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## OECD Global Forum on Competition

### OPTIMAL DESIGN OF A COMPETITION AGENCY

-- Note by the Secretariat --

*This note by the Secretariat is submitted under session I of the Global Forum on Competition to be held on 10-11 February 2003.*

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## OPTIMAL DESIGN OF A COMPETITION AGENCY

*Note by the Secretariat*

### **I. Introduction**

1. Around 100 countries in the world have set up institutions for enforcing competition laws and/or performing other tasks in the competition policy area. Others are in the process of preparing for such institutions. Existing competition institutions are sometimes discontinued, and replaced with other institutions with the same or similar tasks. When preparing for the establishment of a new institution, either the first of its kind in a country or replacing previous bodies, the issue how the new institution should be designed is of central importance. Experiences with alternative designs of current competition institutions in other countries should be helpful in that process.

2. The preliminary agenda for the meeting of the Global Forum on Competition on 10-11 February 2003 includes a session on alternative designs of a competition agency. Participants in this meeting have been encouraged to submit written contributions on the Objectives of Competition Law and the Optimal Design of a Competition Agency within the Overall Government. The purpose of the present note is to supplement these written contributions as a starting point for the discussions at the meeting, by providing a synthesis of responses to the questionnaire on the Optimal Design of a Competition Agency (Annex 1) that was circulated to participants last October/November and suggesting a number of aspects of the topic to be discussed.

### **II. Survey of participating countries' design of competition institutions**

3. In order to gather information related to the design of national competition authorities, the OECD Secretariat sent out the aforementioned questionnaire to participants of the Global Forum on Competition. The focus of this survey was on the 'external' design, that is, the place of this authority in the administrative structure, its relations to other bodies - horizontally and vertically - and its competences rather than the 'internal' organisational structure. The questionnaire was divided into four main parts dealing with, respectively, the position of the competition authority, its tasks and powers, relations to other governmental bodies and, finally, questions relating to influence and independence. The following summary of the responses to the questionnaire is based upon a total of 37 replies received.

4. The term 'Competition Authority', as used in the questionnaire and in this note, means any non-judicial authority or body independent of or incorporated in governmental bodies, which is the primary responsible body of the country for the enforcement of competition law and other activities in the competition policy area, regardless of its name. Bodies with more limited tasks in the competition policy area, or at a lower administrative level, are not understood as 'the Competition Authority' although their activities are touched upon in some parts of the description.

### ***The position of the Competition Authority in the administrative structure***

5. As confirmed by all of the replies, the primary legal basis for the establishment and competences of a Competition Authority is always a law - or several laws. A few authorities also see the constitution as their legal basis, and around one fifth of the replies indicate governmental or ministerial regulations as an additional basis.

6. The decision on the budget of the Competition Authority often involves several levels of government. 60% of the replies indicate that the Parliament or other legislative assembly is involved in the procedure. Where Parliament is not involved, the decision is normally either taken by the Government or by a Minister (around 15% in each category). A few authorities have no separate budget. Less than one fifth of the Competition Authorities have revenues from fines or fees contributing to their funding.

7. The status of the Competition Authority in the public administration is often difficult to define in an unambiguous way, due to differences among countries' administrative structures and traditions. Around one third of the Competition Authorities look upon themselves as independent of Government. Slightly more - around 45% - are incorporated into a Ministry. The remaining group in-between - around one fifth - do not make part of a Ministry but still consider themselves to be responsible to Government.

8. Another factor defining a Competition Authority's position in the administrative system is the method of appointing the President or Head of the Authority. Often this procedure includes several steps of recommendation, nomination, and final approval. Almost half of the replies indicate that the Head of State is involved in the appointment of the Head of the Competition Authority. In three of these countries also Parliament gives its approval. Where the Head of State is not involved, either the Government (close to 25%) takes the decision on the appointment, or the Prime Minister or other Minister (close to 20%). One Competition Authority has its Head appointed by the Commissioners of the Authority, subject to approval of the relevant Minister, and one country has established a Public Service Commission, which is an independent constitutional body that appoints public servants including the Head of the Competition Authority.

### ***The tasks and powers of the Competition Authority***

9. As could be expected, almost all Competition Authorities reply that they investigate infringements of competition law. More than half of the replies include an assessment of the share of the Competition Authority's resources engaged in investigations. The share varies widely, from 20% to 94%, with an average over 40% of total resources.

