, il est essentiel de gagner la confiance des médias, et pour cela la transparence est primordiale. S'il y a des doutes, l'autorité de la concurrence doit être disposée à faire la lumière sur l'affaire. Lorsqu'une entreprise est mise en cause, les tribunaux australiens estiment très souhaitable que les instances de régulation expliquent le contenu de la plainte au public.

Le Président se tourne vers le Canada, rappelant que la politique de communication du Bureau de la concurrence est aussi particulièrement active : campagnes d'information, incitation des sociétés à adopter des programmes de mise en conformité, publications, déclarations dans les médias. L'une des innovations notables du fonctionnement de la communication du Bureau est que, après une formation adéquate et une préparation avec le conseiller en communication, « les personnes qui connaissent particulièrement bien un domaine particulier, quel que soit leur niveau, sont encouragées à jouer le rôle de porte-parole » (paragraphe 13).

Les membres du personnel du bureau en sont les premiers ambassadeurs : « Il entre dans les attributions de chaque membre du personnel d'expliquer comment fonctionne le Bureau et de quelle manière il joue un rôle dans la vie de chaque Canadien » (paragraphe 21). A contrario, on lit dans la contribution de l'Australie : « les communiqués de presse, conférences et déclarations sont du ressort du

Président, et non d'un porte-parole, d'un responsable des relations extérieures ou d'un certain nombre de commissaires ou de responsables. L'information y gagne en autorité, en couverture médiatique et l'ACCC est identifiable à une personne » (Paragraphe 24). Dans sa contribution, le Bureau indique notamment que « ... la communication permet de sensibiliser les responsables politiques sur le rôle essentiel que joue le Bureau dans l'économie canadienne » (paragraphe 2). Le Président demande si ces arguments en faveur d'une communication active valent aussi pour les autres organismes publics canadiens qui ont des responsabilités économiques, ou s'ils sont spécifiques à l'application du droit de la concurrence.

Un délégué du Canada indique que la communication est essentielle pour remplir les quatre fonctions du Bureau de la concurrence : veiller au respect de la législation ; informer le public ; nouer des alliances ; influencer la politique économique. La communication est aussi primordiale au regard des cinq mots d'ordre qui résument les principes directeurs du Bureau, à savoir : confidentialité, diligence, équité, prévisibilité et transparence.

Le délégué du Canada note que la communication est le ciment qui réunit les différents éléments du continuum d'observation de la loi - c'est-à-dire notamment de la discipline - et rappelle que l'information du public fait partie des devoirs de chaque membre du personnel. Tous doivent être capables d'expliquer à leur entourage ce que fait le Bureau de la concurrence, sans « théories économiques complexes » mais simplement en leur montrant en quoi le Bureau peut les aider à optimiser leur pouvoir d'achat.

La communication externe du Bureau cible les consommateurs, les juristes, les entreprises (surtout les PME) et les médias. Le délégué du Canada indique que les alliances contribuent à renforcer la crédibilité du Bureau, améliorer l'information du public et la mise en application de la législation. Ce travail conduit le Bureau à aider les entreprises à élaborer des programmes de conformité. Enfin, comme toutes les autorités de la concurrence, le Bureau a besoin de disposer des ressources suffisantes pour faire son travail. Il est donc naturellement appelé à plaider sa cause auprès des responsables politiques, sachant que ceux-ci auront tendance à financer plus généreusement les activités auxquelles leurs électeurs attachent de l'importance.

Par le passé, l'opportunité de consacrer des ressources à la communication a pu être mise en question au sein du Bureau, mais ce n'est plus le cas, et le service de communication est très souvent sollicité par les agents qui traitent les affaires individuelles.

Un autre délégué du Canada ajoute que la communication est essentielle dans la lutte anti-trust car la culture de la concurrence est loin d'être universellement partagée. La concurrence ne contribue au bien-être économique que de manière indirecte et pour ainsi dire, invisible. De leur côté les adversaires des autorités de la concurrence n'hésitent pas à s'offrir les communicateurs les plus efficaces pour discréditer la politique de la concurrence. Dans ce contexte, la communication est un outil essentiel pour deux raisons. Les autorités de la concurrence doivent d'abord défendre leur existence même, et pour cela démontrer leur contribution indirecte au bien-être. Deuxièmement, les autorités de la concurrence doivent se défendre contre ceux qui pourraient chercher à déformer ou dénaturer le message positif qu'elles s'efforcent de transmettre.

