



**International  
Competition  
Network**

**Interim Report on the  
*Explaining the Benefits of Competition*  
Project**

**Advocacy Working Group**

April 2012

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## 1. Introduction

The ICN Advocacy Working Group (AWG) project on Raising Awareness of the Benefits of Competition (the Benefits Project) seeks to provide ICN members with knowledge, strategies and arguments for explaining the benefits of competition to support their competition advocacy efforts with governmental and non-governmental stakeholders. The Benefits Project considers the content of agencies' communications on the benefits of competition, as well as how competition agencies evaluate, and explain the benefits of their interventions.

Explaining the benefits of competition can be a challenge for many competition agencies, particularly younger agencies. Strategies and approaches on how better to explain the benefits of competition to a variety of stakeholders, including the media, legislators, government, public authorities, business, and the general public, as well as how to evaluate, measure and present effects of competition and competition interventions, can help to promote a competition culture.

In sum, the Benefits Project aims to gather learning on agencies' strategies to communicate the benefits of competition to various stakeholders, and on how agencies evaluate their competition interventions. This report aims to present the results of the Benefits Project for the 2011-2012 ICN year, and propose recommendations for AWG work in the 2012-2013 ICN year.

## **2. The Benefits Project Experience-Sharing Teleseminar Series**

Beginning in September 2011, the Advocacy Working Group held four experience-sharing teleseminars that aimed to be a platform for agencies and NGAs to discuss agencies' communications strategies for explaining the benefits of competition to various stakeholders. Each teleseminar was focused on a particular stakeholder group, acknowledging the importance of targeted and differentiated strategies for each of them. Speakers from agencies from around the globe shared their experience and lessons learned, while NGAs sought to contribute their own view from the 'outside.'

This report includes a short summary of each teleseminar. The slides can be found on the Advocacy section of the ICN Webpage<sup>1</sup>.

### **2.1 Explaining the Benefits of Competition to Government**

The first of the teleseminar series on *Explaining the Benefits of Competition to Government*, held on 29 September, included presentations from Angel López Hoher, Chief of the Planning Unit at the Mexican Federal Competition Commission (CFC), Daniela Zemanovicova, Vice Chairwoman of the Antimonopoly Office of Slovakia, Vladimir Kachalin, Advisor to the Chairman of the Federal Antimonopoly Service (FAS) Russia and Chuck Webb of Baker Botts, L.L.P. (NGA).

The objective of this teleseminar was to explore agencies' experiences and good practices in communicating with government and legislators, in their day-to-day activities, but also during important milestones in an authority's activity, such as legislative reform.

### **2.2 Explaining the Benefits of Competition to Business**

On October 27<sup>th</sup>, the group held the second of the teleseminar series on *Explaining the Benefits of Competition to Business*. The objective of this call was to examine agencies' experiences regarding their communications with business, looking at their communications as a whole, including compliance programmes and innovative advocacy techniques. An NGA brought a fresh perspective from the other side as to how agencies may improve their techniques.

Speakers on this call included Joaquin López, Director of the Competition Research Unit of the Spanish *Comisión Nacional de Competencia*, Marta Skrobisz, Head of Unit of the International Relations and Communication Department of the Polish Office of Competition and Consumer

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<sup>1</sup> <http://www.internationalcompetitionnetwork.org/working-groups/current/advocacy.aspx>.

Protection, Mueen Batlay, Member of the Competition Commission of Pakistan and Anne Riley (NGA), Chair of the ICC UK Competition Committee and Co-Chair of ICC International Joint Working Group on Antitrust Compliance Programmes and an in-house antitrust counsel with a multi-national company.

### **2.3 Explaining the Benefits of Competition to the Media**

The third teleseminar of the series on *Explaining the Benefits of Competition to the Media* took place on the 17<sup>th</sup> of November, and included presentations from Fernando Araya, Senior Legal Officer and International Adviser at the Chilean *Fiscalia Nacional Economica*, Kay Weidner, Head of Unit of Press and Public Relations at the German *Bundeskartellamt*, Miguel Ángel Martín de Pablos, Adviser to the President at the Spanish *Comisión Nacional de Competencia* and Peter Kaplan, Deputy Director of the Office of Public Affairs at the US Federal Trade Commission.

This teleseminar provided information from competition agencies on how best to explain to the media (both as a stakeholder in itself and as a conduit of information to the general public) not only the benefits of competition, but also the activities and decisions of the competition authorities.

### **2.4 Explaining the Benefits of Competition to the General Public**

The teleseminar on *Explaining the Benefits of Competition to the General Public*, the last of the teleseminar series, was held on 15<sup>th</sup> December. Presenters included Brian M. Lingela, Director of Consumer and Public Relations at the Competition & Consumer Protection Commission of Zambia (CCPC), Naohiko Komuro, Senior Planning Officer of the General Affairs Division at the Japan Fair Trade Commission (JFTC), and NGAs Andreas Stephan, Senior Lecturer at the ESRC Centre for Competition Policy at the University of East Anglia in the UK and Annetje Ottow, Member of the Board of OPTA and Professor of Public Economic Law at Utrecht University in the Netherlands.

This teleseminar brought a wider perspective to the series, exploring communication with the public at large, especially consumers. Speakers presented innovative campaigns to reach new target groups and successful strategies to communicate the benefits of competition. The NGAs provided results of an international study that considers public attitudes toward competition law enforcement, and how that might inform agency communications.

### **3. The Benefits Project Survey on Explaining the Benefits of Competition and Evaluating Competition Interventions**

In parallel with a teleseminar series, the group prepared and answered a short survey, one for competition agencies and another for NGAs.

This survey for competition agencies had two parts. Part I addressed agencies' strategies and experience in explaining the benefits of competition. Part II addressed agencies' evaluation of their competition interventions.

The survey for NGAs sought to explore the views of non-governmental agents on competition agencies' communications, as well as their own views on the important and relevant messages that may be put across when explaining the benefits of competition. The questionnaire was sent to the Advocacy Working Group NGAs, as well as to the members of the ICC and an international selection of consumer associations.

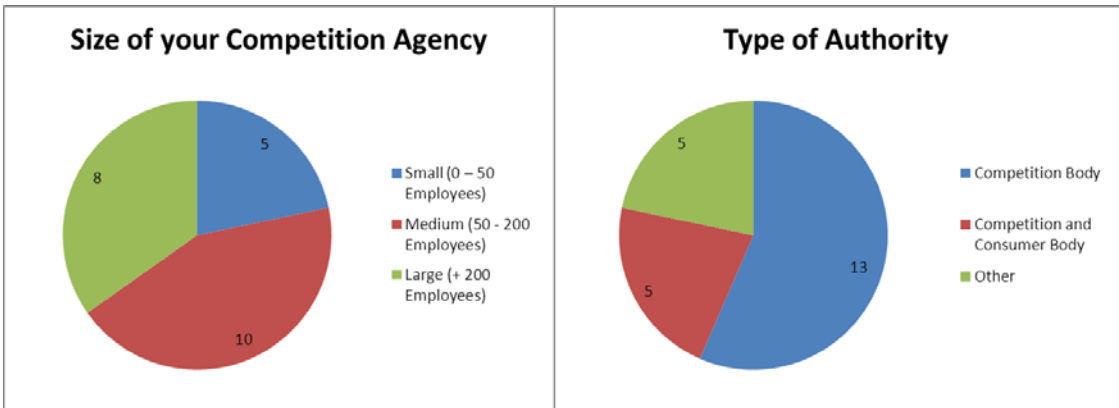
The questionnaires, as well as the reports on their results, were prepared by three drafting teams including the Russian FAS, the Spanish CNC, the UK OFT, Alan Fels (NGA), Bert Foer (NGA), Charles Webb (NGA), Grant Murray (NGA), John Oxenham (NGA) and Salil Mehra (NGA).

#### **3.1 Responding Agency Details**

In total, 23 agencies responded to the questionnaire (listed in Appendix A). Where agencies requested confidential treatment of certain responses, those responses have not been included in this report, apart from inclusion in aggregate statistics.

Most of the competition authorities which have answered this questionnaire are medium sized (10 among 23: 43.47%).

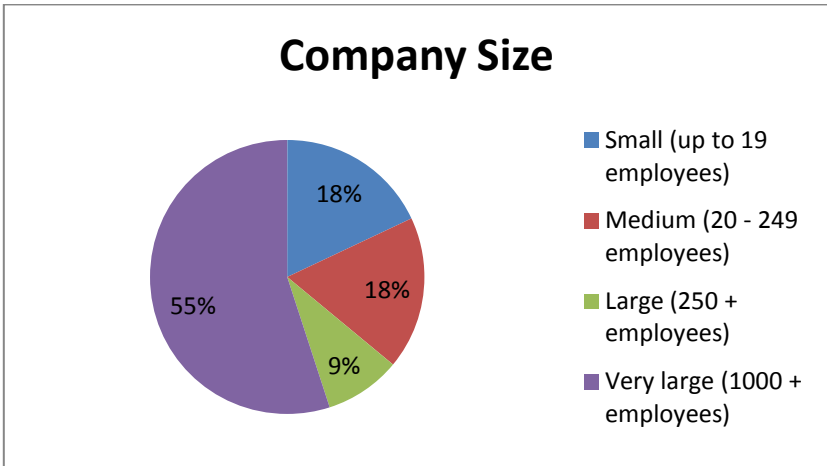
Of the 23 competition authorities that answered the questionnaire, 13 competition authorities deal only with competition, and 5 are competition and consumer bodies (Jamaica, Poland, UK, US FTC and Pakistan). Among authorities that classified themselves as "other", the Tanzanian Authority describes itself as a Competition, Consumer and Counterfeits Body, the New Zealand Authority as a Competition, Consumer and Regulation Body and the Brazilian Authority as an agency that also focuses on economic regulation, international trade policies, competition advocacy, international cooperation, institutional affairs and public affairs. Besides, the Netherlands Competition Authority is a Competition and Regulatory (Energy and Transport) Body.



### 3.2 Responding NGA Details

In total, 20 responses were received to the questionnaire sent to NGAs. 11 of these were from businesses, while the remaining 9 responses came from consumer organizations.

The businesses responded on a confidential basis. The majority of the respondents (55%) were very large businesses with more than 1000 employees.



The 9 consumer agencies are listed below:

- Bulgaria- Active Consumers
- Croatia- Consumers Patrosa
- Kenya- CUTS NRC
- Kenya- IEA
- Netherlands-CB
- UK- EC
- US-AAI
- Spain-OCU
- Vietnam- CUTS Hanoi Resource Center

Although responses from 9 of the 29 organizations to whom the questionnaire was sent were received, the results are limited by the small absolute number of responses and large variations in the number of questions that were answered. These factors may reflect that the questionnaire was designed for other types of respondents and were likely less intuitive for consumer organizations that may not be accustomed to deal with competition as a priority issue. In short, too much emphasis should not be placed on the statistical value of the data presented here, although certain useful generalizations can be made.



### 3.3 Part 1: Explaining the Benefits of Competition – Competition Agencies

#### A. What do you explain and to whom?

Agencies were firstly asked which types of stakeholders are considered to be the most relevant when explaining the benefits of competition, and which are the most relevant messages for each stakeholder, and finally about the frequency of contact with each stakeholder.