10. Other tasks performed by close to all Competition Authorities are decision-making in individual cases of competition law enforcement, and general sector investigations or economic studies. This high share for decision-making would of course not imply that those authorities have the power of taking all kinds of decisions on a case. For instance, a Competition Authority may have powers to grant an individual exemption but would have to bring the case to court for a ruling on sanctions. Decision-making takes, on the average, a more important share of the Competition Authorities' resources (above 25%), as compared to sector investigations and economic studies (10%). More than 85% of the Competition Authorities replied that they have competition advocacy as one of their tasks. The share of total resources devoted to competition advocacy, where this task is included in the Competition Authority's responsibilities, was reported normally to stay in the interval 10-20%.

11. Out of the around 90% of Competition Authorities that have competence to take certain kinds of decisions on individual competition law cases, around two thirds have a specific collegiate body for decision-making. In the remaining third the power to take such decisions is assigned to the Head of the

Authority. When decisions are taken by bodies external to the Competition Authority, categories mentioned by respondents include courts of general jurisdiction, specialised courts and other collegiate bodies, and ministers.

12. No respondent has indicated that first instance decisions on competition law cases would be final. Courts of general jurisdiction are the most common instances of appeal, as indicated in two thirds of the replies. One third mention specialised courts. Appeals outside the judicial system are less frequent. However, in seven countries decisions taken by the Competition Authority can be appealed to the Authority itself, and in four countries appeals are made to the administrative superior to the competition Authority, e.g. a Minister or the Government.

13. No other individual task is performed by as many as one third of the Competition Authorities replying to the questionnaire. The most common tasks outside the core competition law and policy area are, in falling order, consumer protection, sectoral regulation, price control, state aid control, and public procurement control. The share of responses indicating those tasks range from 30% for consumer protection down to 20% for public procurement control. One response indicates more than 40% of total resources being devoted to consumer protection. For those other respondents that were able to assess resources spent on consumer protection, this share stays within the interval 5-15%. Telecommunications is the sector most commonly regulated by Competition Authorities, followed by the energy sector. No Authority has reported that more than 20% of total resources are spent on sector regulation

#### ***The Competition Authorities' relations to other governmental bodies***

14. Around one fourth of the replies indicate that there is a sub-national body dealing with competition policy. These may be regional offices of the Competition Authority or - in some cases - parts of a separate organisation with tasks in the competition policy area. More commonly, bodies at the same level as the Competition Authority may have tasks in specific parts of the competition policy area or relating to specific sectors of the economy. Close to 40% of the respondents replied that there is another agency with competence to enforce competition law, either exclusively or in parallel with the Competition Authority. Typically, sectors like the financial sector and telecommunications are fields where an agency separate from the Competition Authority may enforce competition law. Other examples relate to policy areas like public procurement and state aid control, which may be handled by a separate agency where included in competition legislation. The same number of replies to the questionnaire report the existence of an agency, separate from the Competition Authority, having other tasks in the competition policy area than enforcing competition law. Finally, one third of the Competition Authorities are the sole agencies in the country entrusted with tasks in the competition policy area.

15. 80% of the Competition Authorities responding to the questionnaire are engaged in formal and/or informal co-operation with other government agencies within the jurisdiction<sup>1</sup>. Those with most extensive co-operation quote more than 20 authorities with whom they liaise, but in general the number of agencies involved in co-operation with the Competition Authority stays within the interval 4 to 6. Formal co-operation is slightly more common than informal co-operation. Close to 40% of the Authorities engaged in co-operation have both kinds. Agencies in the telecommunications and energy areas are most often mentioned as co-operation partners, followed by consumer policy agencies, financial sector supervisors, sector regulators in different transport sectors, and privatisation agencies. The variety of other kinds of government agencies co-operating with Competition Authorities is remarkably broad - however, most of those are quoted only in one or two replies.

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<sup>1</sup> The questionnaire did not address the issue of international co-operation.

### *Influence and independence*

16. With rare exceptions, most Competition Authorities are in a position to influence current or proposed legislation through more or less formalised consultations, participation in the law-shaping process, or the right to submit proposals and objections. Influence on legislation is obviously most important relating to competition law, but many Competition Authorities advocate for pro-competitive legislation also in other policy areas when such laws may have an impact on competition. Although few Competition Authorities seem to have an automatic right to be consulted on proposed legislative changes, the responses to the questionnaire generally suggest widespread *de facto* influence on the legislative process. Several of the Competition Authorities state that they act proactively, taking initiatives against rules and regulations restraining competition.

