The primary purpose of competition law is to improve economic efficiency so that consumers enjoy lower prices, increased choice, and improved product quality. Sustained competition is the force that drives companies to be efficient and to pass benefits on to consumers.

A more specific goal of competition law is to prevent economic agents from distorting the competitive process either through agreements with other companies or through unilateral actions designed to exclude actual or potential competitors. Thus the law should control agreements among competing enterprises—horizontal agreements—on prices or other important aspects of their competitive interaction. Agreements between firms at different levels of the manufacturing or distribution processes—vertical agreements, for example, between a manufacturer and wholesaler—are less likely to harm competition. But they may do so under certain circumstances that are more likely to be present in transition or developing economies. Therefore, they too should be addressed in a competition statute.

It is possible for a firm to grow large enough to harm competition unilaterally. Such dominant firms should be subject to carefully crafted provisions in the competition law. Enterprises that win the competitive struggle lawfully should be rewarded for their superior performance. Dominant firms should not be permitted, however, to use their advantages to block challenges from existing or potential competitors.

Enterprises might decide to merge in order to enhance efficiency, which will heighten competition and thus benefit consumers. But some mergers may be anticompetitive, intended to eliminate competition and to artificially achieve a dominant position not based on superior economic performance. Alternatively, a merger might reduce the number of competitors sufficiently, enabling the remaining firms to readily coordinate their activities. An effective competition law should therefore include a provision to prevent such mergers.

Competition laws sometimes include provisions related to consumer protection and unfair business practices. To reduce the potential for overlap with other statutes, these provisions should be as focused as possible on preserving fair competition. They should also operate to protect the competitive process rather than competitors.

This annex provides a suggested structure for a competition law, including wording for its substantive provisions. Some of the suggested provisions are accompanied by brief commentary. It must be emphasized that the statutory provisions are only suggestions. Competition laws must be drafted to fit the legal and economic contexts of each country.

Special project of the Competition Law and Policy Division of the Directorate for Financial, Fiscal, and Enterprise Affairs, Organisation for Economic Co-operation and Development. This annex was prepared by Gary Hewitt, John Clark, and Bernard Phillips.
THE SCOPE OF COMPETITION LAW

Competition law is an essential part of the economic constitution of a free market country. It should, as much as possible, apply to all market transactions and to all entities engaged in commercial transactions irrespective of ownership or legal form. All exceptions to the application of the law should be explicitly identified in pertinent legislation.

Suggested provisions:

[Article _] Purpose

This Law is intended to maintain and enhance competition in order ultimately to enhance consumer welfare.

[Article _] Field of application

1. This Law shall be enforceable on the whole territory of the Republic of _______ and applies to all areas of commercial economic activity. The Law shall be applicable to all matters specified in section(s) of the law containing the prohibitions of restrictive agreements, abuse of dominance, and merger review, having substantial effects in the Republic of _______, including those that result from acts done outside the Republic of _______.

2. This Law does not derogate from the direct enjoyment of the privileges and protections conferred by other laws protecting intellectual property, including inventions, industrial models, trademarks, and copyrights. It does apply to the use of such property in such a manner as to cause the anticompetitive effects prohibited herein.

3. This Law shall apply neither to the combinations or activities of workers or employees nor to agreements or arrangements between two or more employers when such combinations, activities, agreements, or arrangements are designed solely to facilitate collective bargaining in respect of conditions of employment.

DEFINITIONS

The competition law should define common terms that are used in the law and that are needed to interpret its provisions consistently.

Suggested provisions:

“Competition”—the process by which economic agents, acting independently in a market, limit each other’s ability to control the conditions prevailing in that market.

“Firm”—any natural or legal person, governmental body, partnership, or association in any form engaged directly or indirectly in economic activity. Two firms, one of which is controlled by the other, shall be treated as one firm. Two or more firms that are controlled by a single firm shall be treated as one firm. The competition office shall adopt a regulation setting out what constitutes control.

