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MARKET STUDIES: THE RESULTS OF AN OECD SURVEY

-- Note by the Secretariat -

27-28 October 2015

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OECD NOTE ON MARKET STUDIES

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 gap 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. To further this work, 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. The Secretariat received responses from 51 national authorities, of which 49 are competition authorities, from 48 jurisdictions[1].

3. In view of the fact that Chile's Competition Tribunal, as well as the competition authorities in New Zealand and Switzerland, do not possess powers to conduct market studies, their replies have not been included below. As a result, a total of 48 authorities, consisting of 47 competition authorities and Costa Rica's telecoms regulator Sutel, have been included. These respondents will be collectively referred to below as "competition authorities" or "CAs".

4. To further establish the distinction between existing national tools, a second questionnaire focusing on market investigations, which covered similar issues, was sent to the 3 competition authorities that currently have powers to perform market investigations: the UK, Mexico and Iceland. All three CAs answered the questionnaire.

5. The present note (the "Note") summarises the responses to the 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.

[1] The 49 Competition agencies are from: Australia, Belgium, Brazil, Bulgaria, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, European Union, Finland, France, Germany, Greece, Hungary, Iceland, India, Indonesia, Israel, Italy, Japan, Latvia, Lithuania, Malta, Mexico, the Netherlands, New Zealand, Norway, Peru, Poland, Portugal, Republic of Ireland, Republic of Korea, Romania, Russian Federation, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States (both the Federal Trade Commission - FTC and the Department of Justice - DOJ). Responses have also been provided by Chile's competition tribunal (Tribunal de Defensa de la Libre Competencia - TDLC) and Costa Rica's telecommunications regulator (Superintendencia de Telecomunicaciones–Sutel).

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

8. **Section 3** 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.

9. The institutional setting is addressed in **Section 4**, 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 separated from the ones responsible for competition enforcement.

10. **Section 5** addresses market investigations, as adopted by Mexico, the UK and Iceland. The aim of this section is to clearly explain the purpose of market investigations, and thereby clarify 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[2].

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).

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 in other jurisdictions use a combination of formal and informal approaches.

16. Respondents have provided their respective 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**,

[2] 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.

goals and potential **outcomes**, for a better understanding of the different ways in which jurisdictions do, in practice, interpret the notion 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, beyond the behaviour of individual firms. Market studies involve the collection and analysis of data and information to contribute to market knowledge, advocacy efforts, enforcement actions and/or ex-post evaluations of the impact of policy interventions**.

1.1. Description

18. There is a general consensus among competition authorities that market studies tend to have a wider scope than enforcement actions. While the latter focus on specific enterprises which have allegedly infringed competition law, market studies take a broader view and analyse the structure of markets or economic sectors, so as 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).

19. 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[3], South Africa[4], Estonia[5]);
- studies of the competitive conditions in a market (e.g. Australia[6], Canada[7], Finland[8], Mexico[9], Sweden[10] and Turkey[11]);
- fact-finding surveys (Japan[12]);

3 "[A]ll 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".

4 "[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".

5 "[D]etailed 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".

6 "[I]n-depth expert examinations of a market or sector of the economy to determine whether it is functioning properly".

7 "[C]ompetition 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".

8 "[A] research, study or comparison serving the assessment of competitive conditions in a market".

9 "[A]nalysis of competition conditions in a sector and its markets, in order to determine if it is functioning adequately or not".

10 "[S]uch as investigations which are aimed at a broader analysis of competition conditions within a certain industry or sector".

11 "[T]he study that is 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".

- inquiries to assess signs of distortion or restriction of competition (EU[13], Czech Republic[14], 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 tool that helps the Antitrust Authority to collect information" (Brazil);

- "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 (Republic of Ireland[15] , U.S. FTC[16] and the Netherlands[17]).

1.2. Goals

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

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12 "[A]im of achieving insight into specific markets, industries, trade practices and other issues in accordance with the different needs of competition policy at different times".

13 "[T]he 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 suggest that competition may be restricted or distorted within the Common Market".