17. Compulsory consultation with the Competition Authority more frequently applies to decisions by regulatory authorities and other governmental bodies. Around 60% of the replies indicate some form of compulsory consultation with the Competition Authority. The most important category among those is the obligation for sector regulators in telecommunications and other areas to consult with the Competition Authority before taking an individual decision or adopting new rules. Other examples of decisions that are subject to compulsory consultation with the Competition Authority include the granting of state aid, exclusive rights or privileges, the establishment of product standards, re-introduction of price and market controls, and structural measures taken by government agencies like creating, re-organising or liquidating economic entities.

18. More than half the number of Competition Authorities that have replied to the questionnaire feel that they have medium influence on the Government, Parliament, and other bodies of public administration through advocacy initiatives. The proportion assessing that they have high influence slightly exceeds 20%, the same number of respondents see their influence as low and one reply states no influence.

19. The questionnaire also mapped Competition Authorities' perceived degree of independence from political influence. When enforcing competition law in individual cases, 50% of the Authorities considered themselves totally free from political influence, and another close to 45% reported a high degree of independence. Only two replies indicated a medium degree of independence in competition law enforcement. When dealing with advocacy initiatives, perceived independence from political influence was only slightly lower. 80% of the replies stated total or high independence and almost 15% saw their independence as medium. When comparing these replies with the outcome of the query on objectives, it is noteworthy that the respondents to questionnaire A on the Objectives of Competition Policy identified greater independence as being the one thing that could most help to facilitate better attainment of the competition law objectives in their jurisdiction.

20. Having a seat in the country's central bodies of governance may be one of the factors contributing to a Competition Authority's influence on Government. On the other hand, such representation may also make the Competition Authority more exposed to political pressure relating to individual competition cases or advocacy initiatives. One fifth of the Competition Authorities responding to the questionnaire have a seat in the Government Cabinet, and most of these Authorities are also represented in other permanent Ministerial or Parliamentary bodies. Representation in *ad hoc* bodies set up by the Government or a Minister is far more frequent - more than 40% of the Competition Authorities are engaged in such activities. On the other hand, one third of the replies state no form of representation at the political level.

### III. Observations based on the questionnaire material

21. The results from the questionnaire on the design of competition institutions should for different reasons not be generalised as representative for Competition Authorities in general. The most obvious reason is the limited number of replies – in total 37 responses. Among countries participating in the meeting of the Global Forum on Competition, those who have responded might have other characteristics in some respects than the non-respondents. 40% of the replies come from OECD Member countries, and the remaining majority of the answers represent to a large extent economies in transition and developing countries. Still another reason is that it was not possible to submit the questionnaire form to a previous test in order to detect possible ambiguities. In cases where the answers suggest that respondents may have given different interpretations to a specific question, time has not permitted a second round of follow-up questions.

22. In spite of these limitations, the questionnaire material provides a broad picture of different approaches to the design of competition institutions. Some general observations should also be relevant, provided the conclusions are seen rather as issues for discussion than as precise statements that could be applied to Competition Authorities in general.

23. The most striking observation from the questionnaire material is **the broad scope of different models and solutions for the institutional arrangements**. The status of the Competition Authority in the public administration may range from structural independence from Government to being integrated in the ministerial structure, with no evident predominance for any particular approach. Involvement in the work of the Government also varies widely, from the Head of the Competition Authority having a seat in the Government Cabinet to Authorities having no representation whatsoever at the political level. What is particularly striking, and somewhat inconsistent with the responses to the questionnaire on the Objectives of Competition Policy, is the extent to which **virtually all respondents**, regardless of the institutional design of the competition agency in their jurisdiction, **considered themselves to be totally or highly independent from political influence in the enforcement of competition law**.

24. However, one common trait for many Competition Authorities is **high level government influence on the Authority's resources**; nearly two thirds of the replies indicate that Parliament is involved in deciding the budget, and almost half of the responding countries have the Head of State involved in the appointment of the Head of the Competition Authority.