## **2. La qualité de la communication des autorités de la concurrence**

Le Président s'adresse à l'Allemagne, notant qu'elle souligne dans sa contribution l'importance de l'aspect qualitatif de la communication : « Le plaidoyer pour la concurrence doit présenter les choses au public d'une manière équilibrée, exacte et complète » (paragraphe 11). Elle indique également qu'elle exclut toute discrimination dans ses activités de relations publiques, c'est-à-dire qu'il n'y a jamais

d'accords d'exclusivité avec des organes de presse particuliers. Il ne faut pas, poursuit cette contribution, laisser les conflits avec des groupes d'intérêts particuliers « devenir un élément central de leurs relations publiques » (paragraphe 36). Le Président demande plus de précisions sur ce point.

Un délégué de l'Allemagne explique que son pays partage les mêmes objectifs que le Canada mais les poursuit de manière différente. En principe, c'est le Président qui est chargé de la communication avec le service de presse. Pour écarter les risques de malentendus, les autres membres du personnel ne communiquent pas avec la presse. En outre, les informations sont diffusées à l'ensemble du public au lieu d'être communiquées à des journalistes particuliers, car ceux-ci pourraient être soupçonnés de détenir des informations d'initiés. Les informations sont donc communiquées à toute la presse et publiées sur un site WEB accessible à tous ; de cette manière tout le monde est averti en même temps. L'Allemagne souligne aussi l'importance du timing : les rapports sont publiés pendant l'étiage estival de nouvelles fraîches, pour que la presse leur donne un plus large écho.

L'Allemagne estime qu'une bonne communication est nécessaire pour influencer les responsables politiques et bien négocier les budgets de fonctionnement de l'agence. Si l'autorité de la concurrence est présente dans les médias, les responsables politiques, les ministres et ceux qui octroient les budgets s'en aperçoivent.

Le Président se tourne vers la Norvège. L'autorité de la concurrence norvégienne (NCA) est souvent « très présente dans les médias, répondant aux questions sur certaines affaires lorsqu'elle le juge opportun, tout en veillant à ne pas paraître traiter les affaires par voie de presse » (paragraphe 5). Mais contrairement au Bundeskartellamt, la NCA peut dans certains cas « décider de ne communiquer qu'avec un seul journaliste sur une affaire particulière pour obtenir un maximum d'espace dans les colonnes ou de temps d'antenne » (paragraphe 7). Le Président demande à la Norvège d'explicitier ce dernier point.

Un délégué de la Norvège note que le recours à l'exclusivité n'est pas complètement en contradiction avec la pratique du Bundeskartellamt. La NCA a pour principe d'informer les parties en cause avant de publier un communiqué de presse, même pour annoncer une enquête pour entente injustifiable. Le fait de communiquer les informations à un seul journaliste soulève la question de savoir que type de couverture est souhaitable. Il existe des médias spécialisés dans l'information des consommateurs sur certains prix, sur les marchés, etc. En pratique, les autorités norvégiennes ne favorisent pas un journaliste par rapport aux autres, mais il peut se trouver qu'un journaliste téléphone à la NCA une demi-heure avant qu'elle publie une information sur son site WEB. A d'autres occasions, l'information est publiée sous forme de communiqués de presse.

Le Président se tourne alors vers le Mexique : le CFC a mis en œuvre un programme pour d'amélioration continue de son fonctionnement et d'assurance qualité certifié ISO 9002. Autre particularité du Mexique, les programmes de « coordination régionale » et de « consultation ouverte » (paragraphe 7) qui visent à bâtir une relation entre les différents états de la fédération. Le Président souhaiterait avoir des précisions sur ces programmes et demande s'ils remplissent les objectifs fixés.

Un délégué du Mexique explique que la stratégie de communication varie selon les cibles. S'agissant des clients directs, l'objectif est d'assurer les clients sur la stricte conformité de la procédure à la loi (ISO 2000). Pour le grand public, le Mexique s'efforce de développer dans l'opinion une culture de la concurrence. S'agissant de la confidentialité, la règle veut que l'information ne soit diffusée qu'une fois la partie intéressée directement informée de la résolution finale de la Commission sur son dossier.

### 3. L'élaboration d'une stratégie de communication

Pour introduire ce volet de la table ronde, le Président note que la Nouvelle Zélande insiste sur l'importance de définir une stratégie de communication en liaison avec les autres stratégies de l'organisation. La Nouvelle Zélande précise : « La stratégie de communication fait partie de la stratégie intégrée de la Commission pour mener à bien ses stratégies et d'atteindre ses objectifs » et ajoute : « Dans toute organisation, quelle que soit son activité, il existe une communication entre les parties qui la composent et avec l'extérieur. Une bonne stratégie se doit d'optimiser toutes ces interactions » (paragraphe 9 et 10).

