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**THE ROLE OF MARKET STUDIES AS A TOOL TO PROMOTE COMPETITION**

**Background Note by the Secretariat**

-- Session II --

**1-2 December 2016**

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<http://www.oecd.org/competition/globalforum/the-role-of-market-studies-as-a-tool-to-promote-competition.htm>*

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## THE ROLE OF MARKET STUDIES AS A TOOL TO PROMOTE COMPETITION

-- Background Note by the Secretariat --

### Abstract<sup>\*</sup>

Despite the fact that market studies are part of almost all work portfolios of Competition Agencies around the world, there are significant differences on their conception, goals and outcomes. The survey shows that market studies are at minimum, assessments of market structures and analysis of the competitive conditions in a given market that are not limited to prohibited conducts. Market studies are mainly considered as an advocacy tool to issue recommendations to change laws and regulations, or as a pre-enforcement tool. The survey also reflects diversity on the institutional settings to undertake market studies as well as on the legal powers to perform them, where almost half of authorities resorts to *ad-hoc* teams, more than 35% have specific staff and departments in charge of market studies and only 10% are conducted by enforcement staff. A vast majority (68%) enjoy specific powers to undertake market studies and a minority (26%) rely on general principles or rules to enhance competition in order to conduct market studies. Almost all authorities enjoy some sort of power to request information but only 80% may impose sanctions if stakeholders do not reply to a request of information. The survey also explored the use of the information collected for the purpose of market studies where all the surveyed authorities, except one agency reported to have standard rules to protect confidential information. Moreover, 43% of all respondents also protect non-confidential information. The survey also analyses market investigations, a tool adopted by three jurisdictions (Iceland, Mexico and the UK) and identifies the main differences with market studies. The survey identifies proper definition of the purpose and goals of market studies and the involvement of stakeholders as drivers of success, while lack of resources; data availability and stakeholder cooperation had been identified as challenges. Finally, in order to understand the differences between the different market studies approaches, some ideas for further work have been suggested; for instance, the categorization of market studies according to their main purpose; or the use of different legal frameworks and powers for undertaking market studies.

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## Introduction

1. While market studies are commonly conducted by competition authorities, there is no common definition of them and there are significant differences in the legal framework supporting them, as noted in previous reports by the OECD (2008, 2015) and ICN (2009). A need to address this through a systematic evaluation of the scope, definition, applicable powers and institutional setting of market studies has been identified by numerous competition authorities participating in the OECD Competition Committee meetings in June 2015.

2. As a result, the OECD Secretariat conducted a Questionnaire on Market Studies (the “Questionnaire”), which was sent to members, associates and participants in the OECD Competition Committee in June 2015. Furthermore, a Call for Contributions for the session on market studies at the 2016 Global Forum on Competition invited all jurisdictions that had not yet replied the Questionnaire to do so. The Secretariat received responses and updated documents from 62 authorities, representing 59 jurisdictions<sup>1</sup>.

3. Since Chile’s TDLC, as well as the competition authority from New Zealand do not possess powers to conduct market studies, their replies have not been considered in the analysis below<sup>2</sup>. As a result, a total of 60 authorities, consisting of 59 competition authorities and Costa Rica’s SUTEL (the telecommunications regulator), have been analysed. These respondents will be collectively referred below as “competition authorities” or “CAs”.

4. A specific questionnaire on market investigations, which covered similar issues as the Market Studies questionnaire, was sent to the 3 competition authorities that currently have powers to perform market investigations: CA’s from the UK, Mexico and Iceland. All three answered the questionnaire.

5. The present note (the “Note”) summarises the responses to both the Market Studies Questionnaire and the Market Investigations Questionnaire received by the OECD Secretariat. It is structured as follows:

6. **Section 1** looks at what different CAs mean by “market studies” and the goals pursued through the use of this tool. In addition, this section clarifies how market studies differ from enforcement initiatives.

7. **Section 2** focuses on a comparative analysis of the legal powers granted to competition authorities for carrying out market studies.

8. The institutional setting is addressed in **Section 3** with a particular focus on the level of independence of competition authorities *vis-à-vis* other governmental authorities when deciding which sectors, industries or markets to review. This section also includes an analysis of whether or not market studies are carried out by specialised departments within the competition authorities separate from the ones responsible for competition enforcement.

9. **Section 4** analyses the powers to collect and use the information obtained in the course of a market study, with a view to assessing differences of treatment between confidential and non-confidential information and to determine to what extent this information can then be reused in eventual follow-on enforcement activities.

10. **Section 5** addresses market investigations, as adopted by Mexico, the UK and Iceland. The aim of this section is to explain clearly the purpose of market investigations, their differences and complementarity in relation to market studies.

11. **Section 6** provides examples of factors that have led to successful market studies, as well as discusses the challenges faced by CAs when carrying out market studies, including concerns expressed by stakeholders<sup>3</sup>.

12. Finally, the **Conclusion** provides suggestions on further work that the OECD Competition Committee could undertake in the area of market studies.

## 1. Market Studies - Definitions, Goals and Potential Outcomes

13. Competition authorities define market studies in different and often fluid ways. The term ‘market studies’ is usually not legally defined; in most answers to the Questionnaire only informal definitions have been provided by competition authorities.

14. The term ‘market studies’ has been interpreted in this Note to comprise a variety of instruments used in various jurisdictions featuring similar characteristics, such as **sector inquiries** (EU and a number of its member states), **market inquiries** (South Africa), **analysis of the competitive situation** (Estonia), **fact-finding inquiries** (Italy); **fact-finding surveys** (Japan) and **general studies** (U.S. DOJ) among others.

15. Variations concerning market studies are not restricted to terminology. They concern also procedures, outcomes, scope, powers of the competition authorities, and institutional design. For example, market studies may rely on information obtained through compulsory and formal procedures, or they may be based entirely on information voluntarily collected through more informal means, such as workshops, hearings and voluntary information requests. Market studies may use a combination of formal and informal approaches.

16. Respondents provided their definitions of market studies in terms of the legal powers enjoyed by competition authorities to carry them out, procedural characteristics, institutional design, goals and potential outcomes. These definitions have been categorized based on their **descriptions**, **goals** and potential **outcomes**, for a better understanding of the different ways in which jurisdictions interpret the concept of market studies and use them.

17. Replies provided by competition authorities reveal that market studies refer, at a minimum, to assessments of market structures, or economic and competitive conditions in a given sector.

18. Market studies involve the collection and analysis of data and information that mainly contributes to advocacy efforts, enforcement actions, market knowledge and ex-post evaluations of the impact of policy interventions. As a result, main outcomes derived from market studies are recommendations to governments for changes to laws, regulations or public policies, recommendations to competition law enforcement interventions and recommendations to a sector regulator for action in the market.

### 1.1. Definition and Description of Market Studies

19. The Questionnaire replies indicate a general consensus among competition authorities that market studies have a wider scope than enforcement actions. While the latter focuses on specific enterprises which have allegedly infringed competition law; market studies take a broader view and analyse the structure of markets or economic sectors. The analysis is used to identify restraints to competition which are not limited to behaviours prohibited by competition laws (such as abuses of dominance/monopolization, cartels and other anti-competitive agreements).

20. Nonetheless, there are significant differences in the ways in which market studies are **described** in different jurisdictions. Specifically, market studies have been defined by competition authorities as:

- studies of specific markets or economic sectors (e.g. Chile's FNE<sup>4</sup>, South Africa<sup>5</sup>, Estonia<sup>6</sup>, El Salvador<sup>7</sup>);
- studies of the competitive conditions in a market (e.g. Australia<sup>8</sup>, Canada<sup>9</sup>, Finland<sup>10</sup>, Mexico<sup>11</sup>, Sweden<sup>12</sup>, Turkey<sup>13</sup>, Zambia<sup>14</sup>, Singapore<sup>15</sup>, Hong Kong (China)<sup>16</sup>, Argentina<sup>17</sup> and Serbia<sup>18</sup>);
- fact-finding surveys (Japan<sup>19</sup>);
- inquiries to assess signs of distortion or restriction of competition (EU<sup>20</sup>, Czech Republic<sup>21</sup>, Hungary, Malta, Slovenia);
- “industry survey, and economic analysis” (Chinese Taipei);
- “examinations into causes of why particular markets may not be working well, taking an overview of regulatory and other economic drivers and patterns of consumer and business behaviour” (UK);
- “a source of information and the possibility of a deeper insight into the functioning of concrete market and is as such, if an unlawful conduct is detected, the basis for the initiation of proceedings” (Croatia);
- “an in-depth analysis conducted by the Competition Authority on Spanish markets with the objective to gain a thorough understanding of how sectors, markets, or market practices are working”(Spain);
- any studies into a market that relate to the functions pursued by the competition authority (Ireland<sup>22</sup>, U.S. FTC<sup>23</sup> and the Netherlands<sup>24</sup>).