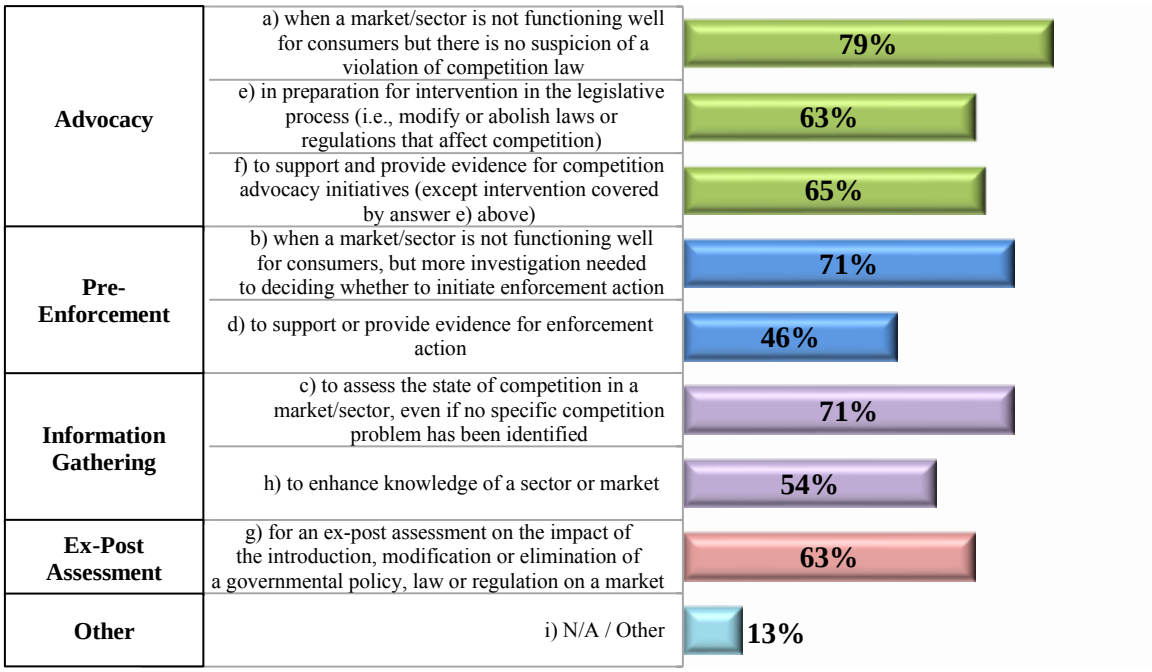
14 "[I]nquiry into a particular sector of the economy or into a particular type of agreements across various sectors conducted by an ECN [European Competition Network] member, who suspects that there are indications of market distortions which cannot be assigned to specific undertakings".

15 "[T]he Commission 'shall, as it considers appropriate, conduct or commission research, studies and analysis on matters relating to the functions of the Commission'".

16 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".

17 The competition authority carries out market studies "to ensure that markets function well, that market processes are orderly and transparent, and that consumers and treated with due care".

Figure 1. Primary Reasons for Competition Authorities to Conduct Market Studies



21. Most surveyed authorities indicated that they often resort to market studies for multiple purposes.[18]

22. Most authorities that pursue market studies (38 out of 48) do so to gain an in-depth understanding of how sectors, markets, or market practices work. Authorities that state that this is the main goal for which market studies are pursued can be found in Europe[19], in the Americas[20], and in Asia[21].

23. In some 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[22].

18 For instance, in market studies conducted by authorities in 21 jurisdictions, the purpose was regulatory change or at least, as was the case in Chile 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 Columbia, 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.

19 Including the EU and a number of its member states (such as Czech Republic, France, Germany, Greece, Republic of Ireland, Italy, Latvia, Malta, Portugal and Spain), and other non-EU European jurisdictions (Norway, Ukraine).

20 Canada, Peru.

21 Republic of Korea, Chinese Taipei.

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.[23]

24. 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 organizations engaged in entrepreneurial activities. South Africa carries out market studies taking into account public interest considerations[24]. 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. Outcomes

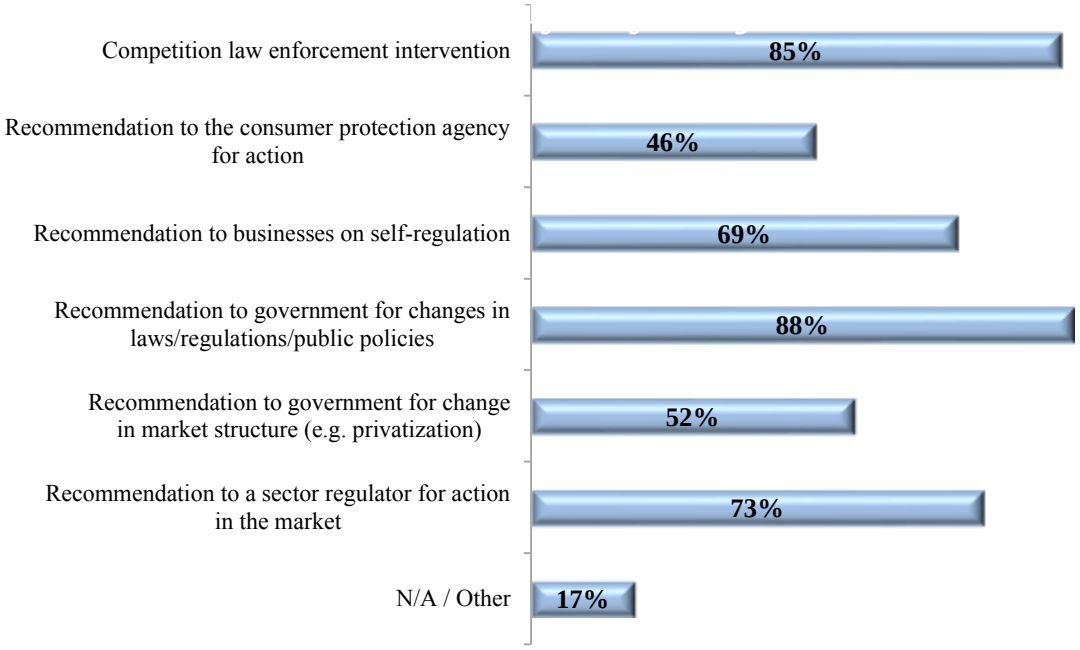
25. The way in which authorities conceive market studies is also directly linked to their potential **outcomes**. When considered individually, both competition law enforcement interventions and recommendations to governments for changes to laws, regulations or public policies, are the primary outcomes expected from market studies, as shown in Figure 2.