Le Président s'adresse ensuite à la Suède, notant que sa stratégie de communication est, elle aussi, « intégrée ». « Tout employé est aussi un ambassadeur de l'autorité... et a également un rôle de communication » (paragraphe 4). Il est donc essentiel qu'un lien fort existe entre les communications externe et interne. Ces neuf dernières années, l'autorité a chargé un institut de recherche marketing d'enquêter auprès de ses principales cibles (juristes et journalistes, notamment). Il ressort que presque personne (exception faite de quelques petites entreprises) n'ignore l'existence de la loi sur la concurrence mais que « la concurrence n'est toujours pas perçue comme un enjeu [important] dans l'esprit du grand public » (paragraphe 20). Le Président demande les raisons de cette contradiction. Cela signifie-t-il que la notoriété de l'Autorité ne se traduit pas nécessairement par une adhésion à son action (et par l'observance de la loi sur la concurrence) ?

Un délégué de la Suède répond qu'il est difficile de savoir pourquoi l'opinion n'attache pas d'importance à la concurrence. C'est toutefois chez le grand public et les médias que l'on cherche la plus forte adhésion aux principes de la concurrence. La concurrence est perçue comme étant positive pour l'efficacité de l'économie mais pas nécessairement pour les consommateurs. Les associations de consommateurs s'intéressent davantage aux problèmes de consommation et de protection du consommateur qu'à la concurrence. La Suède s'efforce par conséquent de mettre davantage l'accent sur les problèmes de consommation dans leur communication.

On a toutefois constaté récemment un changement d'attitude du public envers la concurrence. C'est du moins ce qui ressort d'un sondage d'opinion public conduit à l'automne 2002 par un institut de sondage indépendant. Environ 70% du public perçoit le mot « concurrence » comme positif et synonyme de baisses des prix.

La Suède planifie ses opérations de communication avant la conclusion des affaires, parfois même dès le début. Sa stratégie diffère en cela de celle de l'Allemagne. De plus, les employés sont libres de s'exprimer devant la presse.

Le Président observe que la Pologne souligne dans sa contribution que « la communication interne est aussi importante que la communication externe. Seuls des employés bien informés, possédant une idée claire des activités du Bureau, peuvent bien communiquer avec le public externe » (paragraphe 17). La Pologne précise également que l'objectif du projet de communication est d'inciter les journalistes à informer honnêtement le public sur l'impact de la politique de la concurrence, tant pour les entreprises que pour les consommateurs. Le Président demande à la Pologne d'indiquer quels moyens elle met en œuvre pour cela, et de préciser s'il existe des signes indiquant que les journalistes progressent dans leur compréhension de la loi sur la concurrence.

Un délégué de la Pologne répond qu'il semble effectivement que les journalistes comprennent mieux le droit de la concurrence depuis mars 2002, date à laquelle l'autorité polonaise de la concurrence a mis en place un service de presse. Tous les journaux ouvrent maintenant leurs colonnes aux problèmes de la concurrence.

Le Président note que l'Irlande est particulièrement active sur le front de la communication, bien que l'autorité se décrive elle-même comme « un organisme de concurrence relativement modeste » et qu'elle ait au moins à une reprise été taxée de « tigre sans dents », insuffisamment dotée pour avoir un véritable impact. La politique de communication de l'Irlande est double : « volontariste et énergique pour ce qui est de la sensibilisation » mais réactive et prudente pour ce qui est des sanctions (paragraphe 5). Elle poursuit : « il est particulièrement difficile pour l'Autorité d'agir face à des groupes de pression puissants et riches, de contrer leurs arguments » (paragraphe 25). Le Président demande à l'Irlande de préciser comment s'organise cette approche à double.

Un délégué de l'Irlande explique que l'Autorité de la concurrence est bien consciente que sa législation est assortie de sanctions pénales et sa politique de communication tient compte de cette réalité. Par conséquent sa politique de communication en matière de sanctions est nécessairement prudente et contrôlée afin d'éviter que des affaires ne soient viciées par de la publicité inopportune.

En matière de sensibilisation, la loi confie à l'Autorité de la concurrence la mission de promouvoir activement la concurrence. C'est dans ce cadre, et grâce à sa fonction de publicité, qu'elle parvient à s'opposer à l'influence des groupes de pression puissants, en diffusant autant d'information que possible dans le domaine public. Elle produit ainsi des documents démontrant l'importance et l'intérêt de la concurrence, qu'elle communique aux médias et publie sur son site WEB. Elle organise également des conférences et commente les projets de loi portant sur certains secteurs cibles, comme les secteurs régulés: électricité, télécommunications, laboratoires pharmaceutiques et santé. En outre, l'Autorité participe à des comités du gouvernement traitant de problèmes de concurrence sur les plans réglementaire et législatif, notamment le High Level Group on Regulation, au sein des services du Premier ministre. Enfin, l'Autorité organise et participe activement à des conférences de presse et à d'autres initiatives en direction des médias.