## *1.2. Goals*

21. In addition to differences in definitions of market studies, there are also distinctions regarding the **goals** of market studies. These can be classified in four major groups: **advocacy**, **pre-enforcement**, **information gathering**, and **ex-post assessment**.

**Box 1. Primary Reasons for Competition Authorities to Conduct Market Studies**

<b>Goal</b>	<b>Description</b>	<b>% of Competition Authorities</b>
Advocacy	a) when a market/sector is not working well for consumers but there is no suspicion of a violation of competition law	72%
	e) in preparation for intervention in the legislative process (i.e. modify or abolish laws or regulations that affect competition)	57%
	f) to support and provide evidence for competition advocacy initiatives (except intervention covered by answer e) above)	65%
Pre-Enforcement	b) when a market/sector is not functioning well for consumers, but more investigation needed to deciding whether to initiate enforcement action	70%
	d) to support or provide evidence for enforcement action	47%
Information Gathering	c) to assess the state of competition in a market/sector, even if no specific competition problem has been identified	67%
	h) to enhance knowledge of a sector or a market	60%
Ex-Post Assessment	g) for an ex –post assessment on the impact of the introduction, modification or elimination of a governmental policy, law or regulation on a market.	53%
Other	i) N/A / Other	3%

22. Most surveyed authorities indicated that they often resort to market studies for multiple purposes.<sup>25</sup> The Republic of Moldova and Costa Rica’s COPROCOM are the only authorities that indicate that pursue market studies for one single purpose<sup>26</sup>.

23. Seventy-two percent of the authorities undertake a market study when a market/sector is not working well for consumers but there is no suspicion of a violation of competition law. In contrast, 70% of authorities pursue a market study when a market/sector is not working well for consumers but more investigation is needed to deciding whether to initiate an enforcement action. These two main different reasons are not mutually exclusive.

24. Most authorities that pursue market studies do so to gain an in-depth understanding of how sectors, markets, or market practices work. Authorities that stated that enhancing knowledge of a sector or market is one of the main goals for which market studies are pursued can be found in all continents<sup>27</sup>.

25. In most jurisdictions, the decision of competition authorities to pursue a market study is in response to indications that there may be competition issues or market failures in the sector being studied<sup>28</sup>.

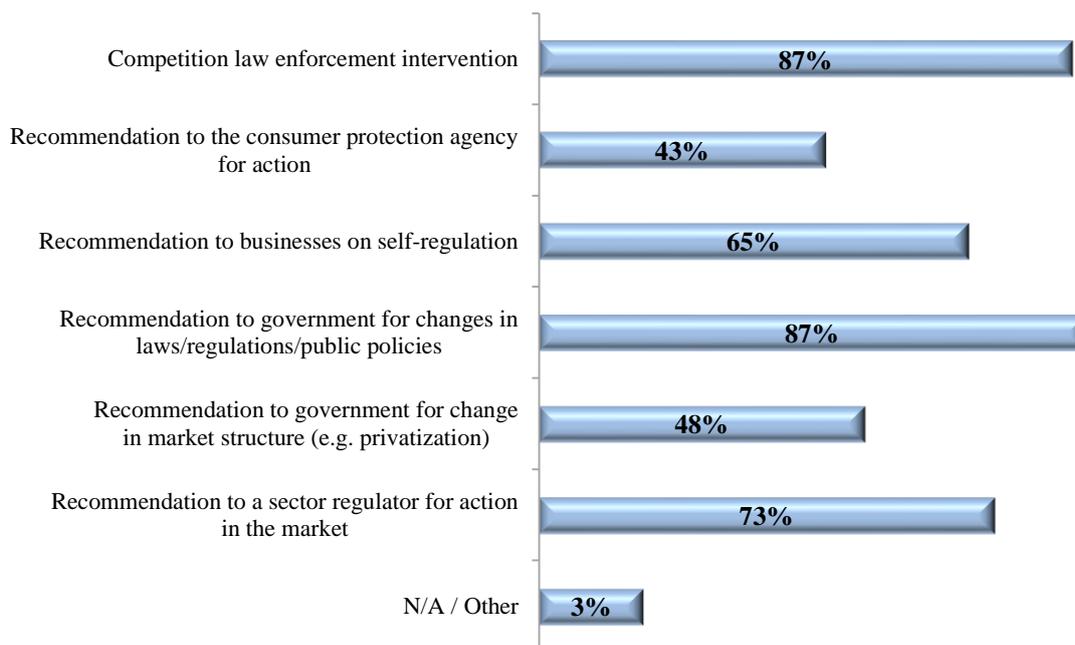
However, competition authorities in other jurisdictions seem to be able to pursue market studies to gain market insights even when there is no indication of competition issues.<sup>29</sup>

26. Competition authorities in a few jurisdictions have identified additional goals in conducting market studies. The Russian Federation includes the assessment of compulsory divestitures of commercial and non-commercial organisations engaged in entrepreneurial activities. South Africa carries out market studies taking into account public interest considerations<sup>30</sup>. Spain has used market studies as a tool to dissuade anticompetitive conducts, identifying cases in which the publication of market studies is considered by the authority as a potentially effective alternative to enforcement actions.

**1.3. Potential Outcomes**

27. The way in which authorities conceive market studies is directly linked to their potential **outcomes**. Competition law enforcement interventions and recommendations to governments for changes to laws, regulations or public policies, are the primary outcomes expected from market studies, as shown in Figure 1.

**Figure 1. Potential outcomes of Market Studies**



28. The UK CA identified several alternative potential outcomes for market studies: market investigations (as discussed in Section 5 below) and the acceptance of undertakings from parties in lieu of making a market investigation reference. The UK reported that the benefits of this approach include the removal of regulatory uncertainty and the promotion of consumer confidence.

29. The Icelandic CA carried out market studies to select markets that it will prioritise for enforcement investigations. In Israel, market studies can also be subsequent to enforcement actions, in cases where investigations raise suspicions of market failures that go beyond individual firms.

## **2. Powers to Perform Market Studies**

### ***2.1. Powers to Perform Market Studies by Competition Authorities***

30. The majority of surveyed competition authorities that conduct market studies enjoy specific powers for that purpose (68%)<sup>31</sup>. Only 26%<sup>32</sup> of the respondents perform market studies under their general powers to protect and foster competition, which they interpret as including powers to conduct market studies. 3% do not have powers to perform market studies.<sup>33</sup>

### ***2.2. Powers by other Public Bodies to Carry out Market Studies***

31. In several jurisdictions, competition authorities share the power to conduct market studies with other governmental bodies. Hungary, for example, reports that the Media Council of the National Media and Info Communications Authority may initiate a market study when price changes or other market conditions suggest that there might be a competition issue in the media services.

32. In Mexico, the competition authority (COFECE) does not possess powers to carry out market studies in the telecommunications and broadcasting sectors, which are exclusively attributed to the Federal Institute for Telecommunications (IFT). The same happens in Costa Rica and in Peru.

33. In Argentina; Croatia; Hong Kong (China) and Zambia, sector regulators may undertake market studies in their specific sectors.

34. Other governmental bodies have powers to collect and analyse data with respect to a particular sector, but are not specifically focused on assessing competition within that sector. A number of jurisdictions refer to such studies as market studies, taken in a broad sense; however, the OECD Secretariat has only considered those studies that take into account competition concerns for the purposes of this Note. Nonetheless, the analysis carried out by other governmental bodies in their studies can be of great value for competition authorities to understand the dynamics of specific sectors and assess their implications from the standpoint of competition.

35. The 30 jurisdictions listed in Table 1 reported powers by other public bodies to carry out market studies in a broad sense, that is, whether competition issues are addressed or not.