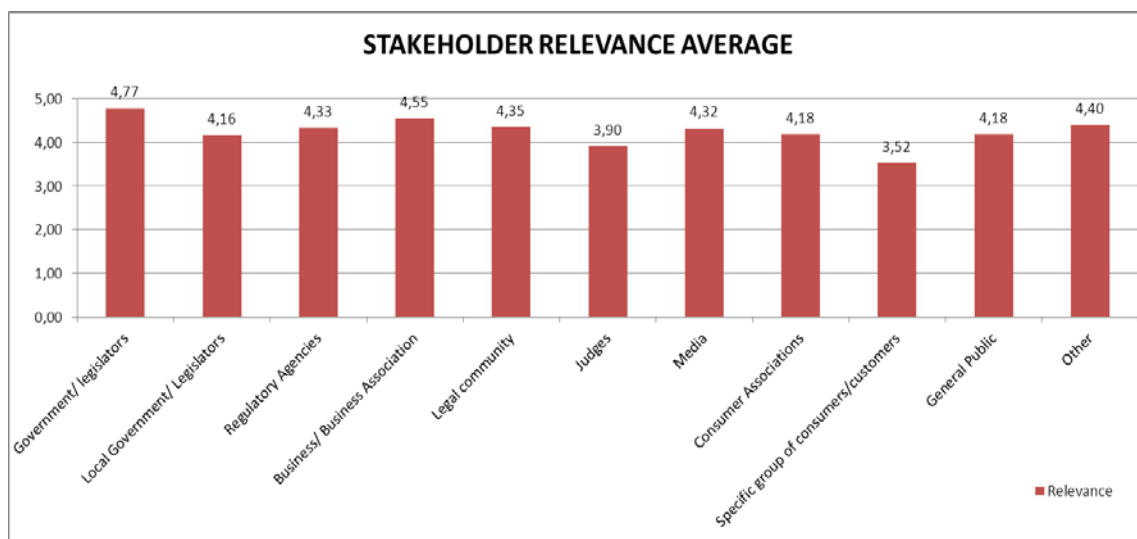
#### 1. Which stakeholders does your agency consider to be relevant in terms of explaining the benefits of competition? (where 1 is not relevant, and 5 is very relevant)

This question aimed to understand which stakeholders were considered by agencies to be the most relevant in terms of explaining the benefits of competition.

Although their relevance varies, the absence of any stakeholder ranked below 3, 5 shows that agencies in fact consider all stakeholders relevant. The following chart shows the average relevance of each of the stakeholder groups identified by the agencies.

According to the results, government, legislators and business associations are considered to be the most relevant stakeholders, followed by the media, the regulatory agencies and the legal community, by agencies when considering their strategies for explaining the benefits of competition.

In addition to the stakeholders set out in the questionnaire, the Indian Competition Commission identified students as a relevant stakeholder. The advocacy strategy of this agency aims at bringing about deep rooted changes in the thinking of students.



During 2011, the **FNE** (Chile) undertook an initiative concerning the link between competition and trade associations, publishing a document for advocacy purposes.

**FAS Russia** has advisory councils that include various stakeholders, including business, consumer associations and academia. Also, FAS participates in joint commissions with industry regulators, primarily those that regulate utilities and natural monopolies and, therefore, have a voice in setting quality standards, quantities of products to be supplied and tariffs. Such commissions exist in electricity, natural gas, railroad transportation and other sectors where a natural monopoly is present.

- 2. Please indicate, on a scale of 1 to 5 (where 1 is not relevant, and 5 is very relevant) which of the suggested benefits of competition would be most relevant to communicate for each of the stakeholder groups identified [in the table below].**

When asked which messages were most relevant when considering how to explain the benefits of competition to the various stakeholders identified in the previous question, the message most valued by agencies was: “to keep competitors from colluding”.

When specifically addressing business associations, agencies considered the message “to facilitate winning new customers” to be the most relevant, though when considering local government/ local legislators, the most relevant message identified by agencies is to promote more efficient public procurement. When dealing with media and consumer associations as stakeholders, the message identified as most relevant is “to enhance consumer access to products and services at low cost” and “to make available a choice of various quality products”. In communicating with the legal community and judges, the most important benefit of competition to put across is “to keep competitors from colluding”.

In contrast, perceived benefits of competition such as “to protect the underdog”, “to facilitate winning new customers” and “to permit failing firms to exit” are the least valued messages with an average score of below 3.

Annex C contains a table with the average for each message and for each stakeholder and in Annex D the competition authorities’ case studies.

The graph below depicts the average relevance attributed to each message included in the questionnaire.

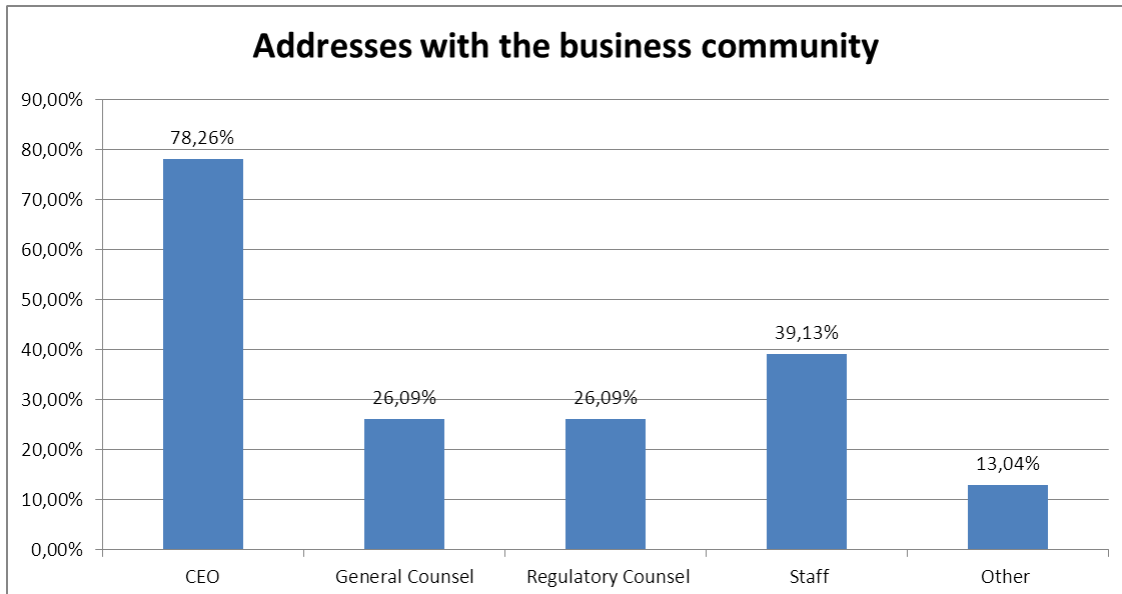


### 3. When communicating with business, who do you most frequently address?

This question aimed to understand to whom agencies most frequently addressed their communications when communicating with the business community, whether the CEO, General Counsel, Regulatory Counsel, Staff or others.

Agencies most (over 78 %) frequently address the CEO.

The average responses are shown in the following chart.



**4. How often do you contact each stakeholder, both formally and informally? (Not at all; Very occasionally; Regularly (annually); Frequently (once a month); Very frequently (once a week))**

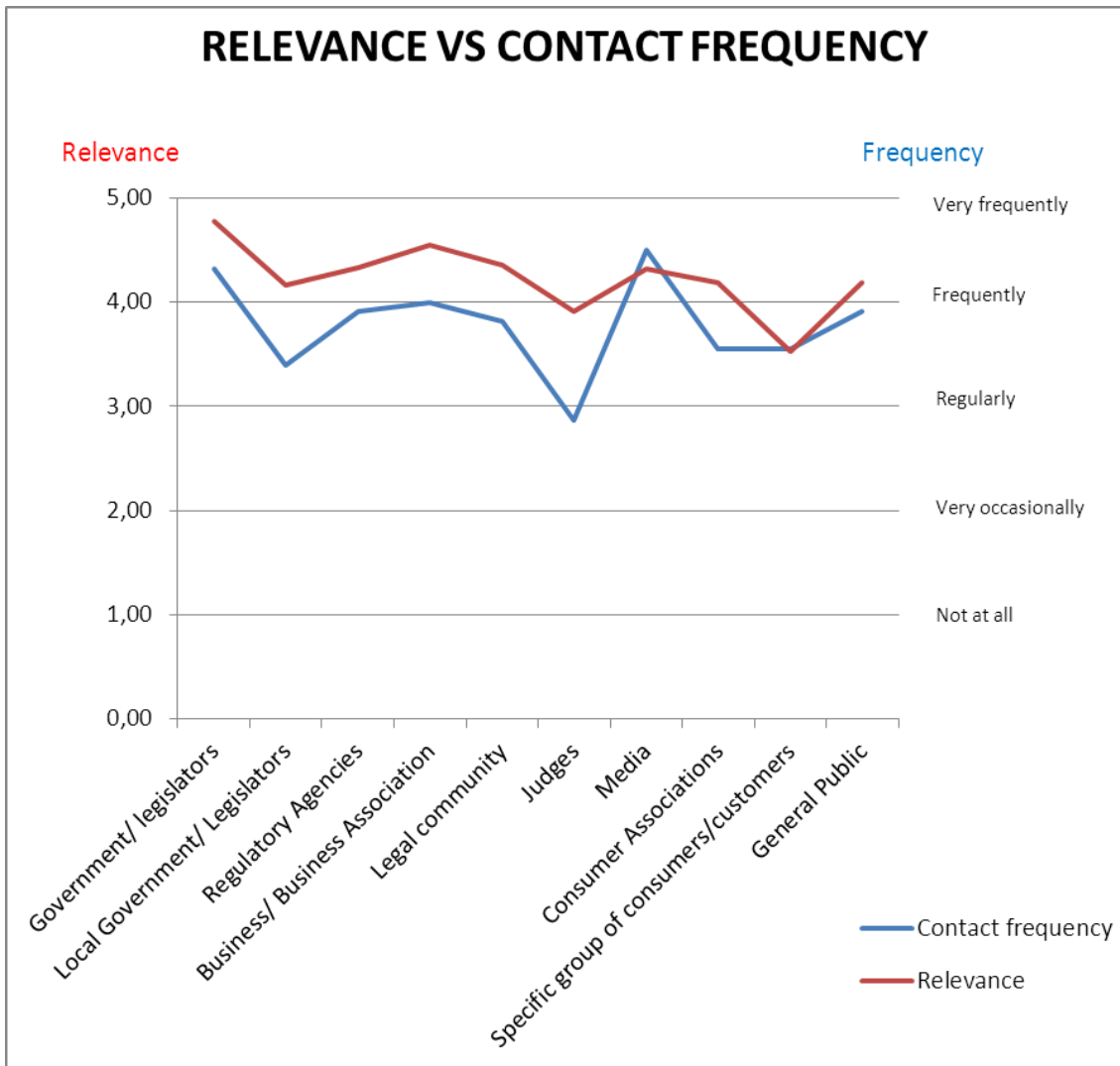
The competition authorities were asked about the frequency with which they contact each stakeholder. The stakeholders most frequently contacted by competition authorities were the media, followed by Government/ Legislators, with an average of once a week.

In contrast, the stakeholders who are contacted less frequently by competition authorities, on average, are judges.