Le Président se tourne vers le délégué du Taipei chinois, notant que, à la différence de ce que l'on observe dans d'autres pays, les milieux universitaires de ce pays « influencent fortement les politiques des entreprises et des pouvoirs publics » (paragraphe 10). La Fair Trade Commission (FTC) du Taipei chinois a défini plusieurs publics cibles - les entreprises, agences gouvernementales, universitaires et grand public – et a élaboré différents programmes de communication adaptés pour chaque catégorie. L'objectif de cette politique de communication de la FTC est de développer une culture de la concurrence et « bien que la loi soit en vigueur depuis une dizaine d'années, la transformation des mentalités prend du temps [tant dans le public que dans le privé] » (paragraphe 5). Le Président demande au représentant du Taipei chinois d'expliquer quels types de programmes sont créés pour un public d'universitaires, et d'indiquer s'ils donnent satisfaction.

Un délégué du Taipei chinois explique que la communication utilise de nombreuses voies, à savoir principalement : programmes ciblés sur les différentes parties prenantes (notamment les entreprises, les organisations de consommateurs et les collectivités locales) ; conférences de presse hebdomadaires afin de relayer immédiatement toutes les décisions de la commission ; mise sur pied d'une permanence pour répondre au public (plus de 10 000 appels par an) ; visites pour le grand public ou les entreprises ; programme de présentation à l'intention des entreprises pour les aider à observer la législation ; invitation d'universitaires à participer à des recherches conjointes sur des questions touchant à la concurrence ; site web permettant au public d'avoir accès à toute la documentation sur l'Internet ; rapport annuel décrivant en détail la structure, les ressources, les domaines prioritaires d'action et les réalisations de la FTC.

Le Président note qu'en Israël, comme en Australie, « l'engagement personnel du Directeur général s'est révélé un atout majeur pour aider l'IAA à être reconnu du public » (paragraphe 6). Le Président demande si cela est le fait du charisme personnel du Directeur général ou si cela correspond, comme le fait valoir l'Australie, à une volonté de donner une figure identifiable à l'autorité de la

concurrence en la personne de son responsable parce que cela est considéré comme souhaitable du point de vue de la communication.

Un délégué d'Israël recense les trois principaux avantages des relations directes du Directeur général avec les médias. Premièrement, ces relations directes permettent à la lutte anti-trust d'avoir une couverture aussi large que les autres grands thèmes d'actualité. Deuxièmement, les journalistes ont tendance à être sceptiques lorsqu'ils ont affaire à un porte-parole d'organisation ; ils préfèrent traiter directement avec le président. Enfin, les relations directes améliorent l'accessibilité. Les journalistes apprécient beaucoup de pouvoir téléphoner et poser des questions délicates directement à la personne qui prend les décisions plutôt que de passer par différents intermédiaires.

#### **4. L'impact de la communication sur la façon de penser de l'autorité de la concurrence**

Le Président commence cette partie du débat en notant que l'autorité de la concurrence de la Hongrie (GVH) « n'a pas véritablement formulé de politique pour gérer les relations avec les médias » (paragraphe 11). Elle a toutefois une certaine expérience en la matière et communique essentiellement sur les affaires déjà conclues. Dans sa contribution, la Hongrie affirme notamment que la communication est un processus à double sens, soulignant que « le travail de communication sur une question donnée est parfois l'occasion pour les employés du GVH de repenser et de clarifier leur propres idées, car leur mission est d'expliquer les problèmes à des publics qui n'ont aucune connaissance sur le droit et la politique de la concurrence » (paragraphe 10). Le Président demande à la délégation de la Hongrie de donner des précisions sur ce point, si possible en donnant des exemples de ce processus interactif.

Un délégué de la Hongrie explique que le feedback est en réalité plutôt l'exception que la règle. En principe, toute communication sur une affaire particulière n'est diffusée qu'une fois la décision prise. Exceptionnellement une information est faite, essentiellement en réponse à des questions soulevées par une association, par la presse ou par un groupe d'intérêts. Dans ce cas, l'autorité de la concurrence prépare un document de référence sur la question et commence ensuite la procédure et la sensibilisation, l'affaire elle-même n'étant éventuellement évoquée que plus tard. Une affaire sur laquelle l'autorité a communiqué concernait des activités commerciales menées par une municipalité qui perturbaient le jeu de la concurrence. L'autorité communique également dans le cadre de son rapport annuel ; en préparant son rapport, l'autorité peut conclure qu'elle pourrait procéder différemment la prochaine fois.