“Good”—all property, tangible and intangible, and services.

“Market”—a collection of goods among which buyers are or would be willing to substitute, and a specific territory, which could extend beyond the borders of the Republic of _______, in which are located sellers among which buyers are or would be willing to substitute.

ABUSE OF A DOMINANT POSITION

Suggested provisions:

[Article _] Abuse of a Dominant Position

1. “Dominant Position”—a firm has a dominant position if, acting on its own, it can profitably and materially restrain or reduce competition in a market for a significant period of time. The position of a firm is not dominant unless its share of the relevant market exceeds 35 percent. A firm having a market share exceeding 35 percent may or may not be found to be dominant depending on the economic situation in that market, including the firm’s market share, competing firms’ market shares and their abilities to expand those shares, and the potential for new entry into the market.

2. Actions of a dominant firm—including creating obstacles to the entry of competing firms or to the expansion of existing competitors or eliminating competing firms from the market—that have or may probably have as their result a significant limitation of competition are prohibited.

3. Section 2 of this article does not prohibit actions by a firm that create obstacles to the entry of new firms or reduce the competitiveness of existing firms solely by increasing the efficiency of the firm taking those actions, or that pass the benefits of greater efficiency on to consumers.
[Article __] Power to break up a firm abusing its dominant position

1. When a firm has abused its dominant position and no other remedy under this law or under an applicable regulatory statute would be likely to rectify the situation or prevent recurrence of the abuse, the competition office may reorganize or divide the firm provided there is a reasonable likelihood that the resulting entity or entities would be economically viable.

2. The power to reorganize or divide contained in this article shall be exercised in a manner designed to minimize any increases in costs of providing the good.

The 35 percent safe harbor is found in the competition laws of several countries either expressly or in common law or practice. Although the 35 percent threshold is somewhat arbitrary, it is unlikely that a firm with a much smaller market share could successfully exercise market power unilaterally. There are some valid reasons for raising the threshold. In a small country that is relatively closed to international trade and investment, high concentration may be necessary so that firms can grow large enough to exhaust significant economies of scale and scope.

In some countries’ law a market share of 65 or 70 percent creates a presumption of dominance that the firm must rebut. But many think that the better practice is to place the burden of proving dominance on the competition agency. A high market share is a necessary but not sufficient condition.

This provision employs a general legal standard: a “significant limitation of competition.” In economic terms this standard typically refers to restrictions that would permit a price increase above what would prevail in a competitive market. It is not possible to legally define a “significant” limitation of competition, however, because the size of an anticompetitive price increase can vary across jurisdictions. It can even vary over time within the same country in response to changes in the resources available for antitrust enforcement and in the efficiency of the competition agency.

The laws of some countries also list specific types of conduct, such as predatory pricing, tying, or exclusive dealing, that can constitute abuse of dominance. Such provisions are more common in countries that employ a civil code legal system, as opposed to a common law system. It is difficult to define such conduct accurately, however, or to be sufficiently inclusive of potentially abusive conduct. Also, it must always be remembered that the specified conduct is not always abusive or anticompetitive, even if carried through by a dominant firm.

RESTRICTIVE AGREEMENTS

Certain types of horizontal agreements, collectively described as cartel agreements, are subject to stricter control than other types. In many countries this distinction is not found in the law itself but in enforcement practice or regulations. Countries that are first adopting competition laws, however, are better off making the distinction explicitly in the law. Doing so will help to ensure that enterprises learn the seriousness of violating cartel prohibitions and will help business people to understand that although some vertical agreements may hurt individual competitors, they are proscribed only if they harm competition industrywide.

Not all horizontal agreements are cartel agreements. Competitors may integrate their operations to achieve greater efficiency, and the result may be procompetitive on balance. Agreements of this type include joint ventures, joint research and development, and the setting of common standards that benefit consumers. These agreements should be subject to a more lenient legal standard and distinguished from cartel agreements in the competition law.