Frequency	Government / legislators	Local Government / Legislators	Regulatory Agencies	Business/ Association	Legal community	Judges	Media	Consumer Associations	Specific group of consumers/ customers	General Public	Other
Average Contacts	19,2	13,4	17,2	18,4	17,2	13	20,6	15,8	14,6	17,4	3,4

In general, competition authorities contact government or legislators, and the media once a week; local government and legislators, regulatory agencies, business associations, the legal community, judges, consumer associations and the general public once a month; and specific group of consumers once a year.

The following graph shows the relation between the competition authorities' contact frequency and the stakeholders' relevance.



In **Bulgaria**, the CPC explains the benefits of competition to the government and legislators very frequently mainly with its advocacy opinions. The CPC organizes seminars and elaborates guidelines for business. Such seminars have also been organized for judges, but very occasionally. The general public is contacted very frequently through the media by means of press releases.

In **Chile**, at least once a year the FNE organizes an outreach event called “Competition Day”. It aims at building a competition culture, and disseminating and explaining the benefits of competition to a broader audience. Attendants are usually between 200 and 400 people. Stakeholders from all the categories mentioned in the chart above attend to this event. The FNE does not deploy specific efforts towards judges, since as a prosecutor, it tries to keep its autonomy and to prevent affecting judges’ independence. The FNE interacts with judges in the Competition Tribunal during competition law proceedings and with Supreme Court judges

during proceedings reviewing the Competition Tribunal's decisions. Since these opportunities are related to specific cases it would not be precise to consider them as instances for explaining benefits of competition by and large.

In **Spain**, the CNC also organizes a Spanish Competition Day annually which aims to ensure that the general public (not just people who are already familiar with competition issues) are aware of the importance of the work done by the competition authorities in applying anti-monopoly legislation and advocating competition in our economies.

In **New Zealand**, while they make no direct or formal approach to judges, judges occasionally attend or address competition law conferences that they are also attending or addressing, so they have informal contact with judges.

In addition to this, in the **Slovak Republic**, contact with media depends on outputs the Office presents in the particular period; hence the contact frequency varies over the course of time.

Moreover, the **Bundeskartellamt** is in regular contact with the Federal Ministry of Economics and Technology as well as the relevant state authorities regarding competition matters.

The **Swiss Competition Commission** must be consulted by the Government/Local Government when a new law, which could possibly have effects on competition, is passed.

## **B. How do you explain the benefits of competition to stakeholders?**

In this section, competition authorities were asked about the means of communication they find most relevant in explaining the benefits of competition to each stakeholder, taking into account the use of targeted means of communication.

### **5. Please indicate, on a scale from 1 to 5 (where 1 is not relevant and 5 is very relevant) which means of communication are most relevant to explain the benefits of competition to the various types of stakeholders.**

Regarding the means of communication, on average, an agency's website is the most valued means of communication, while agency presentations at local Chambers of Commerce and cartoons/comics conveying antitrust messages are the least valued.

Depending on the stakeholder, the means of communication vary.

For competition authorities, on average, the most relevant means of communication to explain the benefits of competition to Government or legislators is the Agency Annual Report.

In contrast, in communicating the benefits of competition to Regulatory Agencies and to the legal community, the most relevant means of communication are enforcement decisions.

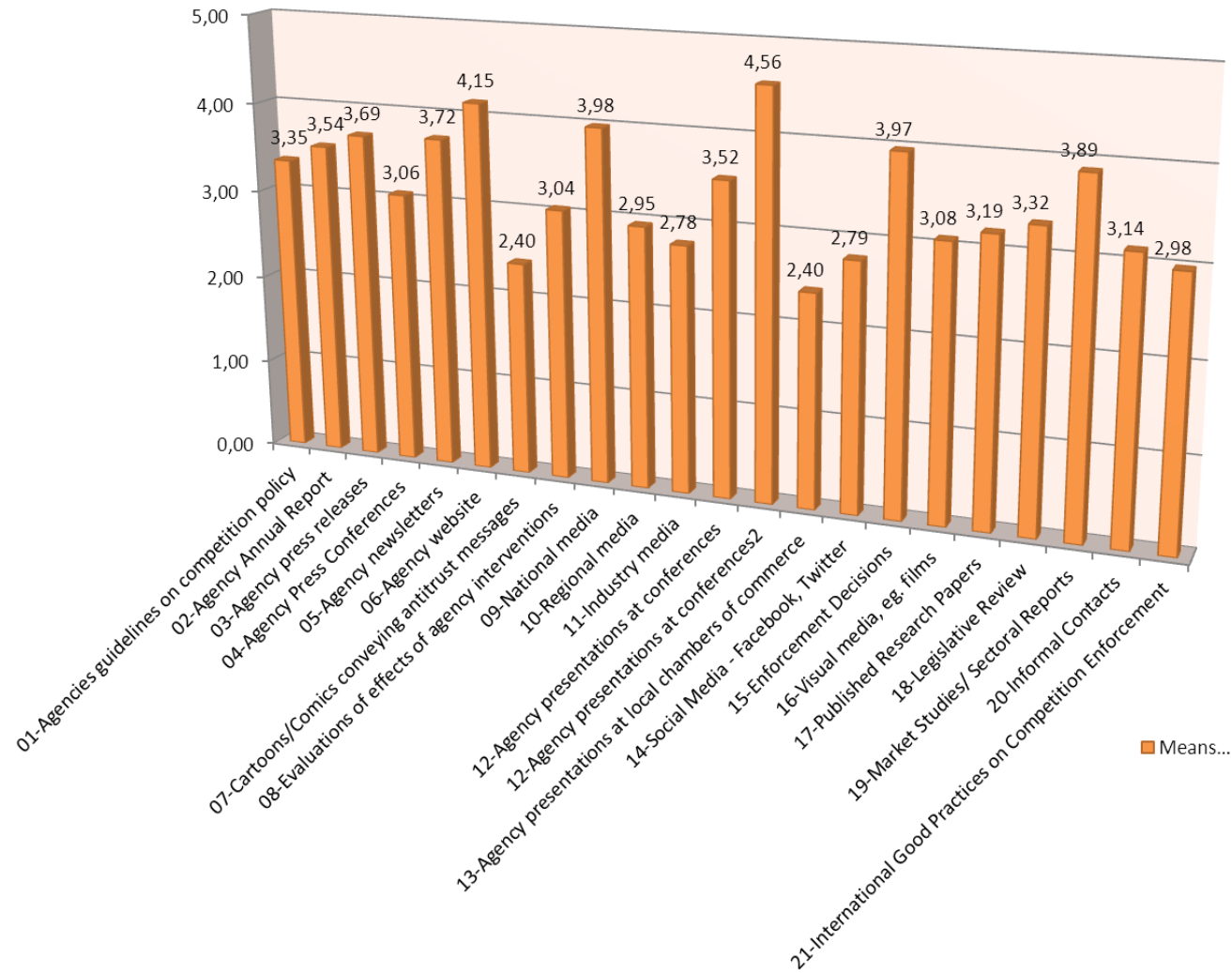
Regarding consumer associations and specific group of consumers, the instrument considered to be most relevant by agencies is the agency website.

Finally, for the general public, the national media is the most relevant means of communication.

In Annex E there is a table with the average for each means of communication and for each stakeholder and in Annex F, individual agency cases studies are available.

The following chart shows the average scores regarding means of communication used by Competition Authorities.

## MEANS OF COMMUNICATION





In **Jamaica**, depending on the stakeholder, different communication methods are used. Besides reports on specific issues, written reports, and quarterly and annual newsletters, what characterizes communication with government/legislators are the one-to-one meetings. For communication with regulatory agencies and business associations and the legal community, seminars and workshops are deemed to be most relevant. Finally, the competition authority organizes workshops in which judges are the sole participants. These sessions also include simulations and mock trial exercises in which challenges, opinions and various methods and approaches to issues are explored. In communicating with the general public, the main means of communication are press releases and newspapers articles.

The website is considered to be the most efficient means of communication for **Chile** and **Russia**.

In **Poland**, UOKiK issued, during 2010, over 203 press releases, held 11 conferences and released 2.5 thousand pieces of radio and TV coverage, regarding decisions of the President of UOKiK.

Additionally, another educational campaign carried out by UOKiK includes sending letters and educational materials explaining, in a clear and accessible manner, how competition law assesses and sanctions different anticompetitive practices, such as abuse of a dominant position, price fixing or bid rigging. These materials contain examples of the Office's decisional practice.

Also, in **Turkey**, the President of the Turkish Competition Authority personally issues annual competition letters to draw the attention of various stakeholders to matters on competition. Such letters are not only made public on the website of the Turkish Competition Authority, but also sent to relevant stakeholders such as government and public administration, regulatory authorities, political parties, public and private undertakings, chambers of industry and trade, associations of undertakings, non-governmental organisations, media, and universities informing them on competition, various aspects of competition law and the activities of the Turkish Competition Authority.

In terms of reports and guidelines, **Bulgaria** has adopted, among others, Guidelines against bid rigging in public procurement, and Guidelines on information sharing among competitors and Guidelines for the assessment of compliance of legislative and general administrative acts with competition rules, **Turkey** published a Booklet in 2002 about "Why competition" and later a Manual of Competition Law.

**India** has developed an internship program for students, as students are considered a very relevant stakeholder.

Finally, another means of communication used by competition authorities is advertising their activities during National Competition Days. For instance, in 2010, on the occasion of the 20th anniversary of the Office, **UOKiK** organised 8 conferences and debates where experts and

practitioners were given the possibility to discuss the benefits of competition law. Furthermore, they tried to address the advantages of competition to the business and general public by launching many campaigns popularising the knowledge of competition law. One of their most successful initiatives was the TV, radio and internet spot launched in 2009 which aimed at promoting the leniency program. In **Japan**, the JFTC hosted “JFTC for One Day” which is an event to promote public relations activities and consultation. Finally, the **CPC (Bulgaria)** received in 2007 the golden key award as a Best Institutional Provider of Information to Citizens.

### **C. Institutional Structure**

In this section, competition agencies were asked about their internal organization regarding their external communications. First of all, they were asked whether they have a specific public relations department. Secondly, agencies were asked whether they have different units that deal with interaction with the different types of stakeholders, and finally whether the agency has partnerships with other agencies or entities.

#### **6. Does your agency have a specific department that deals with external communications?**

Most of the responding agencies have a specific public relations department (72, 72%) and specific units dedicated to specific types of stakeholders (63, 64%).

#### **7. Does your agency have different units that deal with interaction with the different types of stakeholders?**

The **DGCOMP** has a specific unit dealing with external relations and inter-institutional relations. The Unit is in charge of preparing press releases, press conference, interviews, etc. in agreement with the Commissioner's spokesperson. The Unit also prepares speeches and briefing material for senior management. In addition, it dispatches press questions to other technical units and ensures adequate follow-up. The same unit also deals with relations with the European Parliament and Council. It is also in charge of DG Competition's publications and website.

**The FAS (Russia)** has a media liaison unit that is a part of the agency's administrative department.

**Tanzania's** public relation department is an internal unit which operates under the Director General's office.

Some jurisdictions, like **Ireland**, have a very small unit: 2 people. Speeches and presentations are not all prepared by the communications unit, but are all published afterwards via the unit.

**New Zealand** also has a very small communications team (3 people) which conducts surveys of stakeholders and is responsible for dealing with media. It works closely with others in the Commission on matters of communication strategy.

In the case of **Turkey**, before November 2011, there was no specific department for external communications. However, following a restructuring exercise carried out in November 2011, there is now a Department which is responsible for external relations of the Turkish Competition Authority. This Department will be the sole unit responsible in the future regarding external communications.

