DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Working Party No. 2 on Competition and Regulation

STOCKTAKING ON EVALUATION

-- Note by the Secretariat --

11 June 2012

The attached document is submitted to Working Party No.2 of the Competition Committee FOR DISCUSSION under item III of the agenda at its forthcoming meeting on 11 June 2012.

Please contact Ms. Cristiana Vitale if you have any questions regarding this document [Email: cristiana.vitale@oecd.org].

JT03322488

Complete document available on OLIS in its original format

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.
STOCKTAKING ON EVALUATION

Note by the Secretariat

1. Objective of this exercise

1. At its February 2012 meeting, the Competition Committee agreed to start working on the new strategic theme on the evaluation of the impact of competition enforcement and advocacy activities by performing a stocktaking exercise on what competition authorities (“CAs”) have been doing in this area. The Secretariat prepared and circulated a questionnaire to all member countries and observers.

2. The aim of this questionnaire was to understand what kind of the evaluation exercises the CAs have been undertaking (since the year 2000), why they have been undertaking them and how. The questionnaire also asked what kind of difficulties are associated with carrying out these exercises, how the results of these exercises impact on CAs, and whether the latter expect to do or be required to do more evaluation in the future.

3. The questionnaire was answered by a large number of CAs. The response rate, in mid-May when this note was prepared, was 75% (39 CAs out of 52 and 37 jurisdictions out of 50). However, additional responses are still expected and should drive the overall response rate to 85%. The Secretariat has also received a number of relevant studies and papers. All this material has provided the Secretariat with a wealth of information that will be very helpful in developing this strategic theme (and should also reduce any need for information-gathering ahead of subsequent roundtables).

4. This note is a first overview of this material that aims to highlight some the issues that have arisen from this stocktaking exercise and to help to drive the planning of future work within this strategic theme. An update of this overview, which will include the complete set of responses, will be presented during the WP2 Roundtable on 11 June 2012.

2. Types of evaluation exercises

5. Evaluation of the impact of competition enforcement and advocacy activities can take many forms. The Committee, in approving this strategic theme on evaluation, considered them under three main categories:

1. evaluation for accountability, i.e. the evaluation of the overall competition enforcement and advocacy activities (or a subset of them) of a CA over a limited period of time, generally a year, which includes the quantification of the benefits accruing to consumers from these activities;

2. ex-post evaluation of specific interventions and of their impact on the affected market(s); and

---

1. We would like to remind delegates that also the Competition Law and Policy indicators, which will be discussed on Wednesday 13 June at the Competition Committee Meeting, fall under this strategic theme.
3. Evaluation of the broader impact of competition enforcement and advocacy activities on the economy.

6. These three groups overlap to some extent and the answers to the questionnaire have shown how grey the boundaries are between them. In particular, the answers have shown that it is not easy to allocate studies solely on the basis of the purpose for which the evaluation is undertaken: each category can serve many purposes simultaneously. For example, the evaluation of the overall activities (which we refer to as evaluation for accountability) is often undertaken to show the benefits of the CA’s activities and increase awareness of its role, as well as to set priorities/objectives and to organise the CA’s work. The detailed ex-post evaluation of specific interventions is mainly performed to assess the efficacy of the interventions and improve decision-making, but some respondents also cited ensuring transparency and accountability of resources, as well as advocacy as justifications. The evaluation of the broader impact of competition enforcement is often undertaken for advocacy purposes, but also to assess the efficacy of the interventions and improve decision-making. This has shown the wide variety of uses that these three types of evaluations can fulfil.

7. All the exercises discussed above relate to evaluations that are performed after the activities examined have been undertaken (e.g. after a cartel is discovered and fined or after a merger has been prohibited). Hence, they do not include assessments of the possible effects of proposed mergers, or forecasts of the likely benefits of other types of interventions (typically presented in market and sectoral studies). However, it is worth stressing that, while the ex-post evaluation of specific interventions is usually undertaken some time after these took place, the evaluation for accountability is performed soon after the interventions have been made. Even though they both happen “after”, this difference in timing is important and marks one of the key differences between these two types of evaluation. Since competition and advocacy interventions require some time to produce their effects the ex-post evaluation of specific interventions can identify and quantify the actual effects created by the CA’s decision, whereas the evaluation for accountability measures the likely effects on the basis of a number of assumptions.