Finally, some horizontal and vertical agreements may be harmful to competition in some sense, but may generate efficiencies that make
them beneficial on balance. (Cartel agreements, by definition, cannot generate such efficiencies.) It is helpful if the law sets forth the standards that govern this analysis.

Suggested provisions:

1. An agreement, concluded in any form including by concerted practice, between competing firms (including firms that could easily become competitors) is prohibited if such an agreement has or would likely have as its principal effect:
   - (a) Fixing or setting prices, tariffs, discounts, surcharges, or any other charges;
   - (b) fixing or setting the quantity of output;
   - (c) fixing or setting prices at auctions or in any other form of bidding, except for joint bids so identified on their face to the party soliciting bids;
   - (d) dividing the market, whether by territory, by volume of sales or purchases, by type of goods sold, by customers or sellers, or by other means;
   - (e) eliminating from the market actual or potential sellers or purchasers; or
   - (f) refusing to conclude contracts with actual or potential sellers or purchasers.

2. An agreement, other than those enumerated in section 1 of this article, concluded in any form including by concerted practice, is prohibited if it has or would likely have as its result a significant limitation of competition.
   - (a) An agreement among competing firms, including firms that could easily become competitors, other than those agreements enumerated in section 1 of this article, cannot be found to significantly limit competition unless the shares of the firms participating in the agreement collectively exceed 20 percent of a market affected by the agreement.
   - (b) An agreement solely among noncompeting firms cannot be found to significantly limit competition unless:
     - (i) At least one of the parties holds a dominant position in a market affected by the agreement; or
     - (ii) the limitation of competition results from the fact that similar agreements are widespread in a market affected by the agreement.

3. (a) An agreement prohibited under section 2 of this article is nonetheless legal if it has brought about or is likely to bring about gains in real as opposed to merely pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the agreement.
   - (b) The burden of proof under this section lies with the parties seeking the exemption, and includes demonstrating that if the agreement were not implemented it is not likely that the relevant efficiency gains would be realized by means that would limit competition to a lesser degree than the agreement.

Section 3(a)’s reference to “real, as opposed to merely pecuniary, gains in efficiency” is designed to exclude consideration of benefits such as reductions in income taxes or greater quantity discounts obtained solely through exercising greater purchasing leverage. Such pecuniary gains are transfers rather than increases in the economy’s ability to satisfy consumer needs.

Section 3(b) does not require the parties to prove that the agreement is the only way to realize the claimed gains in efficiency, but that there are no practical, less anticompetitive means of doing so.

Section 3(a), and an identical provision in section 9 of the article on concentrations, read together with article 1 (the purpose clause) implicitly applies a total welfare standard to the efficiencies defense or exemption. It does so by giving equal weight to both consumers and producers, thus ignoring any transformation of consumer surplus into producer surplus resulting from the agreement. Section 3(a) permits agreements in which the deadweight loss—that is, the surplus lost to consumers but not transformed into higher producer profits—from the fall in consumption due to a price increase is less than the value of resources saved in more efficiently producing the goods.

Instead of a total welfare standard, some countries might prefer to focus exclusively on consumer welfare, and therefore allow an efficiency
defense or exemption only in cases where efficiency gains are expected to be so large that consumers will not be harmed despite the anticipated increase in market power. To articulate such a standard, section 3(a) could be written as follows:

3. (a) An agreement prohibited under section 2 of this article is nonetheless legal if it has brought about or is likely to bring about such large gains in real as opposed to merely pecuniary efficiencies that consumer well-being is expected to be enhanced as a result of the agreement.