22 In the answers to the questionnaire, this was said to be the case for the EU and some of its member states – such as Bulgaria, Czech Republic, France, Greece, Italy, Romania, Slovenia and the UK –, and for the Republic of Korea.

23 This would seem to be the case with the US FTC.

24 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.

Figure 2. Potential Outcomes of Market Studies



26. 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.

27. The Icelandic CA carries out market studies to select markets that it will prioritize 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

28. The vast majority of surveyed competition authorities that conduct market studies enjoy specific powers for that purpose (73%). Only 27% 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.

2.2. Powers by other public bodies to carry out market studies

29. 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 Infocommunications 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.

30. 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.

31. 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.

32. The 26 jurisdictions listed in Table 1 below have 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)

Jurisdiction	Other public bodies (non-exhaustive list)
EU	Other DGs National Economic Prosecutor's Office
France	General Inspectorate for Social Affairs, among other administrative bodies
Peru	Organismo Supervisor de la Inversión Privada en Telecomunicaciones (telecom regulator)
Czech Republic	Telecommunication Office and Energy Regulatory Office, among others
UK	railway, telecommunications, broadcasting and other regulators
Brazil	Secretariat for Economic Monitoring (SEAE), Institute for Applied Economic Research (IPEA) and Brazilian Institute of Geography and Statistics (IBGE), among others
Bulgaria	Communications Regulation Commission (CRC)
Colombia	Energy and Gas Regulator (CREG), Communication Regulator (CRC); Television Agency (ANTV) and Airplane Regulator (Aeronautica Civil), among others
Chinese Taipei	Directorate-General of Budget, Accounting and Statistics (DGAS), National Communications Commission and Financial Supervisory Commission, among others
Latvia	Consumer Rights Protection Centre, State Revenue Service, State Audit Office, Health Inspectorate and Public Utilities Commission, among others
Mexico	Federal Institute for Telecommunications (IFT)
Australia	Productivity Commission, Australian Energy Regulator, The Bureau of Infrastructure, Transport and Regional Economics, State-government bodies
Portugal	Sector regulators, among others
Republic of Ireland	Sector regulators, among others

Netherlands	Financial regulator, healthcare regulator
Slovak Republic	Regulation Authority for Electronic Communications and Postal Services, Regulation Office for Network Industries
South Africa	Independent Communications Authority of South Africa and the National Energy Regulator, among other sector regulators
Turkey	Federal Energy Regulatory Commission and other regulatory agencies with powers to carry out market studies granted by statute
Spain	Spanish Central Bank and the Financial Markets Regulator (CNMV)
U.S.	Any governmental body with powers to carry out market studies granted by law
Iceland	Post and Telecom Administration
Poland	Office of Electronic Communications and Civil Aviation Office
Belgium	Price Observatory
Costa Rica	Telecommunications authority (Sutel), Ministry of Economy , Industry and Commerce
Italy	Sector regulators such as for energy, telecommunications, transport, banking and insurance
Sweden	Sector regulators, such as the Swedish Transport Agency (implicit powers), Energy Markets Inspectorate (explicit powers), Post and Telecom Authority

3. Powers to collect and use information obtained in the course of market studies

33. 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?

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

3.1. Legal powers to request information for market studies purposes

35. The survey first enquired 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 48 of competition authorities entitled to carry out market studies, all except the US DOJ enjoy some sort of power to request information[25]. These powers are either specifically granted by law for that purpose (73% - 35 authorities[26]) or the requests are based on generic legal powers held by CAs for information gathering (25% - 12 authorities[27]).

36. As shown in Figure 3 below, authorities that have specific powers to request information to both private and public stakeholders represent 54% of respondents (26 authorities[28]), whereas 15% (8 competition authorities[29]) have powers to request information only from private parties. The Chilean competition authority (Fiscalía) is the only authority which reported having specific powers to request information only from other governmental bodies.