In the case of the **UK- OFT**, the public relations department provides three types of external communications:

1. Marketing and Campaigns: plans, develops and implements the OFT's consumer and business information and awareness campaigns on both competition and consumer issues; manages the OFT's website, intranet and digital media properties; provides office-wide advice and direction on corporate marketing communications, including managing the OFT brand, corporate design, house style and produce OFT publications.
2. Corporate Communications: ensures effective relationships with parliamentarians, key government departments and others involved in policy development; ensures strong relationships with all stakeholders including consumer organisations, business representative groups and businesses more generally; oversees the OFT's internal communications; leads production of the OFT Annual Plan and Report.
3. Press Office: leads co-ordination of all major announcements; advises colleagues across the OFT on media strategies for their work or project; protects and builds the OFT's external reputation; develops relationships with the media through broadcast, print and online communications; supports the promotion of OFT consumer and business campaigns via the media.

Most of the responding agencies have internal public relations departments, but there are few that have externalized the department.

In **Spain**, the CNC has an external communications agency which is one of the key elements of its communication strategy. In fact, they provide expertise and their database of journalists. Furthermore, it has proved to be a very cost-effective solution as it allows us to manage a great amount of information demands. It is crucial to build up a close relationship with the agency because of the sensitive issues being dealt with. In relation to this, the agency has been trained during almost a year.

Internally, the CNC does not have a specific department of public relations, though there are specific personnel in charge of public relations in the President's Cabinet.

Similarly, in **Switzerland**, there is a Head of Communications, who is simultaneously the vice-director. He is in charge of reviewing the press releases, organizing the press conferences and the annual report. In addition, the agency hires an external consultant (retired journalist), who reviews all press releases. His feedback is very useful as he is not a competition law specialist, and therefore has an unbiased perspective.

In **Bulgaria**, the Public Relations unit deals only with media relations. The European Commission's **Directorate General for Competition** has a Consumer Liaison Unit dedicated to communications with consumer associations and a separate Communications Unit which handles communication with the press and the general public. Interactions with the press all go through the European Commission's press service.

In **Germany**, the Public Relations unit is responsible for most of the communications. However, with regard to communicating with judges, the legal service is mainly involved in the interaction and advocacy efforts. Furthermore, the General Policy Unit is responsible for communication with the government.

In **Mexico**, the CFC has a Planning Unit, which is in charge of liaising with the Federal Government, state and local governments, Congress (both at the federal and local level), academia, the legal community and consumer groups.

**8. In seeking to explain the benefits of competition, does your agency seek out partnerships with other agencies/entities? (e.g. consumer organisations, business communities, legal community)**

When explaining the benefits of competition, 95, 45% of the responding agencies seek out partnerships with other agencies/ entities.

In some cases, such as **Switzerland**, these partnerships are not usually formalized. They have conducted some training in MBA programmes and have held conferences in collaboration with members of the legal community.

In **Chile**, formal partnerships are also not systematically established, though the agency does informally collaborate with other institutions. In 2008-2009, for instance, the FNE promoted techniques for preventing and detecting bid rigging in public procurement among procurement entities. For these purposes the FNE worked together with the General Comptroller, the e-Procurement body, the Ministry of Public Infrastructure, and several other bodies concerned with public procurement. Furthermore, in 2011, the FNE issued a document about competition and trade associations. It worked with some trade associations, associations of business managers and other business organizations in the dissemination of its principles.

In the case of **Ireland**, the agency will be merged with the national consumer protection agency of Ireland and they are currently seeking ways to do things in partnership in advance of the merger.

In **Jamaica**, depending on the issue at hand and the target group, and in particular, if the issue or the solution to the issue falls within the responsibility of more than one agency, the FTC may partner with other agencies.

This is also the case of **Poland**, where UOKiK cooperates with various entities depending on the topic which it chooses to address, e.g. with regulatory agencies. Moreover, UOKiK cooperates closely with the media in order to communicate information on competition to the general public, thus raising awareness on its benefits to all market participants, both consumers and undertakings. For example, in 2006, UOKiK and the TV channel TVP2 launched a TV series campaign entitled “Consumer in a world of competition”. The series consisted of six episodes which were broadcasted on TVP2 from March 6<sup>th</sup> to April 11<sup>th</sup>. This initiative was accompanied with an educational programme broadcasted on Polish Radio Programme 1: “I have the right to competition”. This program consisted of a series of 10 3-minute episodes aimed at disseminating knowledge on the Polish and EU antimonopoly law and benefits that competition brings to consumers. Moreover, the media support the advocacy activities by promoting the debates organized by the competition authority. In 2010, the UOKiK held a debate on “The development of competition on the markets for rail transport in Poland - Opportunities and Threats”. The debate aimed at presenting the conclusions of UOKiK’s report which diagnosed the situation on the rail freight market in Poland, and at engaging a discussion on this topic among the participants. The report of this discussion was later published in one of the national newspapers.

Moreover, a national newspaper organised a debate, in collaboration with UOKiK, on competition in liberal professions.

Apart from the assistance of the media world, the Office engages in the advocacy of benefits of competition in partnership with academic circles.

In the case of the **US FTC**, the agency has forged a cooperative relationship with the recently created U.S. Consumer Protection Financial Bureau<sup>2</sup>. The FTC’s interactions with other organizations are described at the website.

In India, the Competition Commission collaborates with consumer organisations, business and commerce forums, associations and educational institutions.

In other cases, these partnerships are formalized, like the case of the **DGCOMP**, with other competition agencies, with the framework for instance of the ECN, ICN and OECD; legal and business communities through dedicated conferences and workshops (such as ABA, IBA...);

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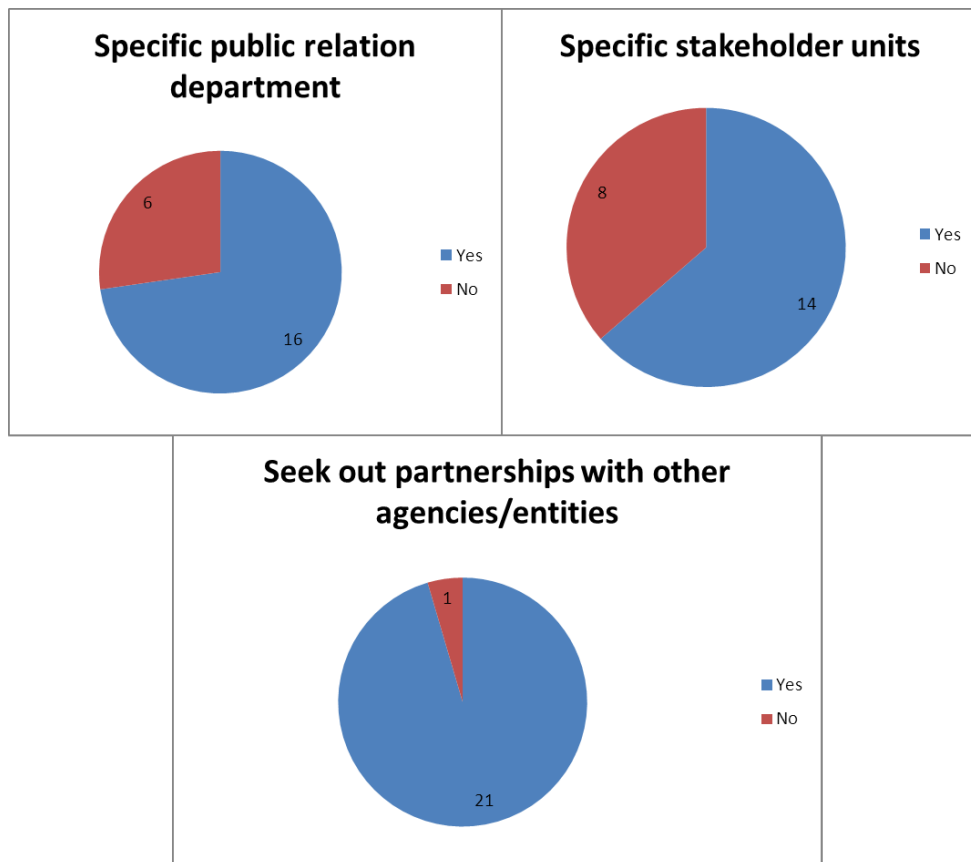
<sup>2</sup> See “Federal Trade Commission, Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers,” at <http://www.ftc.gov/opa/2012/01/ftccfpb.shtm>

judges through ECA and training programmes; and other governments/ regulators/ legislators (EESC, COR, EP, UNCTAD...).

In **Mexico**, the CFC has worked closely with the Mexican Bar Association and the National Association of Corporate Lawyers. This work has allowed reaching out to the legal community through competition-related events, such as seminars, presentations, etc.

Moreover, in the **Slovak Republic**, the Office concluded Memoranda on Cooperation with the Office for Public Procurement, the Supreme Audit Office, the Telecommunications Regulatory Authority and three universities.

When considering both the size of the competition authority and their internal organization, as shown in the charts below, most medium-sized agencies (66%) have a specific public relations department, whereas they do not have specific units (2 out of 3 do not have them). All large agencies have both specific public relations and specific stakeholder units.



### 3.4 Part 1: Explaining the Benefits of Competition - NGAs

In parallel to the questionnaire distributed to competition agencies, a questionnaire with a similar structure and objective was circulated to NGAs, members of the ICC and a selection of international consumer associations. Its objective was to mirror, to some extent, the questions being asked of competition agencies so as to be able to compare perspectives between competition agencies and other stakeholders.

This part of the report includes, therefore, results from each of these groups for each survey question.

#### 1. Which of the suggested benefits of competition are the most relevant in your opinion for your activity and how well do you feel competition agencies communicate these benefits?

The question suggested a number of possible benefits of competition and invited respondents to indicate which benefits are the most relevant in their opinion for their activity and how well they feel competition agencies communicate these benefits.