**Mergers and acquisitions**

A competition statute’s merger provisions should be permissive. In particular, there is no need for systematic review and approval of all mergers. Mergers should be allowed unless the competition authorities can show that they will significantly limit competition. Furthermore, requiring notification of all mergers would unduly burden the authorities and impose unreasonable costs and delays on the merging parties. Only large mergers, which are most likely to present a threat to competition, should be subject to premerger notification requirements. In countries with high inflation, it is advisable to measure the minimum-size threshold in terms that rise with inflation, for example as a multiple of a standard minimum wage.

The same competition test should be applicable to all mergers, whether or not notification is required. The competition office should thus have the power to order the dissolution of smaller, nonnotified mergers. To eliminate the uncertainty created by possible dissolution, merging firms should be permitted to make voluntary notifications.

**Suggested provisions:**

[Article 1] Review of concentrations

**Definition**

1. “Concentration”—concentration shall be deemed to arise when:

(a) Two or more previously independent firms merge, amalgamate, or combine the whole or a part of their businesses; or

(b) one or more natural or legal persons already controlling at least one firm acquire, whether by purchase of securities or assets, by contract or by other means, direct or indirect control of the whole or parts of one or more other firms.

2. “Control”—for the purpose of this article, control is defined as the ability to materially influence a firm, in particular through:

(a) Ownership or the right to use all or part of the assets of an undertaking; or

(b) rights or contracts that confer decisive influence on the composition, voting, or decisions of the organs of a firm.

**Notification**

3. When an agreement or public bid will produce a concentration larger than the minimum size as provided in regulations issued pursuant to section 7 of this article, the parties to the agreement or bid are prohibited from consummating such concentration until __ days after providing notification to the competition office, in the form and containing the information specified in regulations issued pursuant to section 7.

4. Before the expiration of the ___ day period referred to in section 3 of this article, the competition office may issue a written request for further information. The issuance of such a request has the effect of extending the period within which the concentration may not be consummated for an additional ___ days, beginning on the day after substantially all of the requested information is supplied to the competition office.

5. Parties to an agreement or public bid not subject to the notification requirement in section 3 of this article may voluntarily notify and, if they do so, be subject to the same procedures, restrictions, and rights as are applied to cases of compulsory notification.

6. If, before consummation of a concentration, the competition office determines that such concentration is prohibited by section 8 of this article and does not qualify for exemption under section 9 of this article, the competition office may:
(a) Prohibit consummation of the concentration;
(b) prohibit consummation of the concentration unless and until it is modified by changes specified by the competition office;
(c) prohibit consummation of the concentration unless and until the pertinent party or parties enter into legally enforceable agreements specified by the competition office.

Regulations regarding concentrations

7. The competition office shall from time to time adopt and publish regulations stipulating:
   (a) The minimum size or sizes of concentrations subject to the notification requirement in section 3 of this article;
   (b) the information that must be supplied for notified concentrations;
   (c) exceptions or exemptions from the notification requirement of section 3 for specified types of concentrations;
   (d) other rules relating to the notification procedures in sections 3, 4, and 5 of this article.

Permitted and prohibited concentrations

8. Concentrations that will probably lead to a significant limitation of competition are prohibited.
9. Concentrations prohibited under section 8 of this article shall nonetheless be free from prohibition by the competition office if the parties establish that either:
   (a) The concentration has brought about or is likely to bring about gains in real as opposed to merely pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the concentration; or
   (b) one of the parties to the concentration is faced with actual or imminent financial failure, and the concentration represents the least anticompetitive among the known alternative uses for the failing firm's assets.

The burden of proof under this section lies with the parties seeking the exemption.

A party seeking to rely on the exemption specified in (a) must demonstrate that if the concentration were not consummated it is not likely that the relevant efficiency gains would be realized by means that would limit competition to a lesser degree than the concentration.

A party seeking to rely on the exception specified in (b) must:
(i) Demonstrate that reasonable steps have been taken within the recent past to identify alternative purchasers for the failing firm's assets;
(ii) fully describe the results of that search.