**Table 1. Powers by other public bodies to carry out market studies in a broad sense (i.e. not necessarily addressing competition issues)**

<b>Jurisdiction</b>	<b>Other public bodies (non-exhaustive list)</b>
<b>Argentina</b>	Sector regulators
<b>Australia</b>	Productivity Commission, Australian Energy Regulator, The Bureau of Infrastructure, Transport and Regional Economics, State-government bodies
<b>Belgium</b>	Price Observatory
<b>Brazil</b>	Secretariat for Economic Monitoring (SEAE), Institute for Applied Economic Research (IPEA) and Brazilian Institute of Geography and Statistics (IBGE), among others
<b>Bulgaria</b>	Communications Regulation Commission (CRC)
<b>Chinese Taipei</b>	Directorate-General of Budget, Accounting and Statistics (DGAS), National Communications Commission and Financial Supervisory Commission, among others
<b>Colombia</b>	Energy and Gas Regulator (CREG), Communication Regulator (CRC); Television Agency (ANTV) and Airplane Regulator (Aeronautica Civil), among others
<b>Costa Rica's COPROCOM</b>	Telecommunications authority (SUTEL), Ministry of Economy , Industry and Commerce
<b>Croatia</b>	Sector regulators
<b>Czech Republic</b>	Telecommunication Office and Energy Regulatory Office, among others
<b>EU</b>	Other DGs and the National Economic Prosecutor's Office
<b>France</b>	General Inspectorate for Social Affairs, among other administrative bodies
<b>Hong Kong (China)</b>	Sector regulators
<b>Iceland</b>	Post and Telecom Administration
<b>Italy</b>	Sector regulators such as for energy, telecommunications, transport, banking and insurance
<b>Latvia</b>	Consumer Rights Protection Centre, State Revenue Service, State Audit Office, Health Inspectorate and Public Utilities Commission, among others
<b>Mexico</b>	Federal Institute for Telecommunications (IFT)
<b>Netherlands</b>	Financial regulator, healthcare regulator
<b>Peru</b>	<b>Organismo Supervisor de la Inversión Privada en Telecomunicaciones (telecom regulator)</b>
<b>Poland</b>	Office of Electronic Communications and Civil Aviation Office
<b>Portugal</b>	Sector regulators, among others
<b>Ireland</b>	Sector regulators, among others
<b>Slovak Republic</b>	Regulation Authority for Electronic Communications and Postal Services, Regulation Office for Network Industries
<b>South Africa</b>	Independent Communications Authority of South Africa and the National Energy Regulator, among other sector regulators
<b>Spain</b>	Spanish Central Bank and the Financial Markets Regulator (CNMV)
<b>Sweden</b>	Sector regulators, such as the Swedish Transport Agency (implicit powers), Energy Markets Inspectorate (explicit powers), Post and Telecom Authority
<b>Turkey</b>	Federal Energy Regulatory Commission and other regulatory agencies with powers to carry out market studies granted by statute
<b>UK</b>	Railway, telecommunications, broadcasting and other regulators
<b>U.S.</b>	Any governmental body with powers to carry out market studies granted by law
<b>Zambia</b>	Sector regulators

### **3. Institutional Setting**

#### **3.1. *Level of Independence of Competition Authorities in Prioritising Market Studies***

36. The Questionnaire also explored the level of independence of competition authorities in selecting which market studies they wish to carry out. Respondents were asked: 1) can competition authorities receive requests from other public bodies; and, 2) do competition authorities have the discretion to accept or refuse such requests.

37. Almost half of the competition authorities (27<sup>34</sup>, i.e. 45%) declared that they have accepted or could accept requests to carry out market studies from other governmental bodies, consisting, amongst others, of: the Ministry of Trade, Industry and Fisheries (Norway); the Ministry of Economic Development (Italy) or any governmental body (Estonia, the Netherlands, Mexico, Bulgaria; Colombia). On the other hand, 27 authorities (i.e. 45%) responded that other parts of the government could not submit requests for CAs to carry out market studies.

38. Out of the 27 authorities<sup>35</sup> that have accepted or could accept requests from other public bodies, 10<sup>36</sup> cannot refuse them. The remaining authorities indicated that they may refuse these requests, although refusals in some circumstances are possible only under certain conditions. In the case of the latter, requests can be prioritised according to, for examples, internal criteria (Peru), resource constraints (Norway), enforcement priorities by the competition authority (Belgium), absence of a Presidential Executive Order or specific legislative mandate (U.S. DOJ), or absence of a statutory mandate (U.S. FTC).

#### **3.2. *Structure for Carrying out Market Studies***

39. Competition authorities have adopted different institutional structures when it comes to the structure of the teams in charge of market studies. Almost the half of authorities (28<sup>37</sup>, i.e. 47%) resorts to ad-hoc teams, formed by members of staff from across the authority and chosen on a case-by-case basis, according to the specific markets or sectors to be studied. Teams can include a mix of lawyers and economists. Staff can be drawn from the enforcement, economic studies, advocacy or other departments within the authority. This approach benefits from a combination of skills and backgrounds. 11 of these authorities reported using both ad-hoc teams and specialized departments or task forces to carry out market studies.<sup>38</sup>

40. In addition to ad-hoc internal teams, a few competition authorities reported co-operating with staff from other public bodies for studies in which their expertise may be relevant. Specifically, these cross-body teams have been formed between the US DOJ and US FTC; the US DOJ and the Department of Agriculture. The Australian competition authority and Australian Energy Regulator have worked together on the wholesale gas market inquiry, which also included secondees from the Department of Industry.

41. 6 authorities draw their market study teams from enforcement staff alone.<sup>39</sup> Other authorities (22) have separate staff and department(s) in charge of market studies and in some cases of enforcement activities.<sup>40</sup> Some authorities use both ad-hoc teams and specialized departments or task forces to carry out market studies<sup>41</sup>. Finally, in addition to the structures described above, 11 competition authorities have outsourced market studies or a part of it to external consultants with expertise in specific markets or sectors.<sup>42</sup>

### **4. Powers to Collect and use Information Obtained in the Course of Market Studies**

42. As noted above, conclusions arising from market studies may justify follow-up advocacy and enforcement initiatives. The questionnaire sought to clarify the extent to which competition authorities have powers to request information from private and public stakeholders for market studies and to use this information for other purposes, specifically:

- Do they have powers to request information?
- Can they impose sanctions for non-compliance?
- Are these powers expressly granted by law?
- What is the extent of these powers?
- Is there a difference in the treatment of confidential vis-à-vis non-confidential information?
- Can information be re-used in follow-on enforcement actions?
- Are there legal provisions to ensure that adequate procedural fairness is adopted in the use of this information?

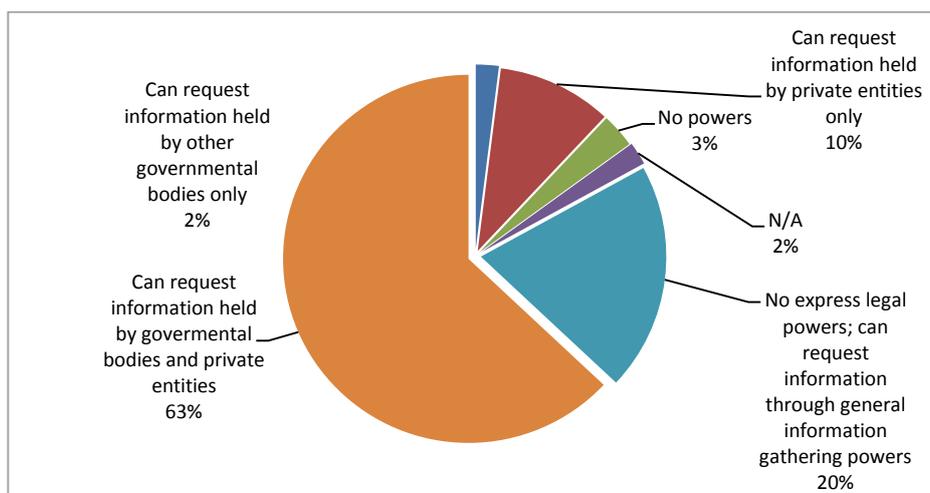
43. The answers to these questions are discussed in detail below.

**4.1. Legal Powers to Request Information**

44. The survey asked about the legal powers held by competition authorities to request information from public and private stakeholders, regardless of whether a response by stakeholders to such requests is mandatory or not. Out of the 60 competition authorities entitled to carry out market studies, all except the US DOJ and Hong Kong (China) enjoy some sort of power to request information<sup>43</sup>. These powers are either specifically granted by law for that purpose (75% - 45 authorities<sup>44</sup>) or the requests are based on generic legal powers held by CAs for information gathering (20% - 12 authorities<sup>45</sup>).

45. As shown in Figure 3 below, authorities that have specific powers to request information to both private and public stakeholders represent 63% of respondents (38 authorities<sup>46</sup>), whereas 10% (6 competition authorities<sup>47</sup>) have powers to request information only from private parties. The Chilean FNE is the only authority which reported having specific powers to request information only from other governmental bodies.

**Figure 2. Information Request Powers Reported by Authorities**



46. The Irish competition authority appears to enjoy particularly extensive powers to request information: it can summon witnesses; have witnesses examined on oath by any authorised staff member; and the authority can request witnesses to produce documents, records and provide written information upon request. The Italian authority reported the ability to request expert testimonies, consult experts and order inspections when conducting market studies.

#### **4.2. Powers to Impose Sanctions**

47. The extent to which competition authorities can compel stakeholders' responses to information requests is subject to the existence of legal provisions granting competition authorities the power to impose sanctions for non-compliance, either directly or upon requests to courts.