25 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").

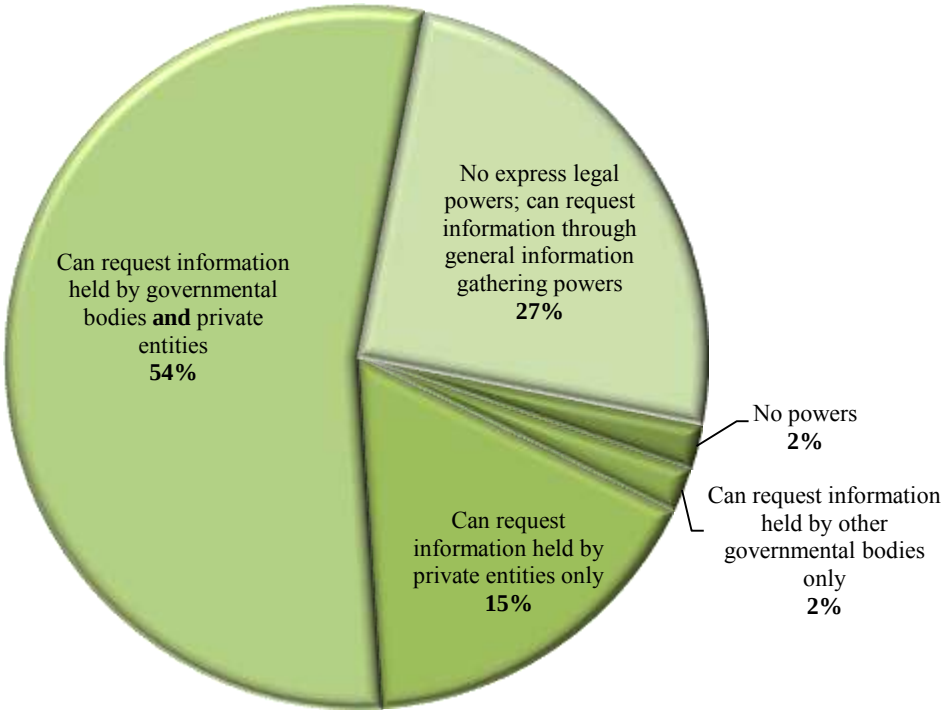
26 Australia, Belgium, Chile (Fiscalia), Costa Rica (competition authority), Czech Republic, Denmark, Estonia, EU, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Malta, Mexico, The Netherlands, Norway, Peru, Poland, Portugal, Romania, Russia, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, UK and the US FTC.

27 Authorities in Brazil, Bulgaria, Canada, Chinese Taipei, Colombia, Costa Rica (Sutel), India, Indonesia, Japan, Lithuania, Republic of Korea and the Slovak Republic.

28 Australia, Costa Rica (competition authority), Czech Republic, Estonia, France, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Romania, Russia, South Africa, Spain, Sweden, Turkey, Ukraine, and the UK.

29 Namely authorities in Denmark (in the case of sector inquiries only), Israel, EU, Germany, Finland, Slovenia, Belgium and the United States (FTC).

Figure 3. Information Request Powers Reported by Authorities



37. The Republic of Ireland's competition authority appears to enjoy extensive powers to request information: it can summon witnesses to attend before it, it can have them examined on oath by any authorized staff member, and it 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.

3.2. Powers to impose sanctions

38. The extent to which stakeholders' responses to information requests can be compelled by competition authorities, rather than simply asked on a voluntary basis, 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.

39. Out of 48 competition authorities, 30 are granted with powers to impose sanction directly[30], 7 authorities must resort to courts to compel compliance[31], and 8 lack powers to impose any sanctions in case stakeholders do not comply with their requests to provide information[32].

30 Belgium, Brazil, Bulgaria, Costa Rica (both competition authority and Sutel), Czech Republic, EU, France, Germany, Greece, Hungary, Israel, Latvia, Lithuania, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Turkey, Ukraine and the UK.

31 Australia, Chile (Fiscalía), Republic of Ireland, Finland, Japan, Sweden and the US FTC.

40. Answers to the Questionnaire have revealed a parallel between the absence of specific powers by competition authorities to request information for the purposes of market studies and the lack of sanctions in case of non-compliance. Out of the ten competition authorities that request information by resorting to more general information gathering powers, eight lack powers to impose sanctions.[33] The only exceptions are Costa Rica's telecom regulator, Sutel, and the Lithuanian competition authority, which, despite the fact that they can request information through more general information gathering powers, have indicated that they can impose sanctions directly. Conversely, out of the 35 competition authorities[34] that have specific powers to request information, only the Italian competition authority indicated it cannot impose sanctions for non-compliance.