10. The competition office may determine, within three years after consummation, that either a nonnotified concentration or a notified concentration in which the provisions of sections 3–5 of this article are not fully complied with, has led or will probably lead to a significant limitation of competition and does not qualify for either of the two exemptions set out in section 9 of this article. If it so determines, the competition office may:
   (a) Undo the concentration by dissolving it into its constituent elements;
   (b) require other modifications of the concentration, including sale of a portion of its operations or assets;
   (c) require the surviving firm or firms to enter into legally enforceable agreements specified by the competition office and designed to reduce or eliminate the competition-limiting effects of the concentration.

11. Notifiable concentrations that the competition office determines are prohibited by section 8 of this article and do not qualify for exemption under section 9 may subsequently be authorized by a published decision of the Government of _________ for overriding reasons of public policy involving a unique and significant contribution to the general welfare of the citizens of _________.

Because delaying a merger can generate high costs for the parties involved and increase the risk that confidential business plans might become public knowledge, it is important to keep the delays mandated in sections 3 and 4 as short as possible.

Although sections 6 and 10 provide for both structural and behavioral remedies, the competition office should favor structural remedies. Behavioral remedies are generally ineffective unless they are easy to monitor and the com-
petition office has effective means of ensuring compliance.

The basis for the efficiencies defense or exemption in section 9(a) is discussed in the commentary accompanying the article on restrictive agreements. If, as discussed there, it is decided that a consumer surplus standard is to be applied to this exemption, the alternative provision provided there may be used in this Article as well.

**UNFAIR COMPETITION**

In enforcing this rubric of the law, the competition office could end up spending an inordinate amount of time arbitrating what are really private disputes having little influence on the competitive process. To reduce that risk, the law should provide for enforcement through private actions. Every effort should also be made to ensure that the unfair competition provisions are as clear as possible. Note that countries could address this issue in their general consumer protection laws instead of in their competition statute.

Suggested provisions:

(Article__) Prohibition of unfair competition

Unfair competition is prohibited, including:

1. The distribution of false or misleading information that is capable of harming the business interests of another firm;

2. the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;

3. false or misleading comparison of goods in the process of advertising;

4. fraudulent use of another's trademark, firm name, or product labeling or packaging;

5. unauthorized receipt, use, or dissemination of confidential scientific, technical, production, business, or trade information.

**ORGANIZATIONAL AND ENFORCEMENT MATTERS**

This section concerns a series of diverse provisions intended to improve the general effectiveness of a competition statute. Where applicable, comments will be followed by suggested statutory wording.

**Specialized courts and rights of appeal**

In most countries the judiciary is involved with enforcing competition laws. The competition authority may be required to apply to the courts for orders that would implement its decisions. More commonly, the competition agency's decisions may be appealed to the courts by the parties involved. If private parties have the right to institute competition cases, these cases may be brought before the courts.

Because the judiciaries in transition and developing economies are inexperienced in dealing with free market problems, it may be advisable to set up specialized courts to hear competition cases. Such courts could hear all commercial disputes or be specialized to hear only competition cases. Concentrating these cases before specially trained judges should speed up the acquisition of expertise and produce more consistent, predictable decisions. Specialized competition courts could adopt procedures and rules of evidence specifically suited to competition cases. The composition of the court could be tailored to the requirements of competition cases. For example, at least one economist could be included in each tribunal.

**Private enforcement**

In some countries private actions for redress of injury resulting from violations of the competition law may be instituted before an appropriate court or tribunal by people harmed. Such private actions have at least two benefits: they supplement and reinforce public enforcement of the competition law, and they free the competition authority from having to obtain such
redress on behalf of private parties. To facilitate private rights of action, provisions could be added to the competition statute to:

- Allow private plaintiffs to bring actions in courts for damages they can prove they sustained as a result of either a violation of the competition statute or a party’s failure to comply with orders made under it, plus all reasonable costs they may have incurred investigating and prosecuting the case.
- Allow private plaintiffs to bring actions for injunctive relief (for example, to prohibit mergers or to cease using certain anticompetitive contract terms).
- Require the competition office to transfer to private plaintiffs all nonconfidential information gathered in the course of the office’s investigations.
- Facilitate the use of court records in cases brought by the competition authority as evidence in private damage suits.
- Allow group damage claims in competition cases.