#### **5. Quelle est l'efficacité de la communication ?**

Le Président ouvre cette partie de la discussion en notant que, dans sa contribution, le Royaume-Uni décrit en détail ses activités de communication avec les médias et souligne qu'il peut être risqué d'utiliser la presse parce que « nous ne pouvons pas toujours garantir que l'article sera rédigé comme nous le souhaitons » (paragraphe 16). Le Royaume-Uni met l'accent sur l'importance de la communication avec les entreprises, pour laquelle il recourt à différentes méthodes, notamment les « road-shows » régionaux. Depuis 1998, l'OFT (Office of Fair Trading) applique aussi un programme annuel d'évaluation du degré d'information des entreprises sur leurs responsabilités et leurs obligations en matière de droit de la concurrence. Le Président demande des précisions sur les méthodes utilisées, sur la mesure de l'efficacité de la politique de communication de l'OFT et les évolutions survenues depuis 1998.

Un délégué du Royaume-Uni indique que l'OFT a créé, au sein de sa division de la communication, un centre d'information des entreprises chargé de coordonner et de cibler toutes les activités internes qui concernent l'information des entreprises. Les « road-shows » s'inscrivent dans ce cadre : une petite équipe intervient auprès des entreprises et organise des séminaires sur la législation. Les

road-shows s'adressent également aux consommateurs et aux médias et à leurs principaux relais. C'est un système qui a donné entière satisfaction jusqu'à présent.

Depuis 1998, l'OFT enquête sur le niveau de compréhension de la loi sur la concurrence (promulguée aussi en 1998) chez les entreprises. L'OFT a élaboré une liste de questions actualisée en permanence, afin de savoir ce que les entreprises connaissent en matière de loi et de politique de la concurrence. Actuellement, ces enquêtes portent chaque année sur 1 400 à 1 500 entreprises de tailles variées. L'OFT s'intéresse particulièrement aux petites entreprises et s'emploie à améliorer son enquête à leur intention.

Dans une enquête récente, l'OFT demandait ce que signifie la concurrence pour les consommateurs et pour les entreprises. Les consommateurs ont cité une longue liste de caractéristiques positives de la concurrence et les entreprises ont cité une liste aussi longue de traits négatifs.

Le Président se tourne vers les Pays-Bas, notant que l'opinion de ce pays, d'abord enthousiaste pour la concurrence (et pour la réforme de la réglementation), montrait quelques années plus tard un certain désenchantement. En particulier, les consommateurs ne reconnaissent pas les avantages qui découlent pour eux de la concurrence ; ils voient dans la concurrence une source de risques, ou redoutent qu'elle n'aboutisse à une configuration oligopolistique dans certains marchés, ce qui accroîtrait leur dépendance à l'égard de certains acteurs. Cette constatation a conduit le ministère à envisager de réorienter sa stratégie de communication. Dans leur contribution, les Pays-Bas notent que « la communication sur la concurrence prend de plus en plus la forme d'un dialogue » (paragraphe 1). Le Président demande aux Pays-Bas de préciser comment se déroule ce dialogue et quelle est son efficacité.

Un délégué des Pays-Bas indique qu'il y a de plus en plus de communication avec les groupes cibles. Une bonne politique de la concurrence nécessite l'adhésion des responsables politiques, de la presse et des différents groupes d'intérêts, dont le plus important est celui des consommateurs. Lorsque les autorités néerlandaises (notamment le NMa) lancent une enquête, qu'elles commencent à observer un marché ou à réformer sa réglementation, elles s'interrogent sur les conséquences qui pourraient en découler pour les consommateurs. S'il y a des intérêts contradictoires, les autorités doivent convaincre les responsables politiques, la presse et les groupes d'intérêts, qu'elles agissent pour l'intérêt commun et le bien-être des consommateurs. En organisant des conférences réunissant différents groupes d'intérêts, le ministère des affaires économiques engage un dialogue avec eux et leur permet ainsi de mieux comprendre les enjeux de la concurrence. Cette interaction est essentielle pour le succès de la politique de la concurrence.

Le Président note qu'au Danemark, contrairement à ce qui se passe aux Pays-Bas, l'opinion semble assez favorable à la concurrence comme le suggère la contribution du Danemark : « l'effort de pédagogie a amélioré la compréhension et l'adhésion aux travaux de l'autorité de la concurrence » (paragraphe 24). Le Président demande si c'est là un résultat de la politique de communication de l'autorité. Se pourrait-il que le public soit déjà convaincu des bienfaits de la concurrence, quels que soient les efforts de communication de l'autorité ? Pourquoi la situation diffère-t-elle de celle des Pays-Bas ?

Un délégué du Danemark explique que l'autorité de la concurrence veille à publier ses communiqués de presse en fonction des dates de bouclage des différents médias. Elle s'efforce aussi d'être accessible : le président est disposé à parler en personne aux journalistes. L'autorité tient régulièrement des points de presse sur des affaires précises ou sur son fonctionnement général. L'adhésion au droit de la concurrence s'en est trouvée renforcée ces dernières années. La communication a également conduit à une meilleure observance du droit de la concurrence et s'est révélée un atout pour l'autorité au niveau du recrutement. L'autorité s'est gardée de faire trop de promesses et d'utiliser la presse pour influencer l'issue

des affaires en cours. L'autorité doit informer les parties intéressées avant de communiquer sur des affaires et éviter de manipuler l'opinion.