41. Here, the authority needs to rely on the willingness of stakeholders to provide information on a voluntary basis. When allowed, sanctions can be imposed by the Minister for Business and Growth, or else by the competition authority if powers are delegated to it by the Minister.

42. The fact that authorities are granted specific powers to enforce compliance does not always mean that they resort to them immediately. Japan clarified that it initially seeks to obtain information from stakeholders on a voluntary basis, resorting to sanctions (through courts) only in situations when market studies are not able to accomplish their purposes otherwise. The US and UK behave in a similar manner.

43. 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 (38 authorities, i.e. 79% of the respondents) - independently or by resorting to courts - the majority (24 authorities) can impose sanctions only on private parties, while the remaining 14 authorities[35] can impose sanctions on both private and public stakeholders.

3.3. Protection of confidential and non-confidential information

44. Respondents to the survey, with the exception of the Costa Rican telecom regulator Sutel, reported having standard procedures or rules in place to protect confidential information provided by stakeholders in the course of a market study. The competition authorities in Mexico and Brazil have also the last word in determining whether information claimed by stakeholders to be confidential should be treated as such.

45. Of those authorities that protect confidential information, 16 (or 33% of all respondents) also protect non-confidential information in all cases. Other authorities choose to protect non-confidential information only in certain circumstances (8 in total). 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

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32 Canada, Chinese Taipei, Colombia, India, Indonesia, Italy, Republic of Korea, US DOJ.

33 Namely, competition authorities from the United States (DOJ), Canada, Italy, Colombia, Chinese Taipei, Indonesia, Republic of Korea and India

34 Competition authorities from Australia, Belgium, Chile (Fiscalia), Costa Rica, Czech Republic, Estonia, EU, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Latvia, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Romania, Russia, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, the UK and the US FTC.

35 Authorities from Greece, Norway, Czech Republic, Denmark, Romania, Australia, Japan, Sweden, the Netherlands, Slovak Republic, South Africa, Turkey, Spain and Iceland.

information that has been made public or whose release has been agreed by the party who has provided it. The Portuguese competition authority can, in some cases, treat information classified as non-confidential by stakeholders as confidential (and therefore protected) in the publication of a market study.

Figure 4. Protection Offered by Authorities for Information Collected for Market Studies

No protection for confidential & non-confidential information:	**Protection for confidential information only:**	**Protection for confidential information & non-confidential information in some situations only:**	**Protection for confidential & non-confidential information:**
Costa Rica	Australia, Brazil, Bulgaria, Czech Republic, Estonia, France, Germany, Greece, Iceland, Indonesia, Peru, Poland, Romania, Russian Federation, Slovenia, Sweden, the Netherlands, Turkey	Canada, Denmark, Finland, Japan, Mexico, Portugal, Spain, US (FTC)	Belgium, Chinese Taipei, Colombia, Costa Rica, EU, Hungary, Ireland, Israel, Italy, Latvia, Lithuania, Malta, Norway, Slovak Republic, South Africa, UK

46. In most cases (36, i.e. 75%)[36], 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.

47. Few authorities (7, i.e. 14%)[37] have declared that there are distinctions between the protection provided within an enforcement action and that provided in the context of a market study. France, for example, 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. Both in Italy and in 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.

48. The only jurisdiction reporting a difference in the treatment of non-confidential information during market studies in comparison to enforcement actions is Italy. Here, 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.

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36 Belgium, Brazil, Bulgaria, Canada, Chinese Taipei, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, EU, Finland, Germany, Greece, Hungary, Iceland, Indonesia, Ireland, Japan, Latvia, Lithuania, Malta, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Russia, Slovak Republic, Slovenia, South Africa, Turkey, Ukraine, the UK and the US FTC.

37 Australia, France, Israel, Italy, Romania, Spain and Sweden.

49. 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 (35 authorities, i.e. 73%).[38] This corroborates the relevance of studies in providing robust support to determine whether to initiate enforcement procedures. A number of those authorities do not place any conditions on the use of confidential information obtained during market studies for enforcement purposes (22 authorities, i.e. 46%).[39]

50. Others (13 authorities) noted that certain conditions apply before they are able to use in an enforcement action the confidential information collected for the purpose of a market study:

- 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 when originally requesting it.

- The above practice also seems to be adopted in the Netherlands, where information must, in addition, be considered as "necessary" to justify its use in enforcement actions.

- In Indonesia, information can be used in enforcement actions only in the form of processed/ statistical data (e.g. percentages or averages).

- In the Russian Federation, information can be used for enforcement purposes under the condition that it can be protected by the authority in charge of the investigation.

- 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 rely on it in the investigation.

- 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 cooperate in market studies.