Relationships between the competition office and other government bodies

Independence from other parts of the government is important to the proper functioning of the competition office. Decisions of the office may affect the interests of entrenched businesses, which may have strong influence in one or more government ministries. The competition office should be free from the political influence of these interests.

Suggested provisions:

[Article ___] Independence of the competition office
1. The competition office is under the authority of the [President of ________], and receives its budget directly from and reports directly to the [legislature of ________].

2. The [head] of the competition office is appointed by the [President of ________], for a renewable term of [a minimum of three] years, and can only be removed by a [vote of the legislature] for patent inability to discharge his functions.

Though the competition office should be organizationally independent from other parts of the government, it should also have the power to participate in government decisions directly affecting competition. The competition office should thus have the power to make recommendations or presentations, and in some situations to intervene when government bodies are making decisions affecting competition policy.

Suggested provision:

[Article ___] Representations and interventions by the competition office
1. The competition office shall have the right to make submissions to state administrative authorities engaged in designing or administering legislation or regulations that could affect competition in any market in [the Republic of ________]. When hearings are held with regard to the adoption or administration of such laws or regulations, the competition office shall have the right to intervene in such proceedings.

2. The competition office shall have the right to publish the submissions and interventions referred to in section 1 of this Article provided that confidential information is not divulged.

Prohibition and remedial orders

The appropriate remedy for many types of anticompetitive practices is to simply demand that the offending party stop engaging in the conduct or to take other actions to eliminate the effects of the unlawful practice. Punishment is also appropriate if the conduct is egregious. But some competitive harms are not readily apparent to business people, who may have engaged in the conduct initially in good faith. Such cases may include noncartel restrictive agreements, some abuses of a dominant position, and some acts of unfair competition. The competition law should empower the competition agency to prohibit the conduct or redress the harm from it.
Suggested provision:

[Article _] Prohibition and remedial orders

The competition office [an appropriate court or tribunal] may issue orders prohibiting firms from carrying on the anticompetitive or unfair practices referred to in this act and, if necessary, requiring such firms to take other specified actions to eliminate the harmful effects of such practices and to ensure against recurrence of such practices.

Fines and Penalties

The competition office should have the authority to impose fines for cartel agreements, serious or repeated abuse of dominance, noncartel agreements, and unfair competition and to ensure compliance with merger notification requirements and competition office decisions.

To deter cartel agreements, fines must be considerably larger than the extra profits that firms anticipate earning through their illegal behavior. For example, consider companies A and B that think they will be able to raise their profits by $500,000 by agreeing to increase prices. If they also believe that there is only a 10 percent probability of being punished for collusion, the anticipated fine must be approximately $5 million to effectively dissuade them. Some countries have found that the deterrent effect of penalties is enhanced considerably if the anticompetitive acts are characterized as criminal and if individuals as well as enterprises are liable.

Interim injunctions

The power to obtain interim injunctions, or temporary orders to stop a particular practice, is frequently necessary to preserve the status quo pending investigation. Interim injunctions are particularly useful in merger cases, in which it is difficult to break apart a merged entity, and in cases involving other types of conduct in which prohibition orders rather than fines are relied on to eliminate or to prevent anticompetitive practices.

Suggested provisions:

[Article _] Interim injunctions

1. The head of the competition office may apply to [appropriate court or tribunal] for an order to suspend business practices under investigation by the competition office or the consummation of concentrations. Before making the order, the [court or tribunal] shall be satisfied that the proposed measures are urgently required to avoid serious, imminent, and irreparable harm to the economic interests of the Republic of [ ], as expressed in this act. When the effectiveness of the order would not thereby be prejudiced, the [court or tribunal] shall permit the firms that would be subject to the order to present their views regarding the proposed order.

