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DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Global Forum on Competition

CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

-- Session III --

Call for Country Contributions

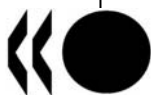
This document is a call for country contributions for Session III of the Global Forum on Competition to be held on 19-20 February 2009. GFC participants are invited to submit their contributions by i) 8 December 2008 (non-members); and ii) by 5 January 2009 (members and observers to the Competition Committee).

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TO ALL GLOBAL FORUM PARTICIPANTS

Re: Challenges Facing Young Competition Authorities

Global Forum on Competition (February 19 - 20, 2009)

Session III

1. Session III of the Global Forum on Competition will discuss “Challenges Facing New Competition Agencies.” Three and a half hours will be set aside on the morning of 20 February for this discussion. A panel of competition authorities will open the session with short presentations in the plenary room. Countries will then have the opportunity to develop a more informal dialogue in breakout sessions scheduled to last for 2 hours.

2. There are special problems encountered by countries beginning to create a competition policy, and a synthesis and discussion of these issues will benefit both those countries that are still in the initial phases of enforcing their competition law and those that will begin to do so in the future. For that purpose we provide below a questionnaire to your country on this topic. The Secretariat will draft a background note for the discussion incorporating the responses.

1. Background

3. Competition agencies are often at different stages of development, depending on how long they have been established. Some have been in operation for only a short period – perhaps only a few years. Others have been active for much longer, for example 15 or 20 years, but nevertheless may still be considered relatively young given their establishment during what some regard as the “modern era” of competition policy. Others have existed considerably longer. While the experiences of these older agencies in their formative years may not be as relevant to this particular discussion, they provide an important perspective given their capacity building activities with these younger agencies.

4. The questionnaire below has two parts. The first contains more detailed questions, targeted at “younger” countries. We recommend that countries that began their enforcement activities after 1991 respond to this section. The second section is aimed at the “older” countries, whose perspective as a provider of technical assistance will be of key interest.

5. Respondents should focus their efforts on those questions most relevant to their particular circumstances.

2. Administrative Issues

6. Please provide your response **i) by 8 December (non-members); and ii) by 5 January 2009 (members and observers to the Competition Committee)**. Send it electronically to Jennah Huxley (Jennah.huxley@oecd.org) in the Secretariat, copying Hélène Chadzyska, Administrator, at helene.chadzyska@oecd.org and John Clark, Consultant, at johnclark3@cox.net.

QUESTIONNAIRE

CHALLENGES FACING YOUNG COMPETITION AUTHORITIES

I. Countries that have been actively enforcing a competition law for a relatively short time

A. *Organising your agency and preparing for work*

This is a unique point in the life of a competition agency – creating a new organisation and preparing it to enforce a new law. Necessary tasks include recruiting senior officials and professional and administrative staff, obtaining office space and equipment, setting goals and priorities for the initial months and years, establishing internal procedures and creating regulations and guidelines implementing the new law.

1. *Describe how you conducted this organisational phase. What went well, and what didn't?*

B. *Competition culture and competition advocacy*

Establishing a competition culture in a country new to competition enforcement – creating in the public awareness of and support for competition policy and the work of the competition agency – is vital to the success of a competition policy. In countries new to competition policy such a culture does not exist, and the competition agency performs an important educational role in helping to create it.

2. *Describe the efforts that your agency made in its first years in promoting a competition culture in your country. Did you have any measurable success? What resistance did you encounter?*

C. *Conduct cases and investigations – abuse of dominance and restrictive agreements*

Prosecuting conduct investigations and cases can be difficult at first. Both the competition agency and the business community are unfamiliar with the legal and evidentiary standards that the law has created, and investigators lack important experience in developing cases of this kind. The investigation tools (fact gathering) and sanctioning powers (fines and remedial orders) provided by the new law may not be adequate for the task. Case handling procedures may be cumbersome and inefficient.

3. *What problems did you encounter in investigating and prosecuting abuse of dominance and non-cartel restrictive agreements in your early years, and how did you address them? What were your successes and what factors can you identify that contributed to those successful outcomes?*
4. *What difficulties did you encounter in developing an anti-cartel programme, and how did you address them? How long did it take for your anti-cartel programme to begin to show results?*

D. *Mergers*

Some countries, especially those with small economies, elect not to incorporate merger control into a new competition law. They conclude that it would require too many resources compared to the benefits to competition that could result. They may plan to begin merger control at a later time. Most countries do adopt merger control at the beginning, however. For some the initial phases of this programme proceed relatively smoothly. Others, however, encounter problems associated with inefficient review procedures, over-inclusive notification regimes or uncertain application of substantive rules.

5. *If your new law did not provide for merger control, have you encountered any problems because you don't have this power? What are the benefits to you, if any, of not having merger control?*
6. *If you have merger control, did it cause resource problems for you in your first years of operation, that is, requiring you to spend more resources on merger review than you thought efficient? If so, what did you do about it? If not, how did you avoid this problem?*
7. *If you have merger control, was it an important and useful part of your agency's activity in its early years? What were your successes in implementing your merger control programme? Your problems?*

E. Judicial appeals

In most countries decisions of the competition agency can be appealed to the courts. Judicial systems vary across countries. In some, competition cases are appealed, at least in the first instance, to a court having special jurisdiction, perhaps extending only to competition cases or more broadly to commercial cases. In others, competition cases are heard by courts of general jurisdiction. While in some countries the judicial process proceeds relatively smoothly and predictably, in others judicial review has proved to be a major impediment to the efficient and effective enforcement of the competition law. Judges may be unfamiliar with the principles of competition analysis. The competition agency may find itself losing an unacceptable number of its cases in court. The judicial process may take much too long, effectively frustrating enforcement of the law.

8. *Can decisions of your agency be appealed to the courts? If so, have you been satisfied with your rate of success in court cases? With the amount of time that it takes for cases that reach the courts to be finally decided? If you have encountered problems, what are the reasons for them, in your opinion? To the extent that you have experienced success, what factors contributed to it?*
9. *Did your agency develop a programme for interacting with judges and helping them to become familiar with competition analysis? If so, please briefly describe.*

F. Resources

Every competition agency encounters budget problems. A new competition agency may be especially vulnerable in this regard, as those who set its budget probably do not fully understand or appreciate the agency's mission.

10. *Did your agency have sufficient resources, financial and personal, to begin your enforcement activities? Did it have resources to grow in subsequent years? If you felt that your budget was inadequate what strategies did you employ to try to increase it?*

G. Independence

A competition agency should be independent as much as possible from other parts of government and from special interests, whether in terms of budget, management or law enforcement.

11. *As a new agency, did you feel that you had sufficient independence? If not, what were the reasons, in your opinion, and what did you do about it?*

Conclusion

12. *State (a) the five most important actions that you would recommend to a new competition agency to ensure a successful start, and (b) the five pitfalls that a new competition agency should avoid.*

II. Countries that have been actively enforcing a competition law for a longer period

1. *For each of the topics A-G in part I above, on the basis of your experience in enforcing your competition law and your interaction with countries beginning to enforce a law, give your views on best practices by a new competition agency.*
2. *State (a) the five most important actions that you would recommend to a new competition agency to ensure a successful start, and (b) the five pitfalls that a new competition agency should avoid.*