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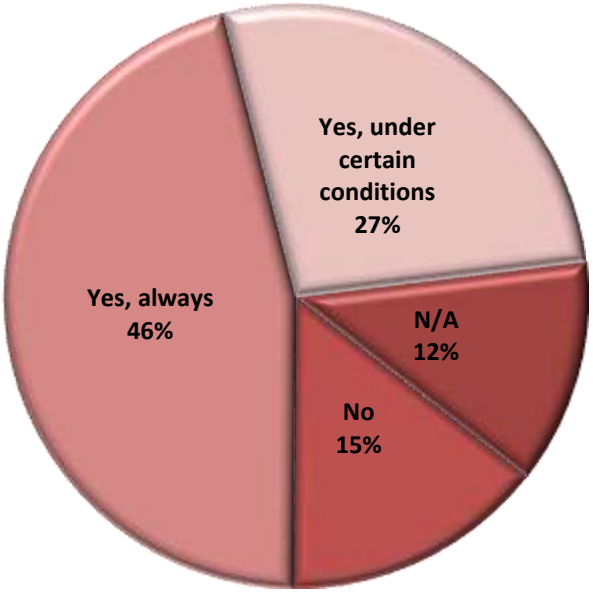
38 Belgium, Brazil, Bulgaria, Canada, Czech Republic, Denmark, Estonia, EU, Finland, Germany, Hungary, Iceland, Indonesia, Israel, Italy, Japan, Latvia, Lithuania, the Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russia, Slovak Republic, Slovenia, South Africa, Sweden, Turkey, Ukraine, UK and the US FTC.

39 Belgium, Brazil, Bulgaria, Canada, Czech Republic, Denmark, Estonia, EU, Finland, Germany, Hungary, Iceland, Latvia, Lithuania, Norway, Poland, Slovak Republic, Slovenia, South Africa, Sweden, Turkey and Ukraine.

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



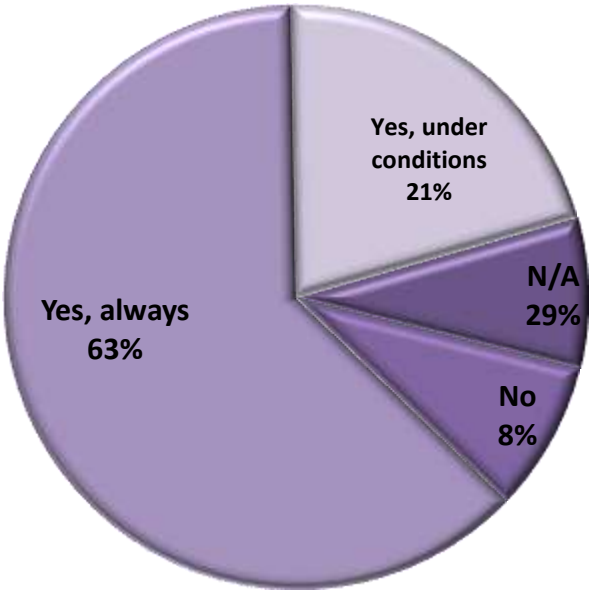
51. As shown in Figure 6 below, The number of authorities using non-confidential information in subsequent enforcement actions (40 in total[40], i.e. 83%, although 10 authorities[41] reported some restrictions) exceeds the number of authorities using confidential information in enforcement actions. Most authorities that apply conditions to the use of non-confidential information use the same conditions applied to confidential information.[42] 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.

40 Authorities from Australia, Belgium, Brazil, Bulgaria, Canada, Colombia, Czech Republic, Denmark, Estonia, EU, Finland, Germany, Greece, Hungary, Iceland, India, Indonesia, Israel, Italy, Japan, Latvia, Lithuania, Mexico, the Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russia, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey, Ukraine, UK and the US FTC.

41 Authorities from Greece, Israel, Italy, Japan, Portugal, Republic of Korea, Romania, Spain, UK and the US FTC.

42 Specifically, authorities from Israel, Japan, Portugal, Romania, the UK and the US FTC.

Figure 6. Competition Authority use of Non- Confidential Information for Enforcement Actions

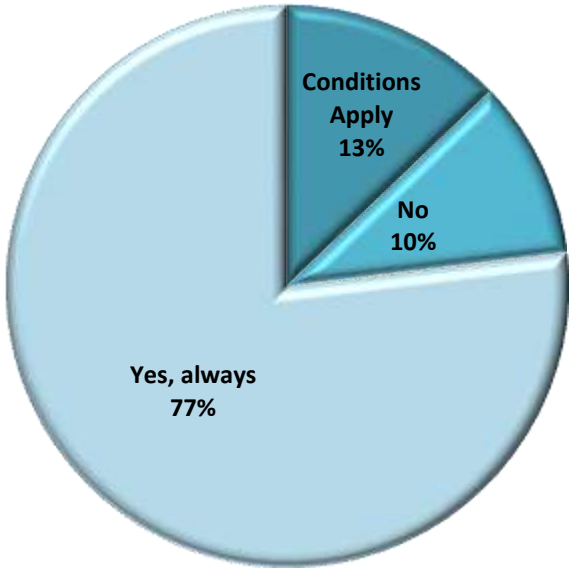


52. Due process principles are also relevant for the protection of confidential information provided by stakeholders in the course of market studies. These may include rules and procedures clarifying the intended use of such information, or allowing stakeholders to be heard, before competition authorities, 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.