Le Président se tourne alors vers la Finlande, qui évoque dans sa contribution les résultats d'enquêtes conduites par le Kilpailuvirasto ou FCA (l'autorité finlandaise de la concurrence) en 1997 et au printemps 2000, et démontre comment ces enquêtes peuvent aider l'autorité à travailler plus efficacement. Fait déconcertant, si l'image de la FCA est généralement positive, tant auprès des juristes qu'auprès des médias, « l'enquête montre clairement que le droit de la concurrence et le travail des autorités de la concurrence apparaissent obscurs et plutôt flous » (paragraphe 22). Le Président demande comment s'explique ce paradoxe.

Un délégué de la Finlande indique que pour le législateur, il est parfois très difficile de comprendre certains aspects de la concurrence et de la législation qui s'y rapporte. L'un des objectifs qui ont conduit la FCA à créer un service de sensibilisation était d'améliorer cette compréhension. Le travail de communication de la FCA a produit des résultats globalement positifs.

Le Président, après avoir précisé que les autorités américaines ne sont pas les seules à exploiter l'Internet pour communiquer, cite la contribution des Etats-Unis, qui suggère que l'analyse des consultations du site WEB d'une autorité de la concurrence peut être un bon moyen d'évaluer l'efficacité de sa communication. Plus précisément : « Tous les documents concernant la lutte anti-trust sont accessibles sur le site WEB de la FTC. Le nombre de « hits » sur ces documents est une mesure clé de notre succès » (paragraphe 17). Le Président demande quels enseignements ont pu être tirés de cette analyse. Qu'est-ce que cela nous apprend sur l'efficacité de la politique de communication de l'autorité de la concurrence ?

Un délégué des Etats-Unis déclare que l'Internet est devenu l'un des principaux vecteurs pour communiquer sur le travail des autorités de la concurrence et sur les raisons qui font que leur action est nécessaire. Mais il est difficile de mesurer l'efficacité de la communication sur Internet. Le nombre de « hits » n'est qu'une tentative imparfaite de cerner cette efficacité. La FTC commence à collecter des données sur la fréquence des accès aux contenus concernant la lutte anti-trust sur son site l'an dernier. Il ressort que la partie de son site consacrée à la lutte anti-trust a totalisé environ 2,6 millions de hits en un an. On tente également d'en apprendre davantage sur ce que regardent les internautes et sur ce qu'ils pensent de la navigabilité du site.

## **6. Développer une culture de la concurrence**

Le Président note qu'au Brésil, après des années de contrôle des prix, la culture de la concurrence est particulièrement peu développée, tant au sein du gouvernement que parmi les consommateurs, et que la communication revêt donc une importance cruciale. On observe toutefois quelques signes encourageants : la lutte anti-trust a été incluse dans les matières enseignées dans les deux premiers cycles d'université en économie ; plusieurs filières de troisième cycle ont été créées sur ce sujet et de nombreuses thèses y sont consacrées. Le Président invite le Brésil à faire des commentaires sur ce point.

Le Brésil explique que le contrôle des prix imposé pendant si longtemps explique pourquoi la société brésilienne est souvent convaincue que seuls les prix imposés sont équitables et les préfèrent aux prix déterminés par la concurrence. Apparemment, après de nombreuses années d'intervention de l'État et de contrôle des prix, on ne peut pas s'attendre à ce que l'opinion considère que la concurrence sur des marchés libres est le meilleur mode d'allocation des ressources. Les autorités brésiennes de la concurrence se sont donc attachées ces trois dernières années à mieux faire connaître les vertus de la concurrence chez les responsables politiques et dans toute la société brésilienne. L'Organisation

brésilienne pour la défense de la concurrence (SMDC) a lancé une série d'initiatives, notamment en orchestrant une grande campagne dans les médias et en participant à des groupes d'action avec différents organismes gouvernementaux. Étant donné que la politique de la concurrence n'a encore que huit ans d'existence dans ce pays, la culture de la concurrence est en train de se construire. Il est probablement trop tôt pour dire si c'est une valeur positive aux yeux des Brésiliens. Pour cette raison, les agences brésiliennes anti-trust voient dans la communication un outil particulièrement important pour diffuser les notions fondamentales de la concurrence au sein de la société et pour améliorer l'observance de ses principes.