48. Out of 60 competition authorities, 38 have powers to impose sanction directly<sup>48</sup>; 10 authorities must resort to courts to compel compliance<sup>49</sup>; 5 lack powers to impose any sanctions should stakeholders not comply with their requests to provide information<sup>50</sup>; one jurisdiction did not state its position; and 6 replied N/A.<sup>51</sup>

49. Answers to the Questionnaire reveal a parallel between the absence of specific powers to request information for the purposes of market studies and the lack of sanctions in case of non-compliance. Out of the twelve competition authorities that request information by resorting to more general information gathering powers, six cannot impose sanctions,<sup>52</sup> five can impose sanctions directly<sup>53</sup> and only Singapore must resort to courts to request sanctions. Conversely, out of the 45 competition authorities<sup>54</sup> that have express powers to request information, only the Italian and the Croatian competition authorities indicated that cannot impose sanctions for non-compliance.

50. When authorities have no powers to enforce compliance of a request of information, they need to rely on the willingness of stakeholders to provide information on a voluntary basis.

51. The fact that authorities are granted specific powers to enforce compliance does not always mean that they resort to them immediately. For example, Israel can legally demand information held by private entities, but generally only requests information held by government bodies. Japan clarified that it initially seeks to obtain information from stakeholders on a voluntary basis, resorting to sanctions (through courts) only in situations when the information is not forthcoming and is required for the market studies to accomplish their objectives. The US and UK behave in a similar manner.

52. The powers to impose sanctions can also be classified based on the targets for the fines. Among the competition authorities with powers to impose sanctions (48 authorities, i.e. 80% of the respondents), independently or by resorting to courts, 23 authorities can impose sanctions only on private parties. Chile's FNE can impose sanction only to governmental bodies, 3 authorities replied N/A<sup>55</sup> and the remaining 21 authorities<sup>56</sup> can impose sanctions on both private and public stakeholders.

#### **4.3. Protection of Confidential and Non-Confidential Information**

53. Respondents to the survey, with the exception of Costa Rica's SUTEL, reported having standard procedures or rules in place to protect confidential information provided by stakeholders in the course of a market study<sup>57</sup>. The competition authorities in Mexico and Brazil determine whether information claimed by stakeholders to be confidential should be treated as such.

54. Of those authorities that protect confidential information, 26 (or 43% of all respondents) also protect non-confidential information. However in some cases there are exceptions to the protection of non-confidential information. In Canada, for example, all information provided voluntarily or pursuant to certain sections of the Act, as well as the identity of the person who provided the information, are treated

as confidential, but the protection afforded to confidential information is subject to exceptions: it can be disclosed to a Canadian law enforcement agency or for the purposes of the administration or enforcement of the Competition Act. These exceptions are not, however, applicable to information that has been made public or whose release has been agreed by the party who has provided it.

**Figure 3. Protection offered by Authorities for Information Collected for Market Studies**



55. In most cases (46, i.e. 77%)<sup>58</sup>, competition authorities that offer protection of confidential information make no distinction between the protection offered in the context of enforcement proceedings or of a market study.

56. A few authorities (8, i.e. 13%)<sup>59</sup> have declared that there are distinctions between the protection provided within an enforcement action and that provided in the context of a market study. Both in Italy and Romania, confidential information receives greater protection in market studies vis-à-vis enforcement actions, as it is considered that, as a rule, disclosures in market study procedures do not affect rights of defence by other parties. In Romania, the disclosure of confidential information may be authorized in enforcement actions under two circumstances: a) upon request by other parties for the purpose of exercising the right of defence, or b) for use as evidence of an infringement.

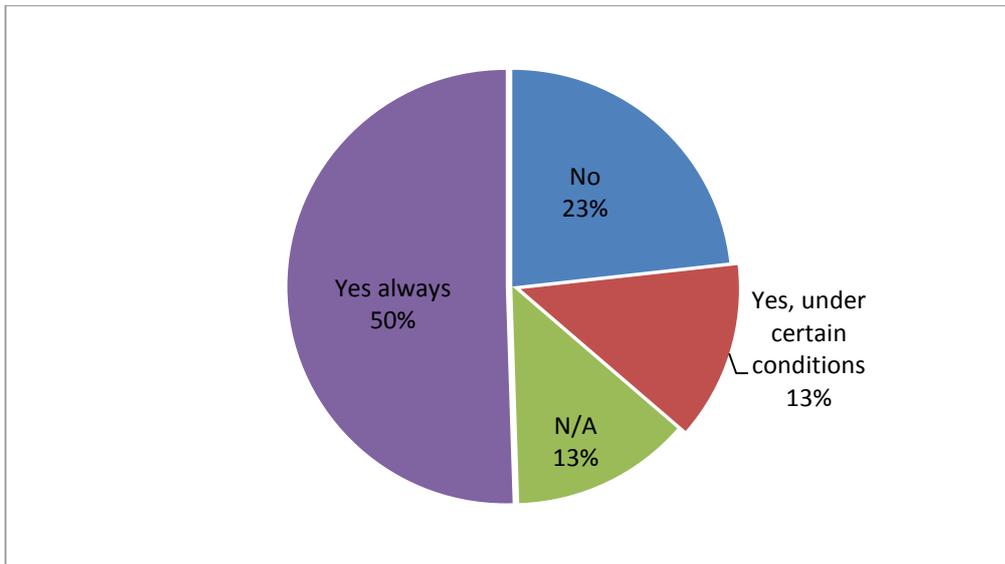
57. Israel and Italy report a difference in the treatment of non-confidential information for the purposes of market studies in comparison to enforcement actions. Evidence (whether it relates to confidential or to non-confidential information) enjoys higher protection under market studies than under enforcement actions, and as a result all evidence gathered in the course of market studies cannot be accessed during or after the completion of the study. Nevertheless, relevant non-confidential information may be quoted and used in the final report published by the Italian competition authority at the conclusion of the market studies. Israel stated that there are differences between information collected through criminal procedures and information collected through other civil/administrative procedures.

58. The majority of respondents confirmed the ability, at least in some circumstances, to use confidential information obtained in the course of market studies as evidence for subsequent enforcement actions (38 authorities, i.e. 63%).<sup>60</sup> Half of the authorities surveyed do not place any conditions on the use of confidential information obtained during market studies for enforcement purposes (30 authorities, i.e. 50%).<sup>61</sup>

59. Others (8 authorities) noted that certain conditions apply before they can use confidential information collected for the purpose of a market study in an enforcement action:

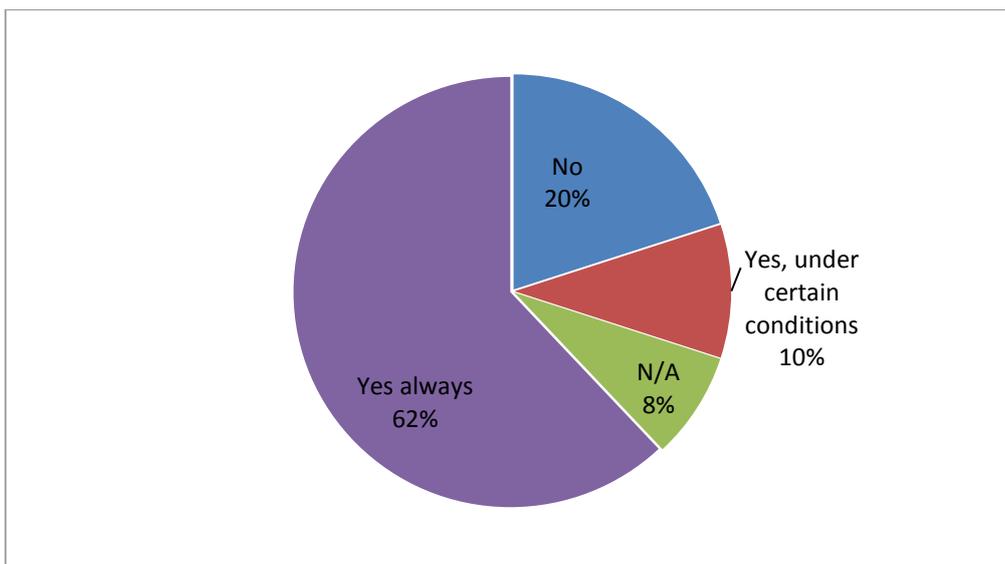
- The United Kingdom makes an assessment on a case-by-case basis, weighing factors that include the terms upon which the information has been received and its intended use.
- Portugal can use confidential information obtained in the course of a market study, as long as it informs those providing the information of that possibility in the original request.
- Netherlands has a similar practice to Portugal and in addition, information must be considered as “necessary” to justify its use in enforcement actions.
- In Indonesia, only processed/ statistical data (e.g. percentages or averages) can be used in enforcement actions.
- Romania uses confidential information obtained in the course of a market study as evidence to begin infringement procedures, but must request the information again during the enforcement process in order to use it as evidence.
- Although not required by law, Japan voluntarily precludes the possibility of using confidential information for purposes other than market studies.
- The U.S. FTC, although not prohibited, does not typically make use of confidential information obtained in the course of a market study for enforcement action(s), as it believes that this approach enhances incentives for stakeholders to co-operate in market studies.
- Pakistan can use confidential information obtained for the purpose of a market study if deemed appropriate in cases of abuse of dominance or anticompetitive agreements.