53. Among the 35 competition authorities permitted to make use of confidential information initially obtained for purposes of a market study for subsequent enforcement actions, 30 apply due process principles. Out of this total, 25 authorities apply due process unconditionally, to any confidential information.[43] Brazil and Estonia indicated that, although not specified in their respective legislations, they would obtain input from the relevant stakeholders before deciding on whether to disclose confidential information.

[43] Authorities from Belgium, Poland, Iceland, U.S. FTC, Slovak Republic, South Africa, the Netherlands, Slovenia, Italy, Portugal, Latvia, Bulgaria, EU, UK, Finland, Russian Federation and Denmark.

Figure 7. Application of Due Process Protections when Confidential Information is used to for Enforcement Actions



54. Five authorities[44] 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.

4. Institutional setting

4.1. Level of independence of competition authorities in prioritizing market studies

55. The level of independence of competition authorities in selecting which market studies they wish to carry out has also been explored in the questionnaire. The level of independence of competition authorities was surveyed by asking respondents whether: 1) competition authorities can receive requests from other public bodies and 2) competition authorities have the discretion to accept or refuse such requests.

56. Almost half of the competition authorities (22[45], i.e. 46%) have declared that they have accepted or could accept requests to carry out market studies from other governmental bodies, consisting, among others, of: the Ministry of Trade, Industry and Fisheries (Norway); the Ministry of Economic Development

44 Belgium, India, Israel, Sweden and the UK.

45 Authorities from Australia, Belgium, Bulgaria, Canada, Chile Fiscalia, Colombia, Costa Rica, Denmark, Estonia, France, Ireland, Italy, Mexico, the Netherlands, Norway, Peru Russia, South Africa, Spain, UK and the US DOJ.

(Italy) or any governmental body (Estonia, the Netherlands, Mexico, Bulgaria; Colombia). On the other hand, 26 authorities (i.e. 51%) responded that other parts of the government could not submit requests for CAs to carry out market studies.

57. Out of the 22 authorities[46] that have accepted or could accept requests from other public bodies, 8[47] cannot refuse them. The remaining 14 authorities[48] , instead, 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 prioritized according to, among others, 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).

4.2. Structure for carrying out market studies

58. Competition authorities have adopted different institutional structures when it comes to the structure of the teams in charge of market studies. The majority (26[49], i.e. 54%) 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, and 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.[50]

59. In addition to ad-hoc internal teams, a few competition authorities reported cooperating 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.

60. 4 authorities draw their market study teams from enforcement staff alone.[51] Other authorities (15) have separate staff and department(s) in charge of market studies and of enforcement activities.[52] Some authorities use both ad-hoc teams and specialized departments or task forces to carry out market studies[53].

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46 Authorities from Australia, Belgium, Bulgaria, Canada, Chile Fiscalia, Colombia, Costa Rica, Denmark, Estonia, France, Ireland, Italy, Mexico, the Netherlands, Norway, Peru Russia, South Africa, Spain, UK and the US DOJ.

47 Authorities from Denmark, Australia, Republic of Ireland, Canada, Russian Federation, Costa Rica competition authority, South Africa, and Canada.

48 Authorities from Belgium, Bulgaria, Chile (Fiscalia), Colombia, Estonia, Italy, Mexico, the Netherlands, Norway, Peru, Spain, UK and the US DOJ.

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

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

51 Russia, Latvia, Slovenia and Iceland.

52 Mexico, Israel, Japan, Portugal, Republic of Ireland, Sweden, Brazil, Colombia, Denmark, Spain, U.S, DOJ and FTC, Costa Rica competition authority, Canada and Romania.

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

Finally, in addition to the structures described above, 10 competition authorities have retained external consultants with expertise in specific markets or sectors.[54]

5. Market Investigations

61. 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 summarized below.

5.1. Definition

62. Similarly 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.

63. Among the three jurisdictions that conduct market investigations, there exist differences in how the instrument is applied, and 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.

64. 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.

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

66. The Iceland 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

67. 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 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.

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[54] India, Peru, Czech Republic, Norway, Chile Fiscalía, Mexico, Republic of Ireland, the Netherlands, South Africa and Canada.

68. 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.

69. 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

70. Unlike market investigations, market studies undertaken by the UK CA are limited to examinations into the causes of why particular markets may not be working well, 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, 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.

71. Market studies conducted by the Iceland CA can have several purposes and, as in the UK, may trigger a market investigation. Specifically, market studies can be used for internal case prioritization, 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 Iceland CA do not involve the issuance of remedy orders, whereas orders can be made pursuant to market investigations.