3. Evaluation for accountability

8. Out of the 39 CAs which answered the questionnaire, 35 (90%) are required by law or statute to perform some kind of evaluation of their activities at the end of each year. This obligation always involves the production of an annual report with a qualitative description of the competition enforcement and advocacy activities of the CA and of their impact on the relevant markets. In addition, it often includes the production of quantitative and performance indicators on the work undertaken in the course of the year. Furthermore, some CAs have additional obligations, such as publishing their annual budget and financial statements, setting goals for the following year(s) and reporting to what extent the goals set in the past have been met, undergoing a regular review by an independent body, and quantifying the benefits accrued to consumers as a result of the CA’s activities. One CA also assesses the efficiency of its actions by comparing the estimated consumer savings with the resources spent on enforcement. This information is normally provided in an annual report, which is published, so as to make it available to the public.

9. Only four CAs do not have an obligation to perform some kind of evaluation of their activities. However, one of them publishes of its own initiative an annual report, which includes a description of its activities, quantitative indicators and a quantitative assessment of the benefits to consumers of its activities, and another expects to start performing some form of evaluation of its activities soon (probably following this roundtable).

10. The obligation to evaluate one’s activities also includes some form of reporting of the outcome of this exercise, in general via the submission of the annual report to the Parliament or a Ministry. Only 16 of the CAs (around 50% of those with a reporting obligation), however, receive official or informal feedback.
as a result of this submission. Four of these CAs noted, however\(^2\), that feedback comes also in the form of a revision of their budget, and hence that the evaluation has an impact on their financial resources.

11. In addition to the evaluations undertaken as part of these obligations, many CAs undertake additional assessments of their own initiative. These include producing and publishing performance indicators; setting out targets and priorities for the following years and measuring to what extent the old ones have been met; running a stakeholder survey to assess how effective their action is perceived to be, and quantifying the benefits to consumers of their activities (or some subset of them).

12. Most of the CAs set priorities in their work in order to focus their resources on the activities and sectors in which they consider their intervention to be most needed or would have the highest impact. Only half of them, however, make these priorities public. It is not clear from the answers we have received how many verify whether these priorities have been respected and appropriately selected. Some CAs also set performance goals for their activities and evaluate to what extent these goals have been met.

13. In order to share this wide range of experiences, the Secretariat could, as suggested in February, hold a Roundtable on evaluation for accountability. This could lead to the identification of best practices on how to assess a CA’s activities, as well as on how to present the outcome of this assessment (e.g. a template for reporting impact), and possibly even to an OECD Recommendation on this topic.

3.1. *Quantification of the benefits of the competition enforcement and advocacy activities to consumers*

14. The Secretariat has devoted much space in the questionnaire to a specific type of evaluation of the overall activities of a CA: the quantification of the benefits of the competition enforcement and advocacy activities to consumers. Indeed, this kind of exercise is becoming increasingly widespread because of the mounting pressure on CAs, and all public agencies, to be more transparent and accountable. Table 1 shows for each major set of activities the number of CAs that perform this exercise (% of total who responded in brackets). These figures include both those CAs that are required to undertake this quantification and those that do so voluntarily.

<table>
<thead>
<tr>
<th>Cartels</th>
<th>Other anticompetitive agreements</th>
<th>Abuses of dominance</th>
<th>Mergers</th>
<th>Competition advocacy</th>
<th>Other interventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>9 (23%)</td>
<td>6 (15%)</td>
<td>7 (18%)</td>
<td>9 (23%)</td>
<td>8 (21%)</td>
</tr>
<tr>
<td>No</td>
<td>28 (72%)</td>
<td>30 (77%)</td>
<td>31 (79%)</td>
<td>29 (74%)</td>
<td>30 (77%)</td>
</tr>
<tr>
<td>Not applicable</td>
<td>2 (5%)</td>
<td>3 (8%)</td>
<td>1 (3%)</td>
<td>1 (3%)</td>
<td>1 (3%)</td>
</tr>
</tbody>
</table>

15. The table shows that on average one in five of the 39 CAs that responded to the questionnaire quantify the benefits consumers derive from cartel detection, merger appraisal and advocacy interventions. The figure is slightly lower for abuses and other anticompetitive agreements, because some CAs regard the quantification with respect to this type of activities as more complex and less reliable. These CAs argue that the harmful effects of these practices materialize in more complex ways than mere price increases and this leads to a tension between the need to carry out a simplified calculation and that of taking into account

---

\(^2\) And formally or informally, this is probably true of most of such reports.
case-specific information which would make the estimation more accurate and dependable. Only a handful of CAs assess the benefits of other types of interventions, but this is mainly due to the fact that many CAs do not examine this type of abuses (this is shown by the high number of N/A - not applicable - in the responses).