**Figure 4. Competition Authority use of Confidential Information for Enforcement Action**



60. Shown in Figure 5, the number of authorities using non-confidential information in subsequent enforcement actions (43 in total<sup>62</sup>, i.e. 72%, although 6 authorities<sup>63</sup> reported some restrictions) exceeds the number of authorities using confidential information in enforcement actions. Most authorities that apply conditions to the use of non-confidential information use the same conditions applied to confidential information. The Italian authority informs interested parties of the subsequent use of their non-confidential information in enforcement actions, providing them with the possibility of making requests for the protection of those documents as confidential. Other authorities do not differentiate between confidential and non-confidential information. In Sweden, for example, there is no restriction on the use of confidential and non-confidential information obtained by the competition authority during a market study for a subsequent enforcement procedure.

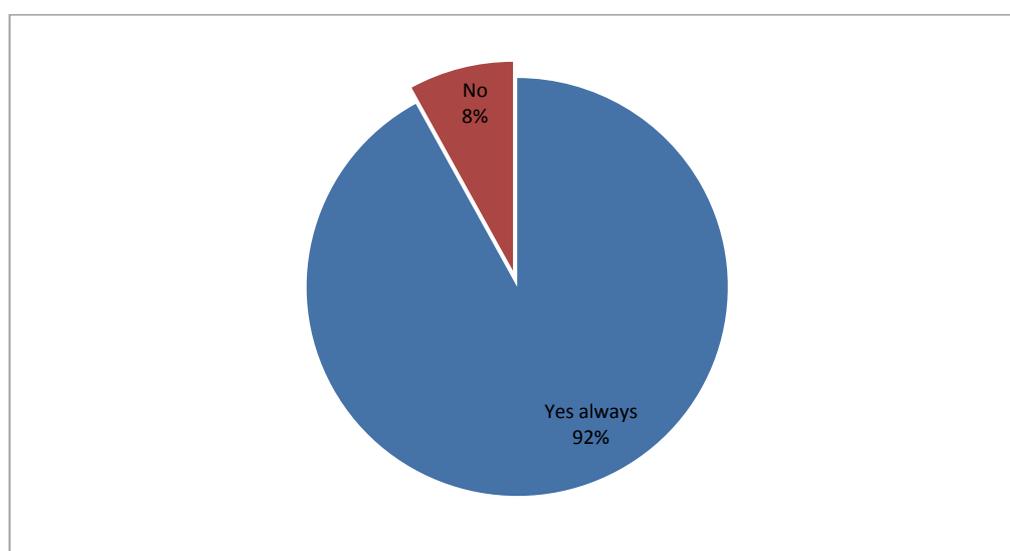
**Figure 5. Competition Authority use of Non- Confidential Information for Enforcement Actions**



61. Due process principles are also relevant for the protection of confidential information provided by stakeholders in the course of market studies. These may include rules and procedures clarifying the intended use of such information, or allowing stakeholders to be heard, before competition authorities, to determine whether to disclose confidential information. Due process provides guarantees that might enhance incentives to provide relevant information in the course of a market study.

62. Among the 38 competition authorities permitted to make use of confidential information initially obtained for purposes of a market study for subsequent enforcement actions, 35 i.e. 92% apply due process principles. Estonia indicated that, although not specified in their legislation, they would obtain input from the relevant stakeholders before deciding on whether to disclose confidential information.

**Figure 6. Application of Due Process Protections when Confidential Information is used to for Enforcement Actions**



63. Five authorities<sup>64</sup> apply different due process safeguards depending on whether the confidential information was originally obtained for the purposes of market studies or for enforcement actions. India, for example, applies due process only to enforcement actions. Belgium restricts the use of confidential information obtained for a specific enforcement action only to that action, whereas such a limitation does not apply to information obtained for market studies. In Sweden, although due process is regulated by different laws when applied to market studies compared to enforcement actions, the level of protection is fairly similar under each law, with one notable exception: protection from self-incrimination is only applicable to information obtained for purposes of enforcement actions, and not for market studies.

## 5. Market Investigations

64. Alongside market studies, authorities in three jurisdictions (Iceland, Mexico and the UK) make use of market investigations and were sent a questionnaire specific to this instrument. To facilitate an understanding of the difference between market studies and market investigations, the key characteristics of the latter are summarised below.

### 5.1. Definition

65. Similar to market studies, market investigations are not limited to the analysis of the individual behaviour of firms: they take into account competition conditions in markets or sectors, so as to detect causes of competition distortions, whether behavioural or structural. A major distinction between market

studies and market investigations lies in the enforceability of remedies: market studies are not enforcement mechanisms by themselves, whereas market investigations allow authorities to impose remedies in cases where competition issues are identified. Market investigations might follow from market studies, but the latter are not a prerequisite for conducting the former.

66. Among the three jurisdictions that conduct market investigations, there are differences in how the instrument is applied, as well as in the relevant powers and procedures. These differences will be explained below to provide an overview of the context within which market investigations are used.

67. The UK CA defines market investigations as “detailed examinations into whether there is an Adverse Effect on Competition in the market(s) for the goods or services referred.” The authority emphasizes the role of market investigations in assessing the effectiveness of competition in a market as a whole, rather than a single aspect or particular firms within it. The broad scope of these exercises permits investigation into the presence of adverse effects on competition beyond the conduct of firms, including structural aspects of the market (such as barriers to entry) and the conduct of customers.

68. In Mexican law, market investigations conducted by the CA are defined as special investigation procedures aimed at detecting essential facilities or barriers to competition.

69. The Icelandic CA indicated that market investigations are inquiries in response to indications that circumstances, firms or conducts prevent, limit or affect competition in the market to the detriment of the public interest.

## **5.2. *Legislative Powers***

70. The UK CA possesses explicit legal powers to conduct market investigations. In the event it finds adverse effects on competition, it is required by statute to respond in a proportionate way using the measures available to it, including powers to make orders to remedy, mitigate or prevent adverse impacts on competition, accept undertakings from industry participants or recommend action on the part of other public entities. In the latter case, the recommendations are not binding on the public entity that receives them, although the UK Government has committed to responding to recommendations within 90 days.

71. The Mexican CA conducts market investigations under its powers to order actions to eliminate barriers to competition and ensure free market access, to determine the existence of and regulate access to essential facilities, and to order divestitures that will eliminate anticompetitive effects. The authority notes that its ability to make orders during market investigations is the same as its powers with respect to cartel and abuse of dominance investigations. The CA is also permitted to make recommendations to other public entities regarding legal barriers to free markets through a resolution that must be published.

72. In Iceland, the CA undertakes market investigations based on its authority in the Competition Act to take measures against circumstances or conduct which prevent, limit or affect competition to the detriment of the public interest. This includes conduct that is not explicitly banned by the competition act. Possible responses to market investigation findings that are available to the Icelandic CA include remedies to firm conduct or structure, remedies to the conduct of public bodies, further investigation and the issuance of recommendations.

## **5.3. *Differences between Market Investigations and other Market Studies***

73. Unlike market investigations, market studies undertaken by the UK CA are examinations into the causes of why particular markets may not be working well and can provide a range of useful findings and useful information to understand a sector, a cross –market practice or a particular set of issues. Including the extent to which these issues impact consumers and whether steps can be made to remedy, mitigate or

prevent them. Market studies can propose potential remedies like recommendations for regulatory changes or agreements to suppliers to change practices among many others but cannot lead to remedy orders issued by the CA. However, market studies can trigger a market investigation (within 6 months of their completion) which can then result in remedy orders.

74. Market studies conducted by the Icelandic CA can have several purposes and, as in the UK, may trigger a market investigation. Specifically, market studies can be used for internal case prioritisation, pointing out actions of firms or government that are harming competition along with possible solutions, or a pre-analysis for deciding whether to undertake a market investigation. Similar to the UK CA, market studies conducted by the Icelandic CA do not involve the issuance of remedy orders, whereas orders can be made pursuant to market investigations.

75. The Mexican CA considers market investigations to be a tool for conducting enforcement investigations, while it considers market studies to be an advocacy tool that do not pursue an enforcement objective.

76. Notwithstanding the significant differences in the way these authorities define and use market investigations as compared to market studies, it appears that some of the basic elements are similar. Table 2 below compares the key features of market studies (based on the survey results summarized above) with the key features of market investigations.