25. In spite of the institutional variety, there is a **core of common tasks** assigned to most Competition Authorities. Based upon rules of law, these Authorities normally investigate, take at least certain kinds of decisions on competition cases and engage in competition advocacy. Beside these core activities, close to 85% perform general investigations into a sector of the economy and/or other economic studies. Further, Competition Authorities may have a variety of other tasks, none of which could be said to be typical for these Authorities in general. Such additional tasks include consumer protection, sector regulation, price control, state aid control and control of public procurement.

26. **Independence and influence** are attributes of a Competition Authority that often come under discussion. However, these are factors that are difficult to define in quantitative terms, and consequently also difficult to measure. On these issues the questionnaire was based upon the Competition Authorities' own perception. Although only around one third of the Authorities stated that they had an independent status in relation to Government, 95% perceived total or high independence when enforcing competition law. A slightly lower but still high share of Competition Authorities – 80% - saw themselves as independent from political influence in their advocacy work. Also seen against the background of a possible inconsistency with responses to questionnaire A, it seems that the concept of independence in a more profound sense would need to be analysed and defined.

27. Around half the number of responding Competition Authorities perceive having medium influence on the Government, Parliament, and other bodies of public administration through advocacy initiatives. There are **some common traits** for those eight respondents who consider themselves having high influence: all but one have Parliament involved in the budget process, and all but one perceive having total or high independence in their advocacy work. In addition, two thirds have the Head of State involved in the appointment of the Head of Authority. It also seems that the rights of an Authority to deal proactively with anti-competitive legislation have importance on the level of influence. On the other hand, the majority of these highly influential Authorities does not have the benefit of compulsory consultation procedures and does not have a seat in the Government Cabinet. As could be expected, **Competition Authorities not having competition advocacy as one of their tasks perceive their influence on Government as low or none.**

28. Institutional autonomy, freedom from political influence on the Competition Authority's activities and the ability to exert influence on political decisions are sometimes seen as interrelated. Thus, a highly autonomous Authority is assumed to stand free from political influence on decisions and initiatives. On the other hand, an Authority more close to the Government, perhaps involved in the political agenda, might be positioned to have a stronger influence on political decisions. There is some support in the replies for a connection between **institutional autonomy and independent competition law enforcement**. Those authorities that perceive themselves as organisations independent of the Government have replied that they either have total independence from political influence when enforcing competition law (two-thirds of independent authorities) or a high degree of independence (the remaining third). The corresponding share of total law enforcement independence among Competition Authorities incorporated into a Ministry is lower - only 40%. However, in the field of competition advocacy the material from this limited questionnaire does not support such conclusions on an interrelation between autonomy, independence and influence.

#### IV. Issues related to the design of a competition institution

29. Several aspects of the design of a competition authority are linked to the traditions and institutional structure of the country, and could not – or only with difficulty – be set up in a different way than is customary for comparable public administrative bodies in the jurisdiction. The questionnaire responses do not tell to what extent the variety in institutional designs is a result of such differences between countries, as opposed to the types of issues discussed in this note, or whether other solutions would be viable. Presumably there is a high degree of country-specific influence on issues like legal basis, budgetary process, appointment of officials, and relation to the ministerial structure.

30. Other aspects of the design of a competition institution would likely be subject to more discretion. The replies to the questionnaire suggest that there is a real option for choice on a number of issues. Evidently there is no one optimal design given the objectives that have been adopted for the competition agency or the functions that have been allocated to it. There appears to be a considerable variety in the solutions chosen in different jurisdictions, and it is difficult to ascertain whether these alternative approaches are optimal without also looking at country specific factors such as its legal and administrative traditions, stage of economic development, political realities, etc. The following questions refer to some of these options for the design of a competition institution:

- *Should the tasks of the Competition Authority include (i) investigation of competition law infringements, (ii) decisions on individual competition cases<sup>2</sup>, (iii) investigations into sectors of the economy and economic studies<sup>3</sup>, and/or (iv) competition advocacy?*

31. There are differing views on whether all of these tasks ought to form part of the core responsibilities of a Competition Authority. Some countries prefer to place decision-making (in terms of whether to prohibit or sanction a matter, in the first instance) in a body separate from the Competition Authority, while others create a collegiate body within the Authority. Still others confer decision-making powers to the Head of the Authority. Often some kinds of decisions on competition cases are taken by the Competition Authority and others by a separate body or a general court (see following bullet point). Economic studies presuppose that the Authority has resources for economic analysis, and often that would also be the case for competition advocacy. Thus, including those tasks may be related to whether the competencies of the Competition Authority are predominantly judicial or mixed judicial-economic. If some of these tasks - mainly (iii) and (iv) above - are not assigned to the Competition Authority, the issue arises whether they should be assigned to a separate body or not be performed at all.