Le Président se tourne alors vers la République tchèque en notant que, comme au Brésil, le rôle de la politique de la concurrence y reste encore très méconnu, dans une économie de marché dont l'autorité de la concurrence n'existe depuis 1991. Selon la contribution de la République tchèque, la presse quotidienne nationale lui ouvre de plus en plus souvent ses colonnes et « le niveau d'expertise des journalistes concernés s'améliore, d'où une meilleure qualité d'interprétation des informations communiquées par le Bureau » (paragraphe 9). Le Président demande si c'est là le résultat d'un effort de pédagogie ciblé sur des journalistes particuliers.

Un délégué de la République tchèque explique qu'une meilleure communication dans la société est aussi synonyme d'une meilleure protection aux consommateurs. La sensibilisation à la concurrence est un instrument de communication très utile. Il faut expliquer non seulement le sens des décisions individuelles mais aussi les règles générales de la politique de la concurrence et les principes de la concurrence. Le délégué note également que dans certains cas, l'information des médias sur des affaires particulières joue également un rôle assimilable à une sanction.

Le Président passe ensuite à la Lituanie, qui précise dans sa contribution: « Pour bien présenter les dispositions pertinentes des Communautés européennes et le processus de négociation en matière de concurrence, le Conseil de la concurrence a bénéficié de l'assistance de méthodologie et d'organisation du Comité pour l'Europe du gouvernement de la République de Lituanie. Un programme spécial a été mis sur pied pour diffuser ces concepts dans l'opinion. La mise en œuvre de ce programme a fait l'objet d'un contrôle constant et de rapports de suivi » (paragraphe 4). Le Président souhaiterait avoir des informations complémentaires sur ce programme et demande s'il a été efficace pour convaincre le public des bienfaits de la concurrence.

Un délégué de la Lituanie explique que chaque agence chargée d'une partie spécifique des négociations d'adhésion a élaboré un plan pour améliorer l'image des négociations dans le public. Le Conseil de la concurrence a engagé ce processus et organisé des séminaires et des rencontres avec les milieux d'affaires et les responsables politiques. Lors de ces réunions, il apparaît que les entreprises se montrent plus attentives aux questions qui touchent à la lutte anti-trust, alors que les responsables gouvernementaux s'intéressent davantage au rôle de l'État.

## **7. La communication dans un contexte difficile**

Pour ouvrir ce chapitre, le Président cite la contribution du Japon, qui précise: « Les recommandations, avertissements et amendes prononcés à l'encontre d'acteurs du privé et d'associations professionnelles qui enfreignent la loi anti-monopole (...) sont publiés dans la presse depuis au moins 1969 » (paragraphe 10). Pourtant « la connaissance du public reste insuffisante et doit être améliorée: il faut donc poursuivre l'effort de communication » (paragraphe 7). Le Président demande au Japon les raisons de ce déficit d'information, malgré une longue tradition de publication des sanctions dans la presse.

Le Japon explique que l'information de l'opinion a nettement progressé grâce aux efforts constants de la Commission de la concurrence (JFTC). Par exemple, il y a dix ou quinze ans, beaucoup de

gens estimaient que le trucage des offres n'était qu'un mal nécessaire. Aujourd'hui, plus personne n'est de cet avis.

Le Japon reconnaît toutefois qu'on ne peut pas en conclure que le public comprend bien ce qu'est le droit de la concurrence, pourquoi il est si important et quel est son rôle. Cela s'explique notamment parce que la loi anti-monopole est difficile à appréhender pour la plupart des gens et que l'effort de pédagogie de la JFTC dans ce domaine n'a pas été suffisant.

En réponse à ce problème, la JFTC a mis en place deux mesures : d'abord, le Secrétaire général tient une conférence de presse tous les mercredi pour expliquer en langage clair ce qui s'est passé dans la semaine. Une chaîne câblée nationale diffuse cette conférence de presse. Deuxièmement, la JFTC propose différents modules éducatifs destinés aux enfants. Des brochures sont distribuées dans les écoles élémentaires et secondaires. De plus, la JFTC invite les enfants des écoles élémentaires et secondaires dans ses locaux pour rencontrer un responsable qui leur explique le travail de l'agence.

Enfin, le Président note qu'à la question du Secrétariat : « Comment votre organisation répond-elle au débat public concernant ses activités ? », la Communauté européenne a répondu : « Le débat part souvent sur des incompréhensions, des affirmations tonitruantes utilisant la Commission comme bouc émissaire ; l'essentiel de la tâche consiste à remettre en perspective le débat ou les critiques, à indiquer quels sont les véritables enjeux et faire comprendre aux journalistes les règles et les procédures » (paragraphe 21). Le Président demande si cette situation est appelée à évoluer avec le temps. Sinon, pourquoi ?