##### a. Relevance of the benefits of competition

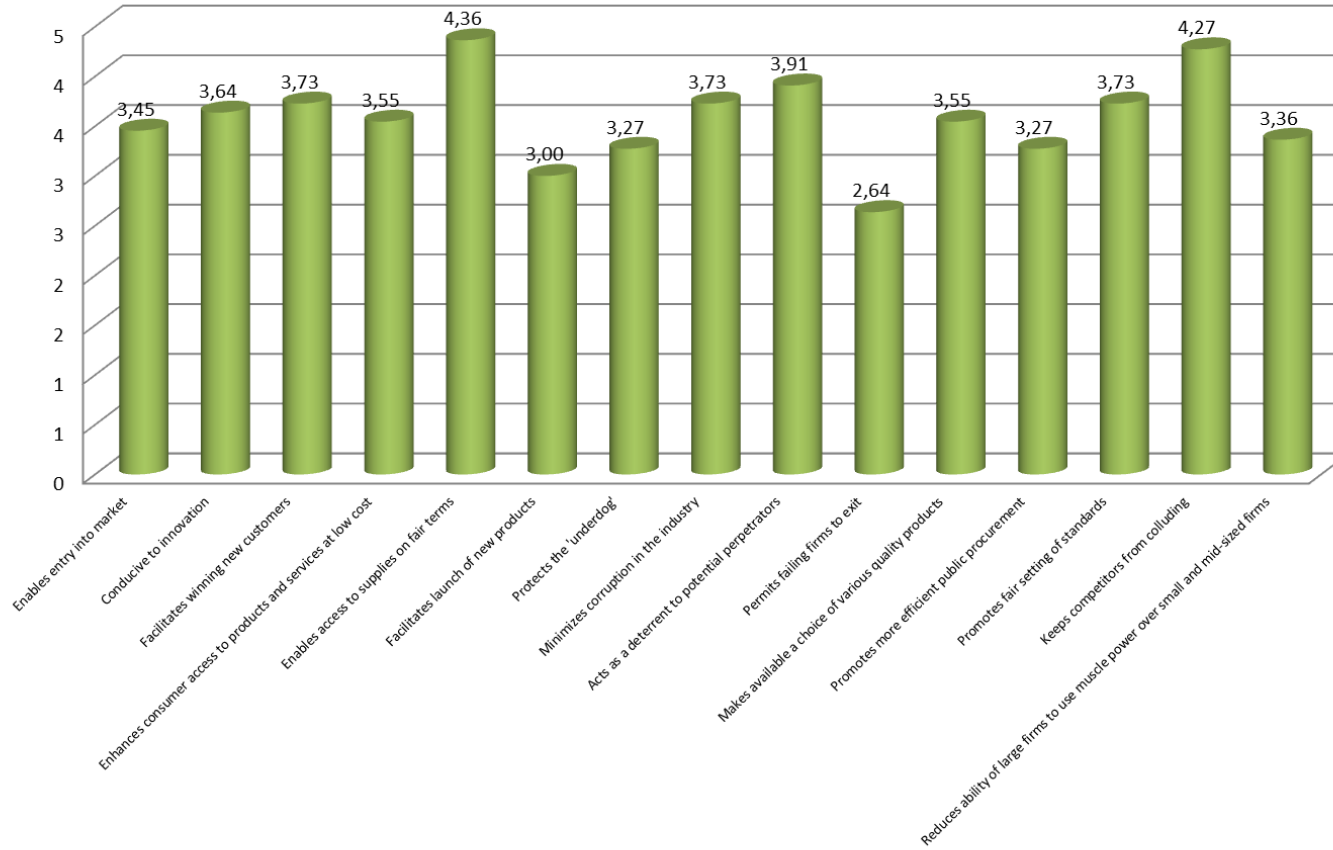
###### → Business Stakeholders

According to the results, businesses consider that enabling access to supplies on fair terms and keeping competitors from colluding are the most relevant benefits of competition, whereas facilitating the launch of new products and permitting failing firms to exit were considered to be the least relevant. A more general conclusion is that businesses attach great importance to almost all of the suggested benefits of competition (15 out of 16 had an average score of more than 3).

Finally, it is worth noting that although competition agencies consider that the message 'to facilitate winning new customers' is the most relevant when they address business associations with an average score of 4.71, businesses considered that message to be the fourth most relevant with an average score of 3.73.

The graph below depicts the average relevance attributed to each message included in the questionnaire.

## Suggested benefits of competition for your activity Relevance

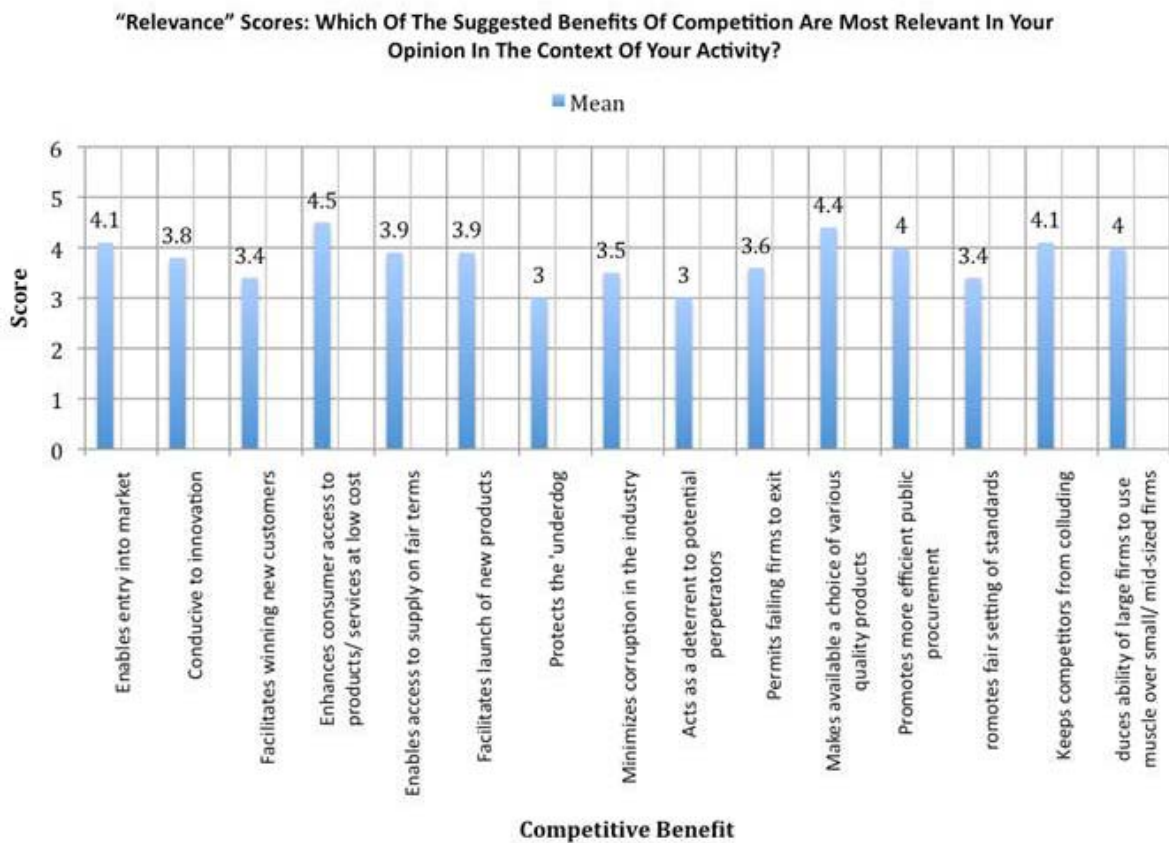




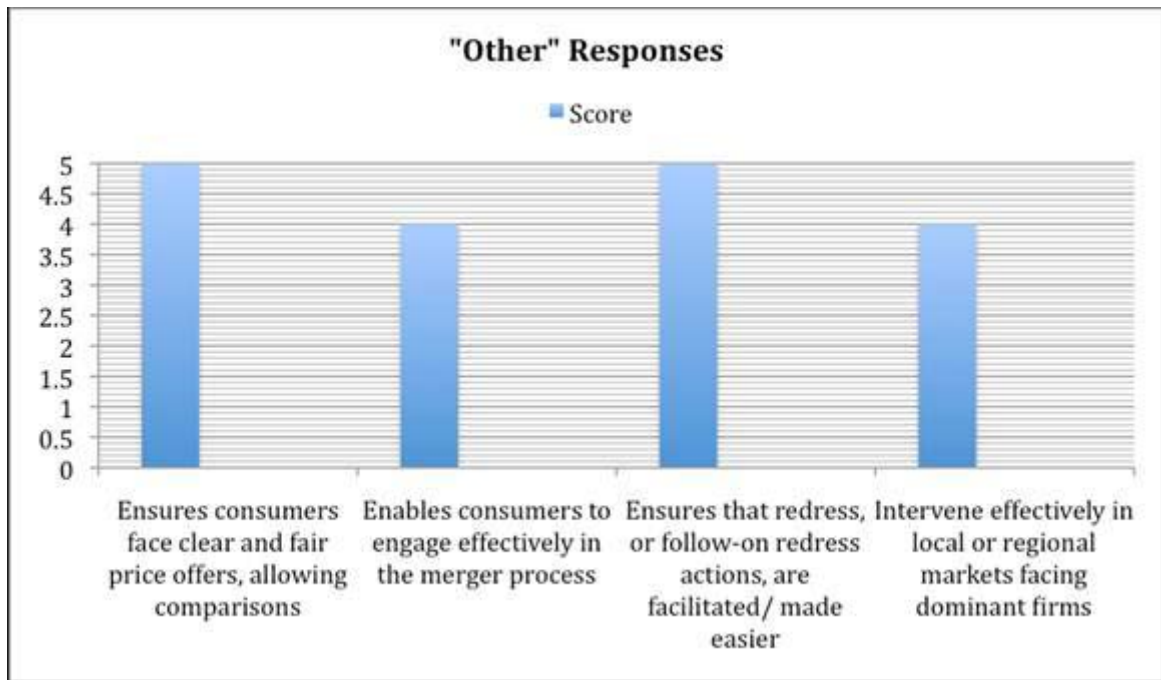
→ **Consumer Associations**

According to the results, based on average scores, the consumer organizations considered the most important benefits to communicate to be “Enhances consumer access to products and services at low cost”, “Makes available a choice of various quality products”, “Makes available a choice of various quality products” and “Keeps competitors from colluding”.

It should be noted that all responses to questions fell within an average range from 3.0 to 4.5, which indicates that each of these benefits is of significance to this particular stakeholder. In general and unsurprisingly, the highest-ranked categories were those most directly related to individual consumers.



In addition to this list, respondents were invited to propose other benefits of competition that they found useful to explain the benefits of competition in the scope of their activity. The consumer associations added, as shown in the table below, “Ensures consumers face clear and fair price offers, allowing comparison”, “Enables consumers to engage effectively in the merger process” , “Ensures that redress, or follow-on redress, actions are facilitated/made easier” and “Intervene effectively in local or regional markets facing dominant firms.”