- *How should different kinds of decisions in application of competition law be allocated between the Competition Authority and one or more bodies separate from the Competition Authority?*

32. Normally the decision-making power is allocated differently depending upon the nature of the decision - for instance, a Competition Authority may have competence to decide on an individual exemption but not on prohibitions or imposing fines. The allocation of decision-making powers are linked to the competencies and internal structure of the Competition Authority, as well as to the nature of bodies separate from this authority that have powers to decide on competition cases. In countries where competition law infringements may be subject to both administrative and criminal proceedings the issue arises whether to allocate these to the same or different decision-making bodies. A similar issue is whether civil matters should be adjudicated by a specialised Tribunal or in general courts. In some jurisdictions the Competition Authority has prosecutorial and/or adjudicative functions as well as investigatory functions. How should considerations of procedural fairness and due process best be addressed in such cases?

- *How should the decision-making functions of a Competition Authority be designed?*

33. What are the pros and cons of a single head-of-agency approach versus a board-of-commissioners approach? Is one approach superior in certain situations, such as when (i) the authority is completely independent from other branches of government; (ii) it also is responsible for functions such as sectoral regulation, consumer protection or state aids; or (iii) it is responsible for adjudicative functions? What, if any, implications for institutional design flow from a need by the authority to enforce criminal powers?

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<sup>2</sup> For instance, decisions on (a) declaring a practice not infringing a prohibition, (b) individual exemption, (c) prohibiting a practice, (d) ordering termination of an infringement, (e) fines or other sanctions, or (f) prohibiting or approving a merger.

<sup>3</sup> This category includes different types of broader studies not making part of an individual competition case. 'Investigations into sectors of the economy' generally refers to initiatives aiming at the disclosure of infringements, enabling the opening of ex officio cases, whereas 'economic studies' more broadly deal with the functioning of competition, for instance aiming at advocacy initiatives.

- *How should competence to enforce competition law in the first instance be allocated between the Competition Authority and other government agencies?*

34. Some countries prefer to have the Competition Authority responsible for enforcing the competition law in all sectors of the economy. Others place this responsibility on a separate body for specific sectors, for instance the financial sector. Sector regulators are sometimes empowered to enforce competition law in parallel with the Competition Authority. Where sectoral regulators have exclusive or dual jurisdiction over competition law enforcement, one of the advantages would be increased coherence between regulatory activities and the enforcement of competition law. On the other hand, some see a risk of inconsistent competition law enforcement when split up on different authorities, and others fear that the regulatory approach and 'culture' of a regulator would unduly influence the application of competition law. Another issue is whether the powers to enforce competition law should be centralised to one national Competition Authority or shared with a system of sub-national regulators. Where regional agency offices are established, what are the pros and cons and what implications does this have for the design of the Competition Authority?

- *Should the Competition Authority have tasks outside the core competition policy area? If so, which tasks, and what implications does this have for agency design?*

35. The issues most often discussed is whether a Competition Authority should also have tasks as sector regulator - and if so, for which sectors - and whether there are reasons to combine competition policy and consumer protection in one authority. The first of these questions has been subject to comprehensive work, including in the OECD Competition Committee. The Committee has further agreed to discuss the links between competition policy and consumer policy in a future round table session. Obviously the protection of consumers against deceptive and fraudulent behaviour by sellers has strong links to competition policy, and many countries have seen advantages in combining those branches of market regulation in one authority. On the other hand, consumer protection may also have a focus on product safety issues, which are less related to competition policy and in some cases include product standardisation approaches that might encourage concerted behaviour among competitors. In the gradual shift towards more market-oriented economic policies, several countries have reduced the role of price controls. However, Competition Authorities have often been responsible for administering such regulations and in some cases price control is still included in the tasks of a Competition Authority. State aid control is sometimes seen as a part of competition policy in the broad sense, not least among countries preparing for accession to the European Union. Some countries also see aspects of public procurement control as related to competition policy - in particular issues related to the right of tendering companies to have access to the market on non-discriminatory terms.