Un délégué de la Commission européenne explique que l'une des causes de ce problème est que les côtés négatifs des décisions de la Commission sont généralement plus faciles à comprendre et à communiquer que leurs côtés positifs. Par exemple, la presse répétera que la CE a interdit une subvention, mais passera sous silence le fait que ce sera bénéfique pour les consommateurs et les prix. De plus, la Commission est souvent invitée à réagir à des spéculations sur la décision qu'elle prendra sur des affaires en cours, mais elle limite généralement ses explications aux affaires déjà résolues. Elle doit en effet préserver la confidentialité sur les informations qu'elle reçoit. Une partie des difficultés tiennent au caractère supranational de la CE, qui la rendent plus distante et plus difficile à appréhender. Pour remédier à ces problèmes, la CE fait un effort de pédagogie sur les enjeux en cours et s'efforce d'être plus accessible, tant par téléphone que par courrier électronique. Elle tient également des points de presse réguliers.

## **8. Discussion générale**

Un délégué du BIAC note qu'il y a deux axes qu'il serait très fructueux de creuser par une bonne interaction entre les agences de la concurrence d'une part et le public et les médias de l'autre. D'abord, améliorer la transparence du processus de décision des agences. Deuxièmement, renforcer le rôle des agences de la concurrence en tant que promoteur de la concurrence et en tant que force de proposition de solutions s'appuyant sur les mécanismes de marché : autrement dit faire avancer la culture de la concurrence. Le BIAC est favorable à ces deux objectifs, mais non sans nuances. Les agences de la concurrence doivent être conscientes que leur communication ne doit pas servir à donner une tournure politique à des sanctions particulières ou à ternir l'image de certains acteurs de la vie économique. En somme, les autorités de la concurrence doivent être perçues comme parfaitement objectives et intègres.

Un délégué du Canada rappelle que son pays est attaché à ce que la communication ne soit pas l'apanage du seul directeur de l'agence. D'abord, cela lui prendrait trop de temps, et ensuite cela transmettrait l'impression erronée que les décisions émanent de sa seule personne et non de toute une

équipe travaillant collectivement. Une bonne stratégie de communication doit permettre à de nombreux employés de s'exprimer.

Un délégué des États-Unis indique que le dialogue transatlantique en matière de concurrence est un aspect important des progrès en matière de communication. Les responsables de la Commission européenne communiquent désormais plus souvent avec différents publics des États-Unis et vice-versa. Le délégué souligne l'importance du rôle du directeur de l'agence et rappelle que la confidentialité doit toujours être respectée. C'est l'une des raisons pour lesquelles les agents du bureau de la concurrence ne sont pas autorisés à communiquer avec la presse sur les affaires en cours.

Un délégué de l'Allemagne observe que chaque pays a sa propre culture et sa propre presse. Le délégué n'approuve pas l'utilisation de dessins animés (un délégué de la Corée signalait que l'expérience, conduite sur le site WEB du FTC, avait remporté un certain succès) car selon lui, la communication en matière de concurrence doit être plus sérieuse. Il précise également que ce n'est pas parce que le président de la Bundeskassellamt est le seul habilité à communiquer avec les médias que c'est là le seul moyen de communication de l'agence avec le public. Les autres agents peuvent aussi communiquer, mais pas avec les journalistes.

Un délégué de la CNUCED note que, pour les pays qui ne se sont dotés que récemment d'une législation sur la concurrence, il est très important de comprendre comment appliquer la loi. Les premiers temps, les milieux d'affaires et les autres instances gouvernementales ont besoin de savoir quelles dispositions spécifiques seront mises en œuvre et comment elles le seront. Les lignes directrices sont un outil essentiel pour cela.

Un délégué d'Australie note que, s'agissant des médias électroniques, le responsable de l'organisation a un impact beaucoup plus fort que le reste du personnel et peut donc plus facilement traiter différents problèmes. Toutefois, l'Australie insiste sur l'équilibre. S'agissant des informations sur le lancement des enquêtes, l'Australie est sélective. Le délégué propose que ce sujet sensible soit discuté lors d'une session ultérieure du Forum mondial de l'OCDE sur la concurrence.

## **9. Conclusion du Président**

Le Président revient sur certains des points soulevés par l'Australie et l'Allemagne avant de terminer cette table ronde. Il note que trois aspects ont été abordés dans la discussion : la stratégie, la culture et les instruments. S'agissant des instruments, il serait peut-être intéressant que les pays échangent les documents qu'ils ont utilisés : vidéos, films ou dessins animés. S'agissant de la stratégie, le Président partage l'analyse de l'Allemagne : toute stratégie de communication doit être fortement marquée par la culture locale et l'environnement législatif dans lequel l'autorité travaille. A cet égard, il est clair que les pays qui ne possèdent pas de lois sur la concurrence ou qui n'en sont dotés que depuis peu doivent avoir des priorités différentes des pays dont le droit de la concurrence est plus mature. Dans le premier groupe, l'accent doit être mis sur la création d'un consensus autour du droit de la concurrence et sur le développement d'une culture de la concurrence.