2. Within three days of the issuance of an order by the [court or tribunal] pursuant to this Article, the competition office shall deliver the order to the parties subject to it, together with reasons for the order and notice of the right to appeal.

3. All orders made under this article lose effect twenty-one days after they are issued, unless renewed by express decision of the [court or tribunal].

4. Orders issued under this section may be appealed to the [pertinent appeal court], but do not lose their effect pending the outcome of the appeal.

Enforcement guidelines and advance rulings

Parties subject to the law should be helped to comply with it and to plan their activities accordingly. Much of this assistance could come through the publication of enforcement guidelines articulating how the competition office will interpret and apply the law. In addition, while protecting confidentiality, the competition office should be required to publish all prohibition orders and decisions imposing sanctions along with supporting reasons.

There is also a need for a process whereby parties can obtain advance rulings from the competition office concerning planned courses of action. This information would be particularly helpful for exemptions given to horizontal or vertical agreements.

Suggested provisions:

[Article _] Advance rulings
1. Parties may apply to the competition office for advance rulings, binding on that office, regarding eligibility for exemptions from the prohibitions of articles relating to restrictive agreements and abuse of a dominant position. If it chooses to grant an advance ruling, the competition office may include in it specified conditions and requirements. The advance ruling shall by its terms exist for a specified period of time.

2. Advance rulings may be renewed upon application by the parties. An advance ruling may be revoked or modified if:
   (a) A significant change in circumstances has occurred since the ruling;
   (b) the applicant infringed on a condition or a requirement specified in the ruling;
   (c) the decision to grant the ruling was materially influenced by inaccurate, fraudulent, or misleading evidence; or
   (d) the applicant abused the exemption granted to it.

3. The competition office shall arrange for publication of its advance rulings, omitting any confidential information. It may arrange similar publication of all other decisions taken under this act, again omitting any confidential information.

Investigative powers
To ensure sufficient investigative capability, the competition office requires the production of information. The office should be able to require that parties under investigation and third parties produce documents (in paper or other form), written answers to questions, and oral testimony. In addition, the competition office should have the power to search the premises of subjects of an investigation and to take away evidence discovered in the search.

Such broad investigative powers should be subject to strict procedural safeguards. In most countries searches can be conducted only after authorization of a court or tribunal—and the competition agency must show probable cause. The competition office should be required to permit any party submitting evidence to have reasonable access to that evidence, and it should be required to return the evidence after the investigation and subsequent enforcement proceedings. These powers should be reinforced with severe fines for willful destruction or withholding of evidence or persistent refusal to supply requested information in a timely fashion.

Protection of confidential information and avoidance of conflicts of interest
If the competition office is to enjoy the confidence and cooperation of the business sector, it must protect the confidentiality of all nonpublic information that it acquires in the course of an investigation or proceeding. Also, it must ensure that its officials are not tempted to profit privately from knowledge acquired in the course of their duties.

Suggested provisions:

[Article ] Confidentiality and conflict of interest rules

1. Officials of the competition office, as well as their agents and consultants, shall maintain the confidentiality of all business, commercial, or official information of which they become aware during the course of their official activities, except that which is otherwise public. Disclosure of such confidential information may occur in the course of administrative or judicial proceedings arising under this act, or otherwise as permitted by [the court or tribunal].

2. All members of the competition office shall inform the head of the competition office of any position held or activity carried out in an economic field by the member, including all agents thereof. The head of the competition office shall take all necessary steps to ensure there is no conflict of interest arising from such positions or activities, including requiring that such positions be resigned or activities cease.

To strengthen these provisions, fines and possible dismissal should be imposed if government employees willfully disclose confidential data or engage in conflicts of interest.