- *What institutional arrangements and procedures are optimal to support the Competition Authority's task in the advocacy area?*

36. As indicated above, the questionnaire material does not provide much guidance on factors that make Competition Authorities successful in their advocacy activities. One reason is probably that advocacy could be performed in so many different fora, using a broad variety of approaches, ranging from informal persuasion of key decision-makers to participating in regulatory proceedings before sectoral or multi-sectoral regulators, interdepartmental meetings within government, submitting formal proposals to Government or Parliament, publishing results of studies on competition problems, initiating public debate or educational activities directed to the general public. One factor is probably having qualitative and quantitative resources to prepare convincing arguments for pro-competitive solutions. Another one relates

to recognition and support for the advocacy role of the Competition Authority, something that could be done in different formal or informal ways.

- *What design is optimal for achieving a high degree of actual and perceived independence from political influence?*

37. For instance, is structural independence from other branches of government or separation from the ministerial structure necessary or helpful? What, if any, implications does institutional design have for transparency and public confidence in the Competition Authority? There are several subtle ways in which government or a ministry could exert an influence on the actions by an enforcement agency. One is influencing the budget of the Competition Authority, another one relates to appointing the Head of the Competition Authority and - maybe still more important - how the Head may be removed from office. How could procedures for establishing the budget and appointing the Head be designed in order to safeguard the appropriate level of independence? Obviously the Government has a legitimate interest in influencing what a Competition authority does, and how, in broad terms. The issue of independence would rather come up when the authority is handling a specific case or taking an advocacy initiative. Thus, when discussing independence it might be useful to identify the line of demarcation between legitimate and undue influence from the political level.

- *When jurisdictions have political influence on decisions enforcing competition law, how could that influence optimally be designed?*

38. Where the Government retains a role in the decision-making process, what is the optimal way for it to input into the process? Some competition laws contain a public interest test for certain matters. In those cases, should the public interest be adjudicated by the same institution that adjudicates competition issues or should public interest issues be reserved to politicians, leaving competition issues to courts or other institutions?

- *What are the pros and cons of partly financing the Competition Authority through fines, notification fees or similar sources of revenue?*

39. Few if any public authorities feel free of budget constraints. Letting the Competition Authority retain part of fines or fees related to competition cases is sometimes seen as a way to find new sources of funding in a situation when the general State budget is insufficient. Fines and fees also have the advantage of being linked to the overall workload of the Authority. However, such sources of funding may at the same time create risks for sub-optimal priorities for the Competition Authority's work, for instance focussing on the number of cases rather than their anti-competitive effects. As for fees, they may be set at a level corresponding to the average costs of the authority handling a particular category of matter. In such a case, the risks of distorting effects on the authority's priorities may be limited. On the other hand, fines have no relation to the costs of the Competition Authority, and there are more obvious risks of giving wrong incentives to an authority that may add fees to its budget, especially if the Competition Authority *de facto* has a high degree of influence on the amount.

**Annex 1****QUESTIONNAIRE ON THE OPTIMAL DESIGN OF A COMPETITION AGENCY**

The following questionnaire aims at gathering information related to the design of national competition authorities. The focus is on the 'external' design, that is, the place of this authority in the administrative structure, its relations to other bodies - horizontally and vertically - and its competences, rather than the 'internal' organisational structure. Based on the replies to the questionnaire, a note will be prepared by the OECD Secretariat to serve as basis for the discussions at the Forum meeting.

The term 'Competition Authority', as used in the questionnaire, means any non-judicial authority or body independent of or incorporated in governmental bodies, which is the primary responsible body of the country for the enforcement of competition law and other activities in the competition policy area, regardless of its name. In some countries, where two bodies would be considered as 'primary responsible for the enforcement of competition law', that should be reflected in the replies. However, bodies with more limited tasks in the competition policy area, or at a lower administrative level, should in this context not be understood as 'the Competition Authority', although their activities are touched upon in some of the questions.

The questionnaire is divided into four main parts dealing with, respectively, the position of the Competition Authority, its tasks and powers, relations to other governmental bodies and, finally, questions relating to influence and independence. In the majority of the cases the answers to the questions can be selected from given options. In some cases the question requires an explanative answer.

**I. The position of the Competition Authority in the administrative structure**

1) What is the legal basis of the establishment and competences of the Competition Authority?