Table 2: A comparison between market investigations and market studies

Feature	Iceland CA		Mexico CA		UK CA	
	Invest.	Study	Invest.	Study	Invest.	Study
<b>Express legal powers to conduct study/investigation</b> ( <i>E: express power, G: general power</i> )	G	E	E	E	E	E
<b>Express legal powers to request information</b> ( <i>G: public bodies, P = private entities</i> )	G,P	G,P	G,P	G,P	G,P	G,P
<b>Ability to directly impose sanctions by authority in event of non-compliance with information requests</b> ( <i>G: public bodies, P = private entities</i> )	G,P	G,P	P	P	G,P	G,P
<b>Protection of confidential information</b>	Yes	Yes	Yes	Yes	Yes	Yes
<b>Protection of non-confidential information</b>	No	No	Yes <sup>65</sup>	Yes	No	No
<b>Protection of confidential information differs from enforcement protections?</b>	No	No	No	No	No	No
<b>Protection of non-confidential information differs from enforcement protections?</b>	No	No	Yes	No	No	No
<b>Use of confidential information from study/investigation for enforcement?</b>	Yes	Yes	No	No	In some cases <sup>66</sup>	In some cases <sup>67</sup>
<b>Use of non-confidential information from study/investigation for enforcement?</b>	Yes	Yes	Yes	Yes	In some cases <sup>68</sup>	In some cases <sup>69</sup>
<b>Due process protections for use of study/investigation information in enforcement actions?</b>	Yes	Yes	N/A	N/A	Yes	Yes
<b>Mandatory to comply with request of other public bodies to conduct study/investigation?</b>	No	No	In some cases <sup>70</sup>	In some cases <sup>71</sup>	Yes	No

#### 5.4 Other Market Investigation Features Reported by Respondents

77. The UK CA's market investigations are conducted by a team of authority officers under the overall direction of a panel of 3 to 5 professionals (for example, economists, lawyers, accountants or business people). The authority reported that this approach provides for the independence of the team from the CA, the government and other public entities, which ensures the independence of its conclusions since they may touch upon the conduct of public entities.

78. The UK CA's market investigations are also subject to certain rules of procedure to meet statutory time limits, use parties' resources effectively and ensure a thorough, disciplined, transparent and fair process. The authority indicated that fairness requirements include providing market participants with the opportunity to understand how the authority's investigation is affecting them, and requiring the consultation of stakeholders on the part of the authority prior to finalizing any decision or finding<sup>72</sup>.

## 6. Successes and Challenges

### 6.1. Factors Leading to Success

79. Feedback received from the Questionnaire regarding elements that favoured the success of market studies generally revolved around two themes: 1) the definition of the purpose and goals of the market studies; and, 2) the involvement of stakeholders in their preparation.

80. Many respondents discussed the role that a clearly defined purpose for market studies played in their success. The German and UK CAs, for instance, emphasized the need for a clear rationale and a well-defined goal prior to initiating market studies. The Italian CA indicated that a formal cost/benefit analysis should be used to ensure effective focus and avoid a waste of resources.

81. For other competition authorities, a broader approach to the scope of market studies has proved successful. In fact, the EU CA indicated that the broad scope of a sector inquiry in the financial services sector successfully facilitated the acquisition of organisational knowledge and helped inform priority-setting for further work in the sector. In the UK, the CA<sup>73</sup> has conducted market studies with a varying range of depth and which have accomplished a range of goals, including setting strategic objectives, enhancing organisational knowledge, supporting enforcement actions or discovering market issues warranting further investigation.

82. Beyond the articulation of clear objectives, stakeholders,<sup>7</sup> several authorities identified co-operation as a contributor to the success of market studies.<sup>74</sup> The French, Spanish and Ukrainian authorities indicated that input from a broad range of stakeholders has often been helpful. The UK competition authority reported a high degree of involvement of stakeholders could lead to a greater willingness to implement recommendations. The Brazilian competition authority recommends working with stakeholders to obtain data in order to maximize market study quality. Similarly, Chinese Taipei's authority indicated that a positive relationship and mutual trust with gas station owners led to a high response rate for surveys conducted in that sector. The Swedish CA involved the Board of Swedish Industry and Commerce for Better Regulation in the design of an industry survey before sending it to industry participants to ensure it reflected market realities. The Irish CA involved market participants to maximize the impact of market study recommendations.

83. The Mexican CA also identified sector regulators as important stakeholders for involvement in market studies, in terms of facilitating access to information and accepting recommendations.

84. Other factors in the success of market studies identified by respondents include the development of clear and concise recommendations to maximize the probability they will be adopted, as proposed by the Dutch CA.

### 6.2. Challenges and Obstacles

85. Many of the challenges experienced by competition authorities relate to: 1) resources, 2) data availability and 3) stakeholder co-operation.

86. Competition authorities in Germany, Indonesia, Lithuania the UK and the Russian Federation noted the resource-intensive nature of market studies. This has posed certain challenges in the Russian Federation with respect to meeting legislated timeframes for the consideration of enforcement action against certain market participants. However, as discussed above, the German and UK authorities have indicated that keeping to a clear and focused objective can prevent resources from being used ineffectively. While they pertain to market investigations and not market studies, it is interesting to note that the UK has developed clear rules to reduce the burden on the parties providing information to the authority.

87. Data collection challenges were another significant theme of the responses received. The lack of sufficient publicly-available data, leads to a reliance on information collected from market participants. However, the perception that market studies could be used as “fishing expeditions” and challenges related to the use of confidential data can make it difficult to rely on stakeholders’ co-operation. An inability to compel the production of data by market participants for the purposes of a market study was mentioned in the responses from authorities in Chile’s FNE, Chinese Taipei, Hong Kong (China) and the Slovak Republic. Croatia, Kazakhstan, Egypt and Bulgaria noted problems related to receiving incomplete or inaccurate data from market participants. Specifically, Bulgaria noted unwillingness on the part of government entities to share data due to legal restrictions. Timely co-operation was also identified as a problem faced by authorities in Italy, Japan (where firms fear the business impacts of sharing information), Malta, Peru, Zambia, Pakistan, Argentina and Turkey (where data retention can be an issue). In addition, the EU CA has experienced difficulties obtaining information from consumer groups due to data and resource constraints. In Spain, Sweden and the United States, information requests have led to litigation regarding the right of authorities to compel it, and disputes about the breadth of information requested. The Dutch CA identified restrictions on its ability to collect information with respect to the banking sector due to legislative limits as a constraint when studying this sector.

88. To mitigate some of these challenges, the Brazilian competition authority recommends negotiating with stakeholders before requesting information, as well as avoiding overly flexible information requests that can hamper comparability across market participants. The US FTC reports engaging into a cost/benefit analysis before sending out any information request (including those that may lead to litigation) to ensure that they are not too burdensome.

89. Authorities in Argentina, France, Estonia, Lithuania, the Netherlands, Peru, Republic of Moldova, Kazakhstan, Turkey and the UK identified decisions by their governments to reject the recommendations contained in market studies as a factor that limits the value of this instrument. The UK competition authority noted, however, that in its jurisdiction the government has committed to publicly explain its reasons for not adopting recommendations.

90. Respondents also identified other challenges. For example, the Ukrainian CA mentioned difficulties associated with the definition of the relevant market. The Italian CA noted that, in the past, overly broad or strong conclusions may have undermined subsequent enforcement actions, and therefore authorities should only provide cautious conclusions in market studies.

## 7. Conclusion

91. As shown in this Note, the Questionnaire has revealed a variety of approaches in dealing with market studies. This suggests that there could be scope for further work to better understand the differences between these approaches and their pros and cons.

92. The areas that were covered in the Questionnaire and that could be explored further include:

1. The categorisation of market studies according to their main purpose, which may include an overview of the triggers for each type of study and any variation in analytical methodologies according to the purpose;
2. An examination of the different legal frameworks for undertaking market studies;
3. An overview of the different powers held by CAs to collect and use information for market studies, and whether these powers may vary according to the purpose for which a study is undertaken. This overview could cover:
  - the powers to request information from private stakeholders;
  - the powers to request information from public stakeholders;
  - the type of protection afforded to confidential and non-confidential information (including how to determine if a piece of information should or should not be considered confidential);
  - the level of involvement of stakeholders in the design of conclusions and recommendations;
  - the powers to re-use information for follow-up enforcement action (as well as whether information collected during an investigation can be re-used in the context of a market study).
4. An analysis of the procedural safeguards available to protect the interest of stakeholders;
5. An overview of the various possible institutional design settings.

93. The above list is by no means meant to be exhaustive. It contains suggestions only for areas in which the Competition Committee may decide to undertake further work based on the results of the survey as presented in this Note.