**Note: There was 1 response for each of the categories.**

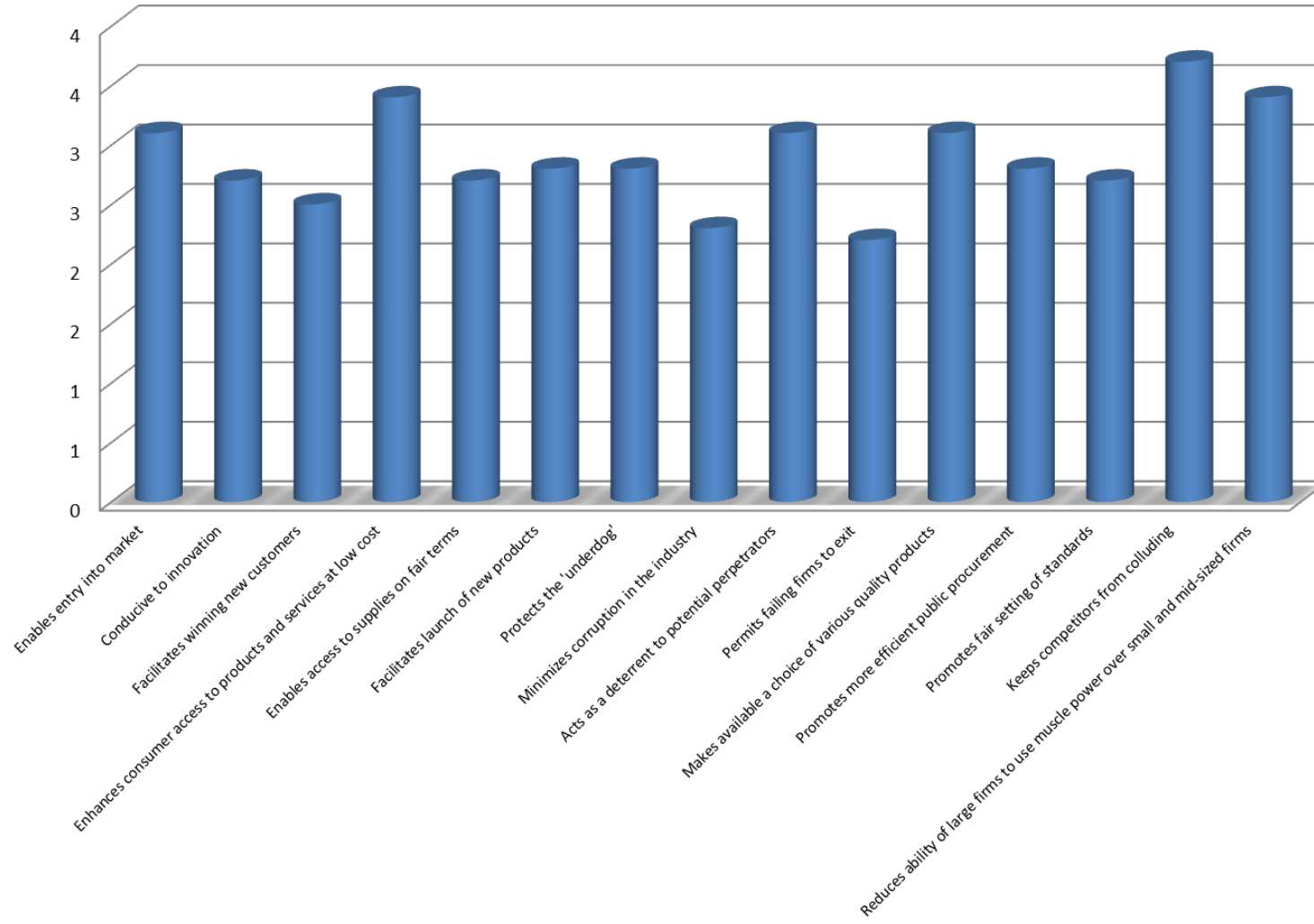
**b. Communication of the benefits of competition**

→ **Business Stakeholders**

In relation to the second part of the question, the business respondents were of the view that competition agencies were most effective at communicating that competition keeps competitors from colluding; reduces the ability of large firms to use muscle power over small and mid-sized firms and enhances consumer access to products and services at a low cost. Overall, however, the answers suggest that businesses consider that there may be room for improvement - since in respect of 9 out of 15 suggested benefits of competition, agencies received an average score of less than 3.

The graph below depicts the average score for how well businesses believe that agencies communicate various benefits of competition.

## How well do agencies communicate this benefit?

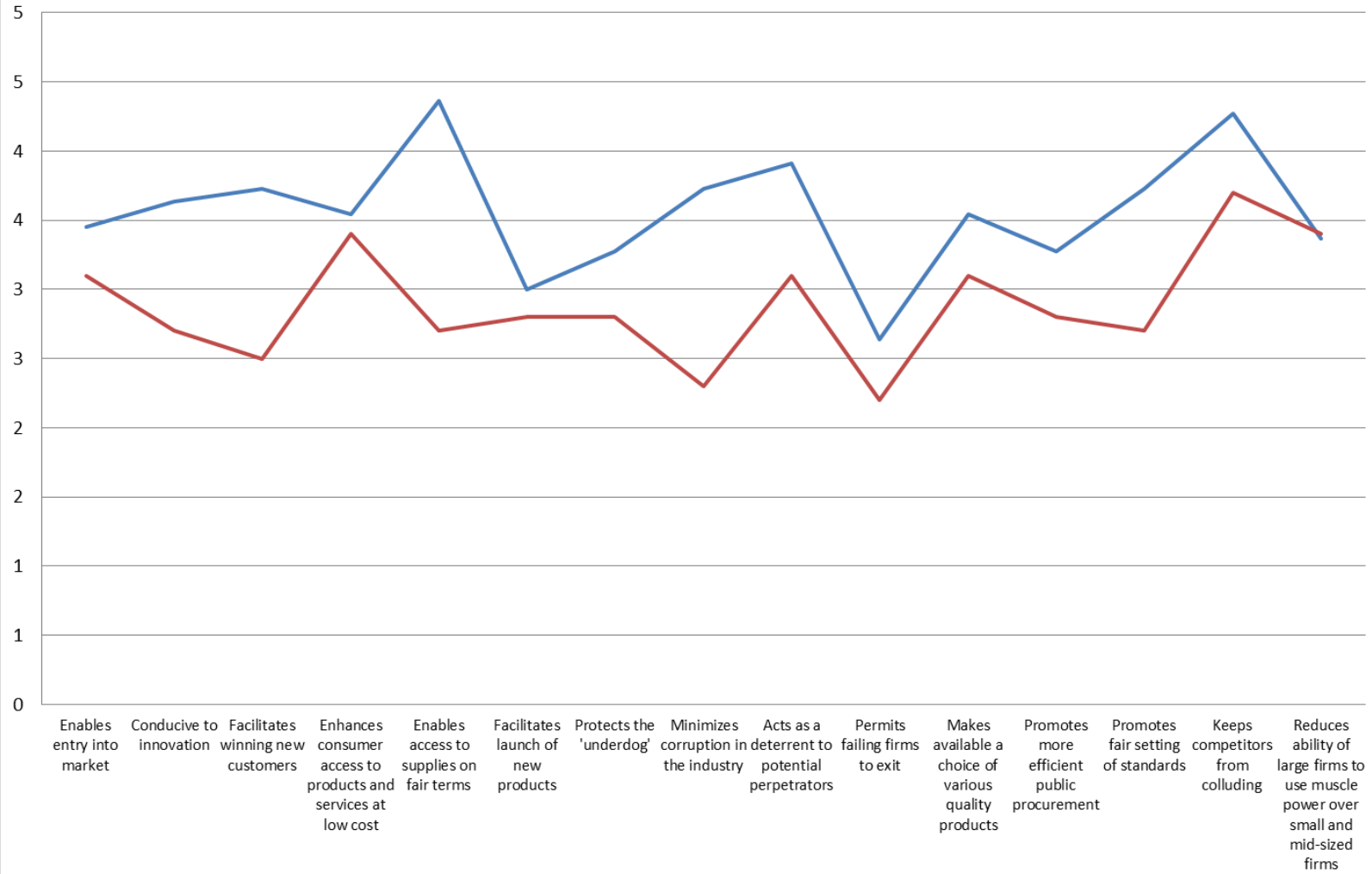


The following graph depicts the relationship between how relevant businesses think certain benefits of competition are in the scope of their activities, and how well they believe competition authorities communicate these benefits.

For example, the graph reveals businesses consider that the message 'Competition enables access to supplies on fair terms' is very relevant in the scope of their activities, but that However they also consider that competition authorities are not very effective in communicating that benefit (average effectiveness of 2.70). Generally speaking, the wider the gap between the two lines, the greater the need for competition agencies to focus on that area.