16. From the questionnaire it also emerged that five CAs have calculated a deterrence multiplier\(^3\) and that two of them have used it to adjust their calculation of the benefits of their activities and include the impact of deterrence.

17. The issue of measuring deterrence and its beneficial impact is very complex, but is an important one. Many commentators claim that deterrence is probably the biggest contribution that CAs make to consumer welfare. This implies that, by not including its impact, the benefits created by competition enforcement and advocacy activities are much understated. Therefore, this is an area that would deserve more attention if CAs want to properly account for their role, and useful lessons could be learnt from the experience of the CAs that have already done some work on the topic. As proposed in February, a hearing or a roundtable could be devoted to an in depth discussion of how to account for the impact of deterrence in evaluation for accountability exercises. The discussion could also be extended to non-price effects of competition enforcement and advocacy activities (e.g. impact on innovation) that are often neglected, especially in quantifications exercises.

18. Another interesting finding that emerged from the answers is that the CAs that perform this quantification of the benefits of their activities include both large CAs, which have more resources and a wider array of cases, and smaller ones, with less staff and limited casework. As mentioned above, spreading the experience of these smaller CAs could be valuable for all those CAs that have pointed out in their response that a lack of resources and having a limited number of interventions to include make this type of assessment difficult for them. This could be done as part of a Roundtable on the evaluation for accountability.

19. It has also emerged that in nine of the 37 jurisdictions that answered the questionnaire, fines for breaching competition law by abusing a dominant position or taking part in anticompetitive agreements can be based on the financial gain resulting from the infringement or on the damages caused\(^4\). Thus, in these cases, an assessment of damage is inherent in the casework. These exercises have much in common with the quantification of the benefits discussed above and useful lessons could be derived from them.

4. **Ex-post evaluation of specific interventions and of their impact on the affected market(s)**

20. The questionnaire has shown that 26 CAs (67%), out of the 39 that answered, have performed at least one assessment of a specific intervention since the year 2000. Seven CAs are actually required to undertake such ex-post assessments and for three of them the results of these assessments have an impact on their budget. However, the specific nature of this obligation differs across CAs. In some cases it overlaps with the requirement to quantify the benefits of their overall activities. In other cases, it is more specific, but not very stringent as the actual number of evaluations required, when specified, is very small (e.g. one CA is required to performed just one externally audited evaluation, while another is required to assess one merger decision and one decision on a cartel or a unilateral contact, and one advocacy

---

\(^3\) This means that they have estimated the average number of potential infringements/anti-competitive mergers deterred by each of their intervention.

\(^4\) In the other 28 countries, the fine is proportional to the firm’s turnover and, though the gravity and the duration of the infringement have an impact on the level of the fine, no assessment of the harm or of the illicit gain is required.
intervention). Hence, most of the ex-post assessments are undertaken of their own initiative by CAs mostly, as mentioned before, to assess the efficacy of their action and to improve decision-making.

21. The 13 CAs that have not undertaken any ex-post evaluations cite the lack of resources and of appropriate skills as the main reason for not undertaking any such assessment.

22. The number of ex-post evaluations of specific interventions performed by each CA varies widely, some have performed only a very few, whilst others have carried out a large number. In most cases, one or a few interventions have been examined in detail in each study, but in some instances the studies look at a large cross-section of cases to derive some more general conclusions (e.g. studies that have examined the success of merger remedies).