- Constitution
- Law
- Governmental Regulation
- Ministerial Regulation
- Other, please specify.....

2) Who decides on the budget of the Competition Authority? (more than one answer is possible)

- Parliament/legislative assembly
- Government
- Responsible minister
- Revenues from fees, fines, other sources
- No separate budget for the Competition Authority
- Other, please specify.....

3) What is the status of the Competition Authority in the public administration?

- Organisation independent of the Government
- Organisation responsible to the Government, but not incorporated into any Ministry
- Organisation incorporated into a Ministry
- Other, please specify.....

4) The President/Head of the Competition Authority is appointed by: (in the case of a more than one step procedure, please indicate these steps)

- Head of the State
- Parliament
- Prime Minister
- Government
- Minister
- Other, please specify.....

**II. The tasks and powers of the Competition Authority**

5) What are the tasks of the Competition Authority? (more than one answer is possible) Please indicate the approximate percentage of the authority's total resources engaged in the respective tasks.

- %
- Investigation of infringements of competition law  ....
  - General investigations into a sector of the economy, economic studies, *etc.*  ....
  - Decision-making in individual cases of competition law enforcement  ....
  - Representation of the public interest in the decision-making procedure (if decision is brought by an other entity)  ....
  - Competition advocacy  .....
  - Price control  .....
  - State aid control  .....
  - Public procurement control  .....
  - Sectoral regulation (please specify sectors) .....  
.....  
.....
  - Consumer protection  .....
  - Other, please specify .....  
.....

- 6) Decisions in individual competition law cases are brought by
- Head of the Competition Authority
  - Collegiate body within the Competition Authority
  - Body external to the Competition Authority
    - separate collegiate body
    - specialised court
    - court of general jurisdiction
  - Minister
  - Other, please specify.....

- 7) Decisions taken by the Competition Authority can be appealed at
- the Competition Authority itself
  - the superior of the Competition Authority in the system of public administration (e.g. Minister, Government)
  - specialised court
  - court of general jurisdiction
  - no remedy is available
  - Other, please specify.....

**III. The Competition Authority's relations to other governmental bodies**

- 8) Is there a regional organisation for competition policy, separate from or making part of the Competition Authority? Yes  No

(If "yes", please specify) .....

- 9) Is there any other agency entrusted with tasks in the competition policy area in a specific sector or in general?

- agency with exclusive competence to enforce the competition law in certain fields? Yes  No
- agency with competence to enforce the competition law in parallel with the Competition Authority? Yes  No
- agency with other tasks in the competition policy area? Yes  No

(If "yes" to one or more alternatives, please answer in details).....

- 10) Is there an established formal or informal co-operation with any other agencies (e.g. consumer authority, sector regulators, financial inspection body, privatisation body)? Please give a list of these authorities.

Formal co-operation:  
.....  
.....

Informal co-operation:  
.....  
.....

**IV. Influence and independence**

11) How can the Competition Authority participate in the drafting and preparation of legal provisions affecting competition? (Please list main forms of participation, *e.g.* right to issue proposals for legislation, right to give opinion on draft legislation, institutionalised participation in the law-shaping procedure, *etc.*).....  
.....

12) Is there compulsory consultation with the Competition Authority prior to

- decisions by regulatory authorities? Yes  No
- decisions by other governmental bodies? Yes  No
- other forms of compulsory consultation with the Competition authority? Yes  No

(If "yes", please describe) .....

13) What is the Competition Authority's degree of influence on the Government, Parliament, and other bodies of public administration through advocacy initiatives?

- High
- Medium
- Low

14) What is the Competition Authority's degree of independence from political influence in individual cases of competition law enforcement?

- Total
- High
- Medium
- Low
- None

15) What is the degree of independence from political influence in individual competition advocacy initiatives?

- Total
- High
- Medium
- Low
- None

16) Do representatives of the Competition Authority have a seat in

- |  |                              |                             |
|--|------------------------------|-----------------------------|
| - The Government Cabinet   | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| - Other permanent Ministerial or Parliamentary bodies<br>(if "yes", please describe).....  | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| - Ad hoc bodies set up by the Government or a Minister                                     | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| - Other forms of representation at the political level<br>(if "yes", please describe)..... | Yes <input type="checkbox"/> | No <input type="checkbox"/> |