72. 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.

73. 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
Express legal powers to conduct study/investigation *(E: express power, G: general power)*	G	E	E	E	E	E
Express legal powers to request information *(G: public bodies, P = private entities)*	G,P	G,P	G,P	G,P	G,P	G,P
Ability to directly impose sanctions by authority in event of non-compliance with information requests *(G: public bodies, P = private entities)*	G,P	G,P	P	P	G,P	G,P
Protection of confidential information	Yes	Yes	Yes	Yes	Yes	Yes
Protection of non-confidential information	No	No	Yes[55]	Yes	Yes	Yes
Protection of confidential information differs from enforcement protections?	No	No	No	No	No	No
Protection of non-confidential information differs from enforcement protections?	N/A	N/A	Yes	No	No	No
Use of confidential information from study/investigation for enforcement?	Yes	Yes	No	No	In some cases[56]	In some cases[57]
Use of non-confidential information from study/investigation for enforcement?	Yes	Yes	Yes	Yes	In some cases[58]	In some cases[59]
Due process protections for use of study/investigation information in enforcement actions?	Yes	Yes	N/A	N/A	In some cases[60]	Yes
Mandatory to comply with request of other public bodies to conduct study/investigation?	Yes	N/A	In some cases[61]	In some cases[62]	Yes	No

55 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.

56 Assessed on a case-by-case basis.

57 Assessed on a case-by-case basis.

58 Assessed on a case-by-case basis.

59 Assessed on a case-by-case basis.

60 One difference is that parties who provided information for market investigations would likely not be given the opportunity to comment before the use of this information in an enforcement action.

61 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.

5.4 Other Market Investigation Features Reported by Respondents

74. The UK CA's market investigations are conducted by a panel of 3 to 5 professionals (including, for instance, economists, lawyers, accountants or business people) supported by authority employees. The authority reported that this approach provides the independence of the team from the CA, the government and other public entities, which ensures the independence of its conclusions which may touch upon the conduct of public entities.

75. The UK CA's market investigations are also subject to certain rules of procedure to balance different demands, 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.

6. Successes and Challenges

6.1. Factors leading to Success

76. 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.

77. 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.

78. 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 organizational knowledge and helped inform priority-setting for further work in the sector. In the UK, the CA[63] has conducted market studies with a varying range of depth and have accomplished a range of goals, including setting strategic objectives, enhancing organizational knowledge, supporting enforcement actions or discovering market issues warranting further investigation.

79. Beyond the articulation of clear objectives, stakeholders' cooperation was identified by several authorities as a contributor to the success of market studies.[64] The French, Spanish and Ukrainian authorities have 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

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62 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.

63 Both the current Competition and Markets Authority and the former Office of Fair Trading.

64 Specifically, Brazil, Chinese Taipei, the Czech Republic, Finland, France, Republic of Ireland, India, Mexico, the Netherlands, Norway, Peru, Spain, Sweden, Turkey, Ukraine, the United Kingdom.

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.

80. 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.

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

81. Many of the challenges experienced by competition authorities relate to: 1) resources, 2) data availability and 3) stakeholder cooperation.

82. Competition authorities in Germany, Indonesia, Lithuania the UK and Russia noted the resource-intensive nature of market studies. This has posed certain challenges in Russia 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.

83. 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 expedition" and challenges related to the use of confidential data can make it difficult to rely on stakeholders' cooperation. 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, Chinese Taipei and the Slovak Republic. The Bulgarian CA noted problems related to receiving incomplete or inaccurate data from market participants, coupled with an unwillingness of government entities to share data due to legal restrictions. Timely cooperation was also identified as a problem faced by authorities in Italy, Japan (where firms fear the business impacts of sharing information), Malta, Peru and Turkey (where data retention can be an issue). In addition, DG-Comp has experienced difficulties obtaining information from consumer groups due to data and resource constraints. In Canada, 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 has a constraint when studying this sector.

84. To mitigate some of these challenges, the Brazilian competition authority recommends (as noted above) 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.

85. Authorities in France, Estonia, Lithuania, the Netherlands, Peru, Turkey and the UK have identified decisions by their governments not to accept 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.

86. Other challenges were also identified by respondents. 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

87. 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.

88. 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).

5. An analysis of the procedural safeguards available to protect the interest of stakeholders;

6. An overview of the various possible institutional design settings.

89. 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.

90. 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.[6566] 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[67]. Hence, the areas suggested above cover new and different ground and would not lead to any overlap with the work of the ICN.

65 http://www.internationalcompetitionnetwork.org/uploads/library/doc907.pdf

66 The ICN has also developed an Information Store, which includes market studies conducted by ICN members between 2005 and 2009[66], and it is planning to update it

67 The ICN is planning to update the Handbook, but not expand the range of subject covered in it.