23. Table 2 below shows which types of interventions are assessed by the CAs (% of total who responded in brackets).

<table>
<thead>
<tr>
<th></th>
<th>Mergers</th>
<th>Cartels and other anticompetitive agreements</th>
<th>Abuses of dominance</th>
<th>Competition advocacy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>20 (51%)</td>
<td>17 (44%)</td>
<td>9 (23%)</td>
<td>9 (23%)</td>
</tr>
<tr>
<td>No</td>
<td>16 (41%)</td>
<td>18 (46%)</td>
<td>26 (67%)</td>
<td>25 (64%)</td>
</tr>
<tr>
<td>Not answered</td>
<td>3 (8%)</td>
<td>3 (8%)</td>
<td>3 (8%)</td>
<td>4 (10%)</td>
</tr>
<tr>
<td>Not applicable</td>
<td>0 (0%)</td>
<td>1 (3%)</td>
<td>1 (3%)</td>
<td>1 (3%)</td>
</tr>
</tbody>
</table>

24. This tables shows that around half of the CAs perform ex-post assessments of mergers, and almost half of cartels and other anticompetitive agreements (though in most cases the assessments relates to hard core cartels), while the number drops with respect to abuses of dominance and competition advocacy interventions. The reasons why less CAs perform ex-post evaluation of abuses of dominance appear to be methodological difficulties and lack of appropriate cases. As for competition advocacy, this is less clear and would be worth exploring further.

25. Many assessments are qualitative, seeking to ‘tell the story’ of what happened after an intervention was made, but quantitative ones, trying to measure the impact of the intervention on market variables, are becoming more widespread.

26. Most of these studies have been performed internally by the CA’s staff. The main reason provided for this choice is the costs required to outsource them, which most CAs do not have the resources to meet, and confidentiality issues related to accessing the data of the file relative to the original decision. However, some CAs have argued that external studies make market participants less concerned about providing their views on how the affected market has developed following the CA’s intervention and can ensure the quality of the analysis when the appropriate skills are not available.

27. A lack of resources was widely identified as a constraint to performing these studies. Ex-post evaluations of specific interventions, because of their high data requirement and the complexity of the quantitative analyses, are resource intensive (in terms of time, staff, skills and financial resources). Since enforcement activities take priority, the lack of resources can represent a stumbling block, especially for smaller authorities.
28. A few CAs mentioned the difficulty of obtaining the data necessary for performing a meaningful quantitative assessment. Not much information is publicly available, commercial databases, when they exist, are expensive and most of the time fairly aggregated; furthermore, the CAs have no legal power to require market participants to provide them with data for evaluation purposes.

29. Sharing experiences of those authorities that perform these exercises, both large and skilled CAs and smaller ones, could provide useful insights for the less experienced authorities and help overcome some of the issues mentioned above. As suggested in February, the Secretariat could hold a Roundtable on this topic, which could lead to an OECD Best Practice Recommendation and a Competition Evaluation Toolkit (including methodologies, tools, and illustrative real-world cases).

30. It has also emerged from the questionnaire that the main variable considered in quantitative assessments is the price level (in particular for enforcement activities), while qualitative studies tend to focus on entry and exit, availability of products, and profits. Innovation and changes in the quality of the products are rarely mentioned in either type of studies, despite the importance of the dynamic effects of competition. Similarly deterrence seems to be rarely considered. As suggested in February, the Secretariat could hold a discussion on how ex-post evaluations of specific interventions could take more into account important non-price effects on markets, such as innovation, new entry, product repositioning and deterrence. Since some of these effects are longer term ones, the Secretariat could also identify or carry out long-run case studies, illustrating the effects of competition interventions over a period of one or two decades.

5. Evaluation of the broader impact of competition policy

31. In their answers 15 CAs reported having undertaken or commissioned studies that examine the links between the enforcement and advocacy activities of the CA and one or more high-level economic variables (such as productivity, GDP, growth).

32. The variety in the nature of these studies is such that it is difficult at this stage to provide a simple categorisation. There are of course many academic studies in this area, and some respondents cited reviews of the existing economic literature on the topic. Others reported sectoral studies in this category. Several CAs have conducted qualitative assessment of the importance of competition in promoting growth and increasing productivity, while a few are quantitative (econometric) exercises commissioned or co-authored with academics or consultants. These latter studies tend to focus on the impact of specific types of interventions (such as state aid, liberalisation of specific sectors, and removal of bureaucratic barriers to competition) on macro-variables, rather than looking at the overall activity of the CA.

33. These studies are undertaken for research purposes in order to understand more widely how effective CAs’ activities are, but they also help to increase awareness on the role of CAs in the economy. As proposed in February, members may be interested in a compilation of this work to use for advocacy purposes.