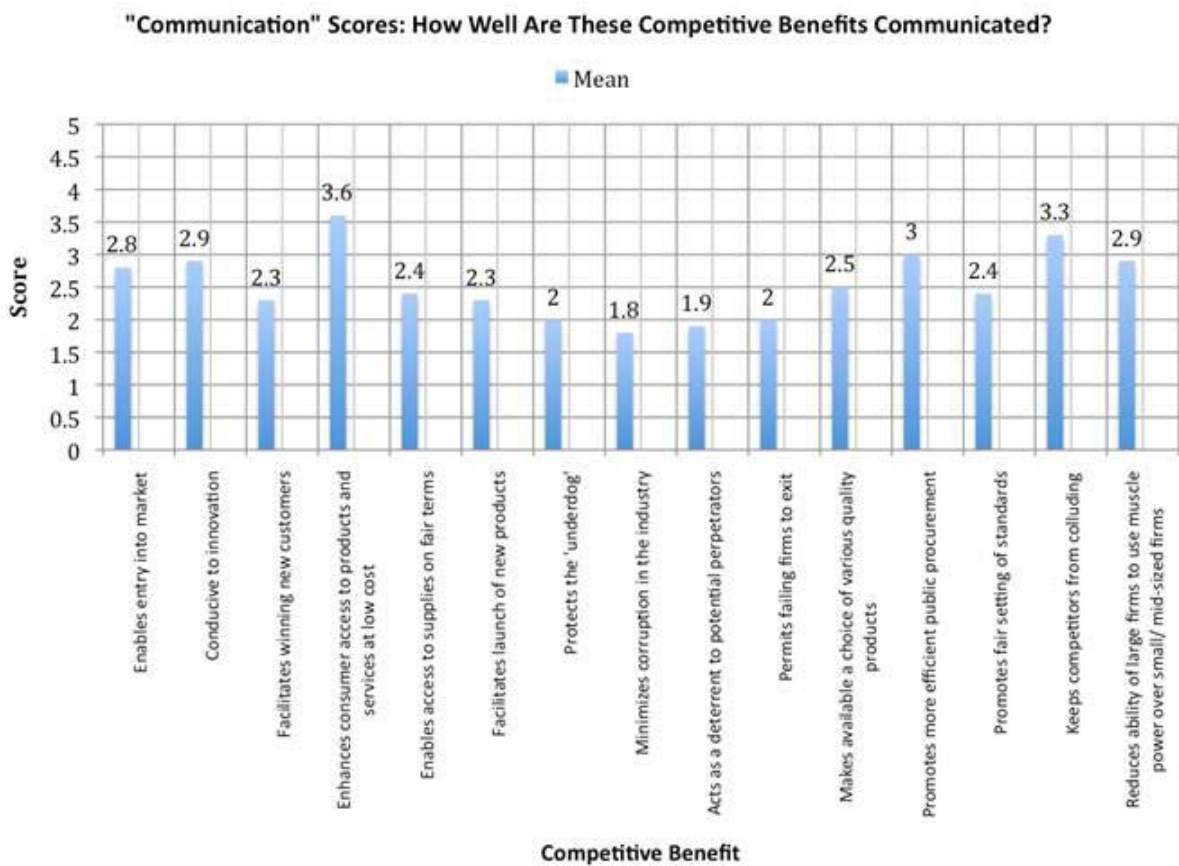
## Relevance vs. Effectiveness

— Relevance of benefit    — How well agencies communicate the benefit



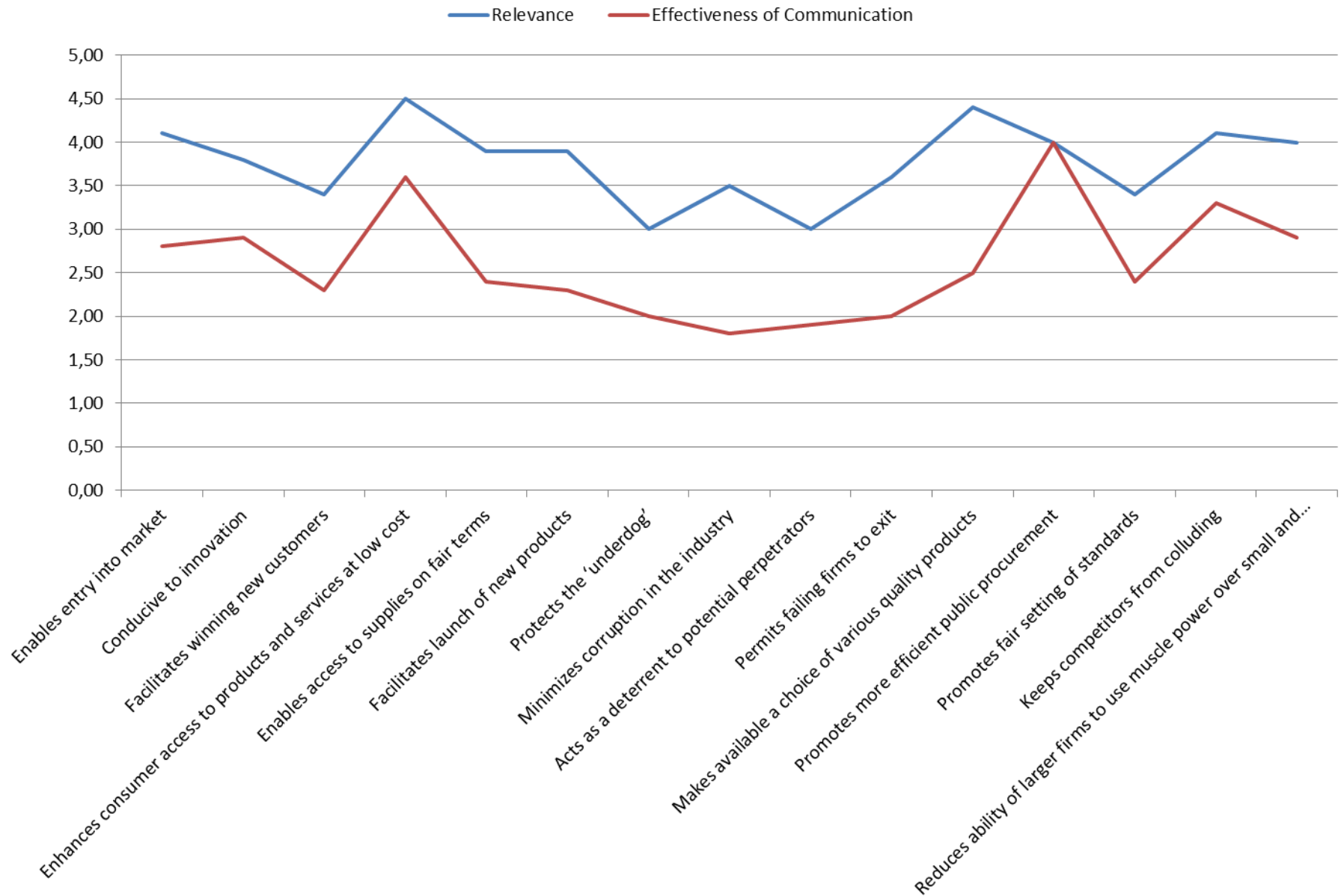
→ **Consumer Associations**

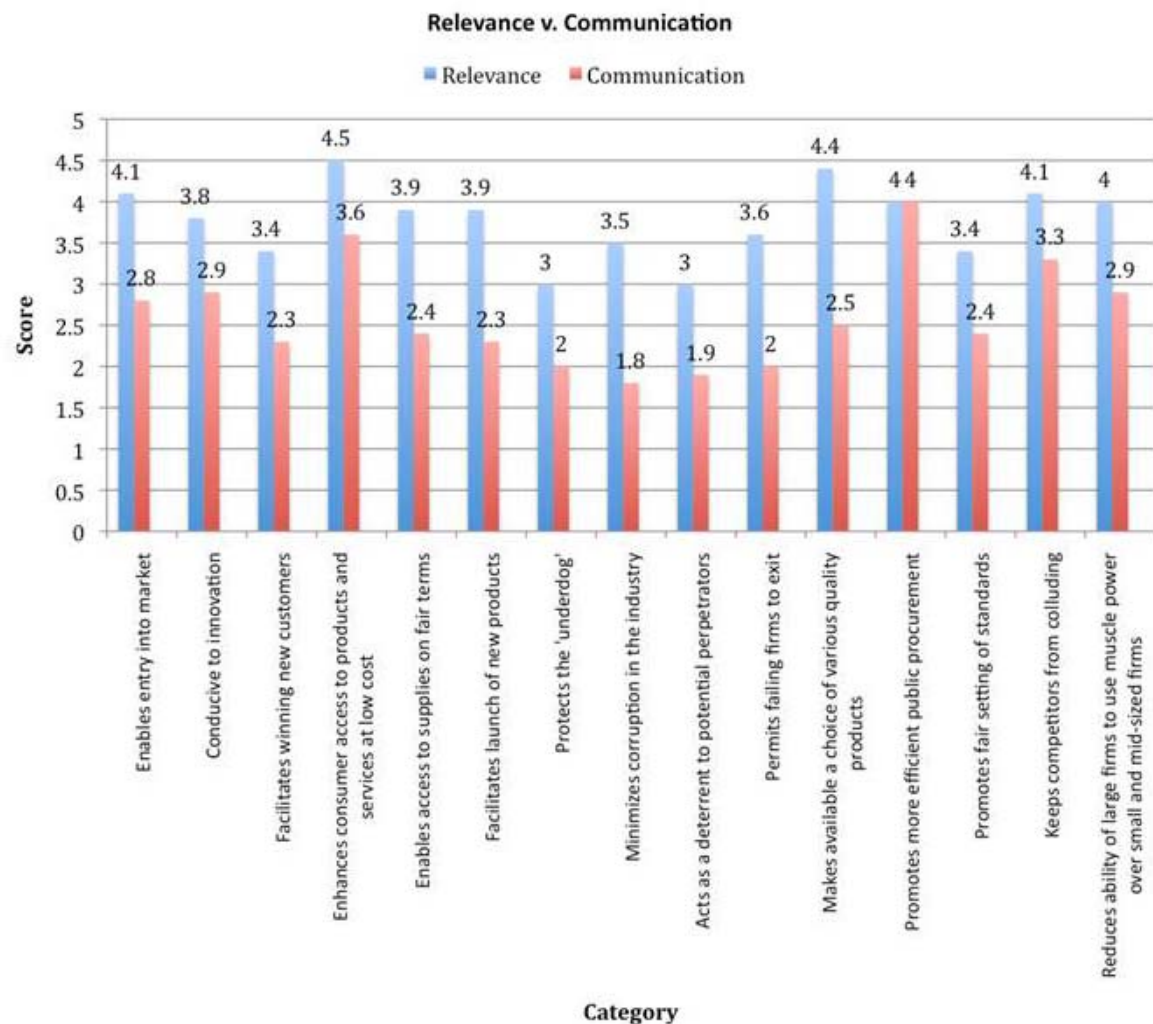
In the second part of the question, the consumer organization respondents were of the view that competition agencies were most effective at communicating “Enhances consumer access to products and services at low price.” This was followed by “Keeps competitors from colluding” and “Permits more efficient public procurement.” Of least effectiveness in terms of agency communications were “Minimizes corruption in the industry” and “Acts as a deterrent to potential perpetrators.” Overall, the average scores for effectiveness of communication were lower than the scores for perceived benefits of competition. As with the benefits, the categories most associated with individual consumers appeared to receive the highest averages.



When comparing the relevance of messages with the perceived effectiveness of their communication by competition agencies, we obtain a clearer picture.

# Relevance vs. Effectiveness





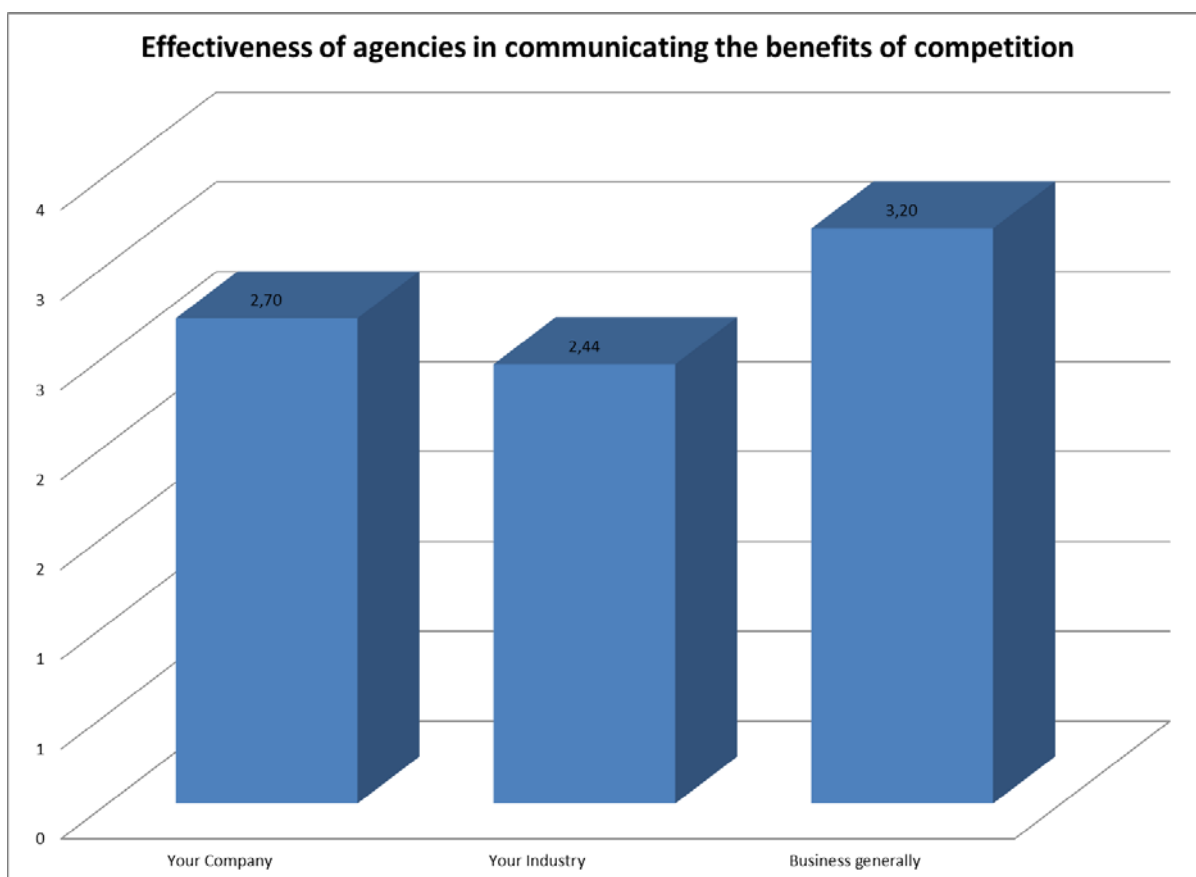
- With 1 as the lowest and 5 as the highest score, please rate the effectiveness of agencies in communicating the benefits of competition to: Your Company; your industry; and business generally.

→ **Business Stakeholders**

The business respondents indicated that competition agencies are most effective when they are explaining the benefits of competition to business generally, and least effective when they explain these benefits to the industry to which each respondent belongs.

When asked about how well competition agencies perform when explaining the benefits of competition to their own companies (an arguably more important question, since it reflects personal experience rather than perception), respondents gave agencies an average score of 2.70.