94. It is also worth highlighting that the International Competition Network (ICN) has looked at market studies in the past and has developed a Good Practice Handbook, which identifies a number of good practices in conducting market studies that ICN members have found to be beneficial and effective.<sup>75</sup> The Handbook does not examine the purposes for which market studies are undertaken, nor does it explore the range and scope of legal powers associated with this instrument<sup>76</sup>. Hence, the areas suggested above cover new and different ground and would not lead to any overlap with the work of the ICN.

## END NOTES

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- <sup>1</sup> The 59 jurisdictions are: Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile (both the *Tribunal de Defensa de la Libre Competencia –TDLC* and the *Fiscalía Nacional Económica -FNE*), Chinese Taipei, Colombia, Costa Rica (both the *Comisión para Promover la Competencia -COPROCOM* and the *Superintendencia de Telecomunicaciones -SUTEL*, Croatia,, Czech Republic, Denmark, Egypt, El Salvador, Estonia, European Union -EU, Finland, France, Germany, Greece, Hong Kong (China), Hungary, Iceland, India, Indonesia, Israel, Italy, Japan, Kazakhstan, Latvia, Lithuania, Malta, Mexico, the Netherlands, New Zealand, Norway, Pakistan, Peru, Poland, Portugal, Ireland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Slovak Republic, Slovenia, South Africa, Serbia, Singapore, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom -UK, United States (both the Federal Trade Commission - FTC and the Department of Justice - DOJ) and Zambia.
- <sup>2</sup> With exception of the comparison made in Section 2.1.
- <sup>3</sup> Stakeholders are any interested parties affected by market studies, such as parties to which confidential and non-confidential information is requested, or those that will positively or negatively implicated by outcomes of market studies, whether private businesses, associations or public bodies.
- <sup>4</sup> “All those activities enhancing its current knowledge on specific economic activities, on the grounds of a systematic method of analysis (scientific method) and internally peer reviewed”.
- <sup>5</sup> “A formal inquiry in respect of the general state of competition in a market for particular goods or services, without necessarily referring to the conduct or activities of any particular named firm”.
- <sup>6</sup> “Detailed analysis of one or more economic sectors or a specific market for the purpose of enhancing the knowledge of the economic and competitive situation and legal background of the sector or market”.
- <sup>7</sup> “Reports that focus on the analysis of an specific sector of the economy, aimed to describe and analyse the performance of different economic sectors, in order to understand and evaluate its composition, size, participants, regulations, and other relevant aspects to establish its incidence in the degree of competition”
- <sup>8</sup> “In-depth expert examinations of a market or sector of the economy to determine whether it is functioning properly”.
- <sup>9</sup> “Competition advocacy projects that examine an industry through a competition lens”. Market studies allow the Bureau to examine an industry to highlight competition issues to an audience of regulators, policy makers, industry participants, and the public and to understand a sector to further the administration and enforcement of the Competition Act”.
- <sup>10</sup> “A research, study or comparison serving the assessment of competitive conditions in a market”.
- <sup>11</sup> “Analysis of competition conditions in a sector and its markets, in order to determine if it is functioning adequately or not”.
- <sup>12</sup> “Such as investigations which are aimed at a broader analysis of competition conditions within a certain industry or sector”.
- <sup>13</sup> “The studies that are carried out in order to detect or solve existing or potential competition problems related to the whole or part of a sector/market, or to certain practices in the relevant sector/market”.
- <sup>14</sup> “Market Studies are investigations on the effectiveness of competition in individual sectors of the economy in Zambia and on matter of concern to consumers”
- <sup>15</sup> “To understand how markets work and the effects of a market feature on competition in Singapore”.
- <sup>16</sup> “To assess whether competition in a market is working effectively and to advice the Government accordingly”.
- <sup>17</sup> “A research about competition conditions in a particular economic sector aiming at identifying potential competition issues”.

- 18 “Economic and regulatory procedure that analyses the dynamics of competition in a particular market to identify existing restrictions which can hinder or prevent efficient resource allocation and to issue recommendations aimed to reduce the effect of or eliminate such restrictions”.
- 19 “Aim of achieving insight into specific markets, industries, trade practices and other issues in accordance with the different needs of competition policy at different times”.
- 20 “The Commission may conduct general inquiries into a particular sector of the economy or a particular type of agreements across various sectors where a trend of trade between EU Member States, price rigidity or other circumstances suggests that competition may be restricted or distorted within the Common Market”.
- 21 “Inquiry into a particular sector of the economy or into a particular type of agreements across various sectors conducted by an ECN [European Competition Network] member, who suspects that there are indications of market distortions which cannot be assigned to specific undertakings”.
- 22 “The Commission ‘shall, as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Commission”.
- 23 Market studies comprise both formal “wide-ranging studies that do not have a specific law enforcement purpose”, as well as informal studies “in the form of hearing or workshops to obtain information through means such as workshop testimony can provide a useful overview of a particular industry and help raise important competition and consumer protection issues that may merit further exploration”.
- 24 The competition authority carries out market studies “to ensure that markets function well, that market processes are orderly and transparent, and that consumers are treated with due care”.
- 25 For instance, in market studies conducted by authorities in 35 jurisdictions, the purpose was regulatory change or at least, as was the case in Chile’s FNE and Estonia, the start of a discussion among policymakers regarding the role that regulations and competition played in the markets in question. The removal of regulatory barriers to competition was specifically identified as a goal of market study recommendations in several jurisdictions, including in Colombia, Italy, Peru and Portugal. Market studies in other jurisdictions directly led to the commencement of enforcement actions, including a dawn raid in Poland and investigations in Indonesia, the Slovak Republic, Romania and Turkey.
- 26 In the case of the Republic of Moldova when a market/sector is not working well for consumers but more investigation is needed to deciding whether to initiate an enforcement action against individual undertakings. In the case of Costa Rica’s COPROCOM is to support or provide evidence for enforcement actions.
- 27 Europe (Greece, Norway, Lithuania, France, Finland, Denmark, Sweden, Slovenia, the Netherlands, Slovak Republic, Spain, Iceland, Poland and Croatia.) Asia (Chinese Taipei, Japan, Turkey, Pakistan, Singapore, Kazakhstan and Honk Kong (China) America (Peru, Colombia, Chile FNE, Brazil, Costa Rica’s COPROCOM, Mexico, Canada, United States of America and El Salvador) Africa (South Africa and Zambia) Oceania (Australia).
- 28 In the answers to the questionnaire, this was said to be the case for India, EU, Greece, Indonesia, Czech Republic, Norway, Lithuania, Hungary, UK, Ukraine, Chile’s FNE, Finland, Denmark, Brazil, Bulgaria, Malta, Colombia, Chinese Taipei, Latvia, Costa Rica, Mexico, Australia, Japan, Portugal, Italy, Ireland, Sweden, the Netherlands, Slovak Republic, South Africa, Israel, Canada, Turkey, United States of America, Spain, Estonia, Poland, Belgium, Pakistan, Zambia, Singapore, Croatia, and Hong Kong (China). The UK remarked that market studies are used to explore whether a market or sector is working well for consumers, and that market studies should also be considered as part of the overall markets regime which is intended to improve how competition works (encouraging competition and addressing any reasons why competition may not work well) in order to benefit consumers, encourage growth, and encourage innovation.
- 29 This would seem to be the case of Germany, Peru, Republic of Korea, France, Iceland, Kazakhstan, El Salvador and Serbia.
- 30 The South Africa Competition Act refers to socio-economic development and equity, alongside efficiency objectives, among its goals. Those explicitly include the promotion of employment, of small and medium enterprises, and ownership by historically disadvantaged South Africans. As a result, these may be

exempted from the application of abuse of dominance or restrictive practices, and are also taken into account on merger analyses.

31 Jurisdictions with express legal powers are: EU, Germany, Greece, Czech Republic, Lithuania, Hungary, Russian Federation, France, UK, Ukraine, Finland, Romania, Bulgaria, Malta, Colombia, Latvia, Mexico, Australia, Japan, Portugal, Italy, Ireland, Slovenia, the Netherlands, Slovak Republic, South Africa, Israel, Turkey, USFTC, Spain, Estonia, Iceland, Poland, Belgium, Pakistan, Kazakhstan, Republic of Moldova, El Salvador, Serbia, Argentina, Hong Kong (China) and Egypt. (the replies from Switzerland and Denmark were not clear, and were considered as “others” for this specific topic)

32 Jurisdictions that undertake market studies under general powers are: India, Peru, Indonesia, Norway, Republic of Korea, Chile’s FNE, Brazil, Chinese Taipei, Costa Rica’s SUTEL, Sweden, Canada, USDOJ, Costa Rica’s COPROCOM, Zambia, Singapore and Croatia. (the replies from Switzerland and Denmark were not clear, and were considered as “others” for this specific topic)

33 Jurisdictions with no legal powers are: Chile’s TDLC and New Zealand.

34 Authorities from Australia, Belgium, Bulgaria, Canada, Chile’s FNE, Colombia, Costa Rica’s COPROCOM, Denmark, Egypt, Estonia, France, Ireland, Kazakhstan, Italy, Mexico, the Netherlands, Norway, Pakistan, Peru Russian Federation, Singapore, South Africa, Spain, US DOJ, US FTC and Zambia.

35 Authorities from Australia, Belgium, Bulgaria, Canada, Chile’s FNE, Colombia, Costa Rica’s COPROCOM, Denmark, Egypt, Estonia, France, Ireland, Italy, Kazakhstan, Mexico, the Netherlands, Norway, Pakistan, Peru Russian Federation, Singapore, South Africa, Spain, UK and the US DOJ, US FTC and Zambia.

36 Authorities from Switzerland, France, Kazakhstan, Denmark, Australia, Ireland, Canada, Russian Federation, Costa Rica’s COPROCOM and South Africa.

37 Authorities from India, EU, Germany, Peru, Pakistan, Indonesia, Czech Republic, Norway, Lithuania, Hungary, France, UK, Ukraine, Finland, Bulgaria, Malta, Chinese Taipei, Italy, the Netherlands, Slovak Republic, Singapore, Canada, Turkey, US (FTC), US (DOJ), Greece, Poland and Belgium.

38 Authorities from EU, Germany, Czech Republic, Norway, Chinese Taipei, Italy, Sweden, the Netherlands, Canada, Turkey and Greece.

39 Argentina, Egypt, Russian Federation, Latvia, Slovenia and Iceland.

40 El Salvador, Mexico, Hong Kong (China), Israel, Japan, Kazakhstan, Portugal, Republic of Moldova, Ireland, Sweden, Brazil, Croatia, Colombia, Denmark, Serbia, Spain, U.S, DOJ and FTC, Costa Rica’s COPROCOM, Canada, Romania and Zambia..

41 Such as the European Commission and the competition authority of the Czech Republic.

42 India, Peru, Czech Republic, Norway, Chile’s FNE, Mexico, Ireland, the Netherlands, South Africa Singapore, and Canada.

43 Powers mean, here, authorization provided by law to competition authorities to request information to be provided by stakeholders, whether such authorization is expressed on general (“to protect competition”) or specific terms (“for the purpose of carrying out market studies”).

For this specific question Switzerland replied N/A.

44 Argentina, Australia, Belgium, Brazil, Canada, Chile’s FNE, Costa Rica’s COPROCOM, Croatia, Czech Republic, Denmark, Egypt, El Salvador, Estonia, EU, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kazakhstan, Latvia, Malta, Mexico, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Romania, Russian Federation, Serbia, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, UK and the US FTC.

45 Authorities in Bulgaria, Chinese Taipei, Colombia, Costa Rica’s SUTEL, India, Indonesia, Lithuania, Republic of Moldova, Republic of Korea, Singapore, Slovak Republic and Zambia.

- 46 Argentina, Australia, Brazil, Canada, Costa Rica (competition authority), Croatia, Czech Republic, Denmark, Egypt, El Salvador, Estonia, France, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kazakhstan, Latvia, Malta, Mexico, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Romania, Russian Federation, Serbia, South Africa, Spain, Sweden, Turkey, Ukraine, and the UK.
- 47 EU, Germany, Finland, Slovenia, Belgium and the United States (FTC).
- 48 Argentina, Belgium, Brazil, Bulgaria, Costa Rica (both COPROCOM and SUTEL), Czech Republic, El Salvador, Estonia, EU, France, Germany, Greece, Hungary, Iceland, Israel, Kazakhstan, Latvia, Lithuania, Malta, Mexico, Republic of Moldova, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Romania, Russian Federation, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Turkey, Ukraine and the UK.
- 49 Australia, Chile's FNE, Denmark, Egypt, Ireland, Finland, Japan, Singapore, Sweden and the US FTC.
- 50 Croatia, Chinese Taipei, India, Italy and Zambia.
- 51 Canada, Colombia, Hong Kong (China), Indonesia and Republic of Korea.
- 52 Namely, competition authorities from Colombia, Chinese Taipei, India, Indonesia, Republic of Korea and Zambia.
- 53 Lithuania, Bulgaria, Costa Rica's SUTEL, Slovak Republic and Republic of Moldova.
- 54 Argentina, Australia, Belgium, Brazil, Canada, Chile FNE, Costa Rica's COPROCOM, Croatia, Czech Republic, Denmark, Egypt, El Salvador, Estonia, EU, Finland, France, Germany, Greece, Hungary, Iceland, Israel, Italy, Japan, Kazakhstan, Latvia, Malta, Mexico, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Ireland, Romania, Russian Federation, Slovenia, South Africa, Serbia, Spain, Sweden, Turkey, Ukraine, UK and the USFTC
- 55 Estonia, Ireland and Singapore.
- 56 Authorities from Greece, Peru, Norway, Czech Republic, Denmark, Romania, Australia, Japan, Sweden, the Netherlands, Slovak Republic, South Africa, Turkey, Spain, UK, Ukraine, Iceland, Pakistan, Kazakhstan, Republic of Moldova and El Salvador.
- 57 India, Switzerland, Republic of Korea, Chile's FNE and the USDOJ replied the N/A option.
- 58 Belgium, Brazil, Bulgaria, Canada, Chinese Croatia, Taipei, Colombia, Costa Rica's COPROCOM, Czech Republic, Denmark, El Salvador, Egypt, Estonia, EU, Finland, France, Germany, Greece, Hong Kong China, Hungary, Iceland, Indonesia, Ireland, Japan, Kazakhstan, Latvia, Lithuania, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Republic of Moldova, Russian Federation, Serbia, Slovak Republic, Singapore, Slovenia, South Africa, Turkey, Ukraine, UK, US FTC and Zambia.
- France reports that although the rules for the protection of confidential information are formally applicable only to enforcement actions, it applies the same principles for their protection in the course of market studies. Because of this, it was considered that offers protection to confidential information on market studies.
- 59 Argentina, Australia, Israel, Italy, Pakistan, Romania, Spain and Sweden.
- 60 Belgium, , Bulgaria, Canada, Croatia, Colombia, Czech Republic, Denmark, Estonia, Egypt EU, Finland, Germany, Greece, Hong Kong (China), Hungary, Iceland, Indonesia, Israel, Italy, Kazakhstan, Latvia, Lithuania, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Republic of Moldova, Serbia, Slovak Republic, Slovenia, South Africa, Sweden, Turkey, Ukraine, UK and Zambia.
- 61 Belgium, , Bulgaria, Canada, Colombia, Croatia, Czech Republic, Denmark, Egypt, Estonia, EU, Finland, Germany, Hong Kong (China), Hungary, Iceland, Italy, Kazakhstan, Latvia, Lithuania, Norway, Peru, Poland, Slovak Republic, Serbia, Slovenia, South Africa, Sweden, Turkey, Ukraine and Zambia.
- 62 Authorities from Australia, Belgium, , Bulgaria, Canada, Colombia, Croatia, Czech Republic, Denmark, Egypt, Estonia, EU, Finland, Germany, Greece, Hong Kong China, Hungary, Iceland, India, Indonesia, Israel, Italy, Kazakhstan, Latvia, Lithuania, Mexico, the Netherlands, Norway, Pakistan, Peru, Poland, Portugal, Republic of Moldova, , Russian Federation, Serbia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, UK and Zambia.

- 63 Competition authorities from Greece, Israel, Italy, Portugal, Republic of Moldova and the UK.
- 64 Belgium, India, Israel, Sweden and the UK.
- 65 Investigation is categorized based on whether it is considered under the relevant statute to be Reserved,  
Confidential Information or Public Information and is then subject to different levels of protection for each level.
- 66 Assessed on a case-by-case basis.
- 67 Assessed on a case-by-case basis.
- 68 Assessed on a case-by-case basis.
- 69 Assessed on a case-by-case basis.
- 70 Requests can be refused in the event that the request does not include a detailed description containing the  
elements set out in the Mexican CA's regulations or data is missing.
- 71 Requests can be refused in the event that the request does not include a detailed description containing the  
elements set out in the Mexican CA's regulations or data is missing.
- 72 A notable feature of UK market investigation procedures is that formal hearings are heard with main and third  
parties, and provisional findings are published for public consultation as provisional decisions on remedies.
- 73 Both the current Competition and Markets Authority and the former Office of Fair Trading.
- 74 Specifically, Argentina, Brazil, Chinese Taipei, the Czech Republic, Finland, France, Ireland, Hong Kong  
(China), India, Mexico, the Netherlands, Norway, Peru, Spain, Sweden, Turkey, Ukraine, the United Kingdom.
- 75 <http://www.internationalcompetitionnetwork.org/uploads/library/doc907.pdf>.
- 76 The ICN is planning to update the Handbook, but not expand the range of subject covered in it.