Four main reasons were put forward as explanations for awarding low scores (when that was the case):

- a) Lack of enforcement on the part of the competition agency which undermines any efforts to spread a competition culture amongst companies;
- b) Lack of sufficient recommendations/guidelines on the application of antitrust legislation;
- c) Agencies sometimes focus too much on highlighting the results of their enforcement actions rather than focusing on explaining the benefits of competition;
- d) Agencies do not engage with large multinationals as much as they engage with SMEs.

→ **Consumer Associations**

The average response to this question was a 2.6. A common response to this question was that consumers have difficulties in understanding the benefits of competition. One respondent commented that competition laws themselves have a myriad of shortcomings and lack an effective enforcement mechanism. Communication of the benefits of competition, therefore,

is perceived as a challenge. In addition to the aforementioned obstacles to understanding the benefits of competition generally, there is also a lack of understanding of legal terms and processes. If consumers cannot understand the legal terms and the underlying process of competition law enforcement, it is unsurprising that agencies would have a more difficult time explaining the benefits of competition. Moreover, competition agencies themselves are perceived to have inadequate resources to explain the benefits of competition. Even if agencies were fully equipped to do so, the general lack of understanding on the part of the average consumer regarding not only benefits of competition, but basic legal jargon, is a major impediment to an effective communication of the benefits of competition.

**3. For those that you consider to be less relevant benefits of competition for your activity, what, if anything, might convince you that those effects are in fact important benefits?**

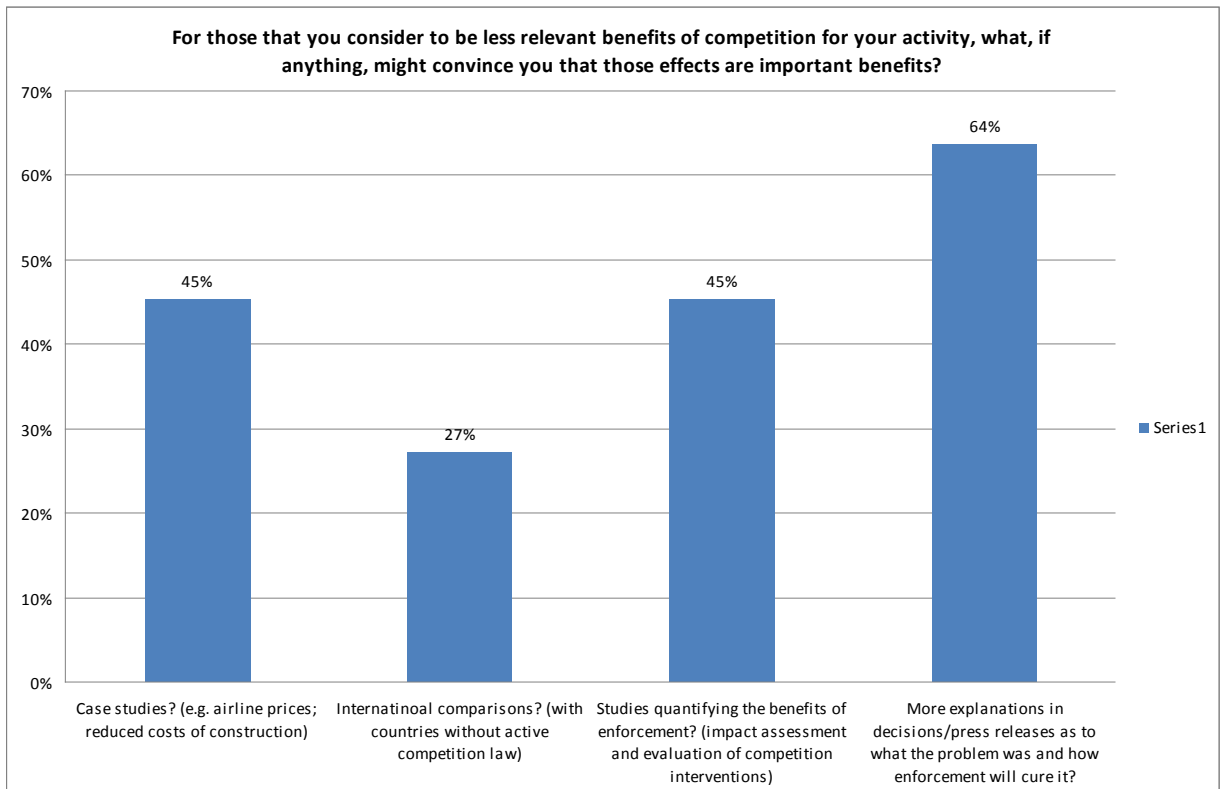
Recipients of the questionnaire were given four options as examples (see horizontal axis of the table below) and were asked to specify any additional tools that agencies could use in order to convince stakeholders about the importance of certain benefits of competition.

→ **Business Stakeholders**

When answered by the business stakeholders, two of the responses to the questionnaire did not include answers in relation to this question, and also gave no reasons as to why they chose not to.

The remaining answers revealed that 'more explanations in decisions/press releases as to what the problem was and how enforcement will cure it' could convince 64% of the respondents about the importance of certain benefits of competition. 'Case Studies' and 'studies quantifying the benefits of enforcement' were identified as an effective tool by 45% of the respondents whereas only 27% identified 'international comparisons' as such.

It was also mentioned that competition agencies should not merely publish information on a website, since that is not enough to get the message over, and that there should be real engagement and dialogue with business and business leaders. However, specifics about how agencies were to achieve that were not included in the relevant response.



→ **Consumer Associations**

The results of this question vary widely. There seems to be a consensus that more elaborate explanations of judicial and agency decisions would have the most utility for explaining the benefits of competition. “Studies quantifying the benefits of enforcement” also seems to be viewed as a potential key tool agencies may use to communicate to consumers important benefits of competition that they considered to be the least relevant benefits of competition. One respondent stated that very little can be done in this regard because the protection of small firms usually comes at the expense of the consumer.

4. The questionnaire listed a wide variety of ways in which an agency might endeavour to communicate the benefits of competition to business stakeholders. In relation to each method, businesses were invited to indicate:

- a. *Whether they had ever looked at or seen that particular method*
- b. *How useful they found it (in terms of content, timeliness, transparency) for awareness of competition policy*
- c. *Whether it was an effective way to learn about the benefits of competition or of agency policy*
- d. *Whether they had ever passed on information from this source to colleagues for their information (since this might provide some indication of how useful it was perceived to be).*

The section below examines each sub-question separately:

**a. *Whether they had ever looked at or seen that particular method***

The purpose of this question was to explore the means through which stakeholders usually receive information about competition law and policy. Respondents were asked to provide a 'yes' or 'no' answer to the relevant question.

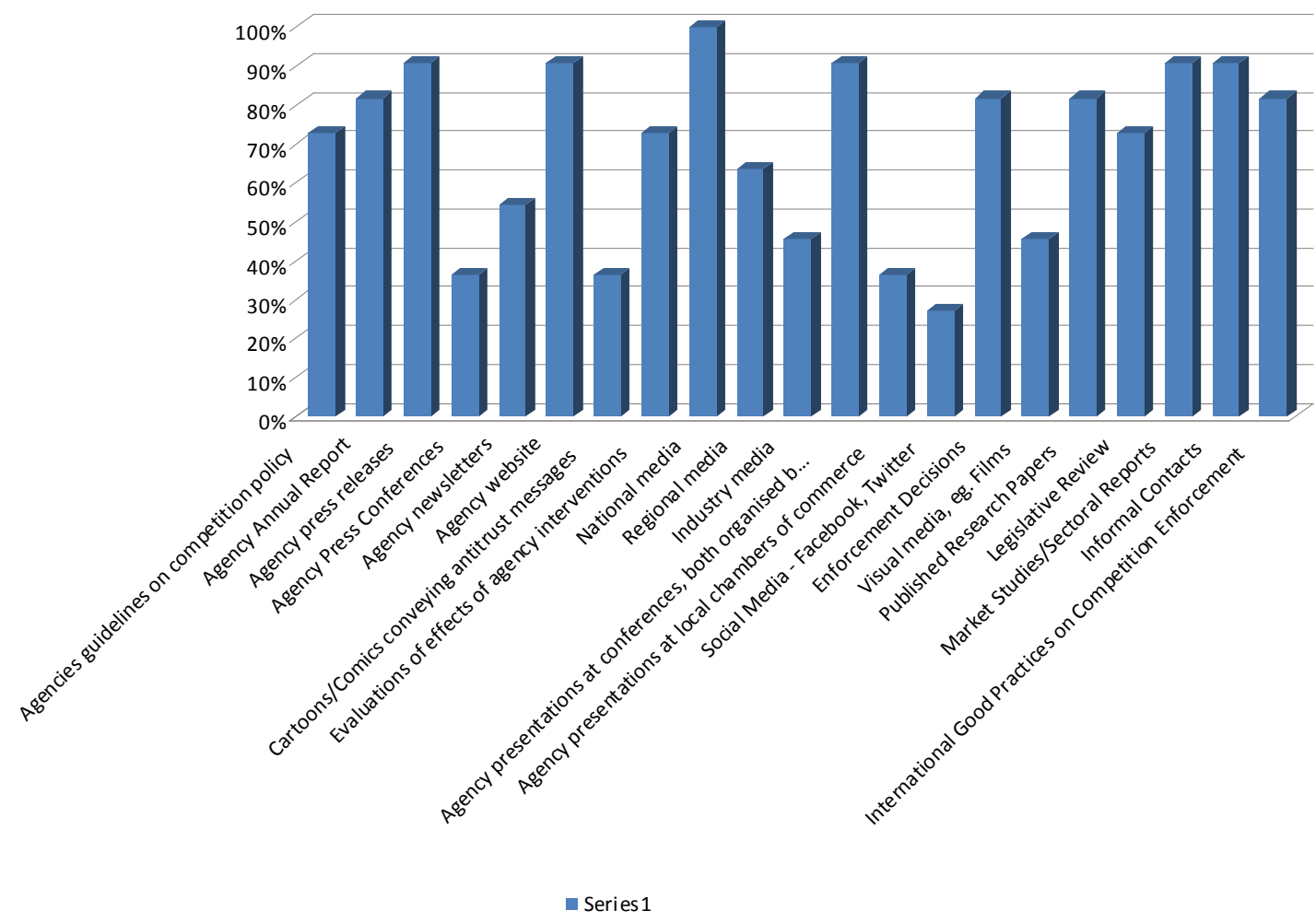
→ **Business Stakeholders**

The table below indicates that all businesses consult the national media.

The overwhelming majority (91% of respondents) have looked at/received information through each of the following: market studies/sectoral inquiries; informal contacts; agency press releases and the agency's website.

Agency press conferences (36%); agency presentations at local chambers (36%); cartoons and comics conveying antitrust messages (36%) and Social media like Facebook and Twitter (27%) are shown to be less commonly consulted.

## How you receive information about the benefits of competition from agencies



→ **Consumer Associations**

The consumer associations most frequently answered “yes” for: “Agency guidelines on competition policy” and “Agency website.” These were followed closely by “Agency presentations at conferences, both organized by academia, business or other agencies,” “Published research papers,” and “International good practices on competition enforcement.” The largest number of “no’s” were “Agency presentations at local chambers or commerce”, unsurprisingly for consumer organizations, and, perhaps more surprisingly “Cartoons/ comics conveying antitrust messages,” and “Social media”.



***b. How useful they found it (in terms of content, timeliness, transparency) for awareness of competition policy***

Businesses were asked to rate how useful they thought each medium to be on a scale of 1 to 5.

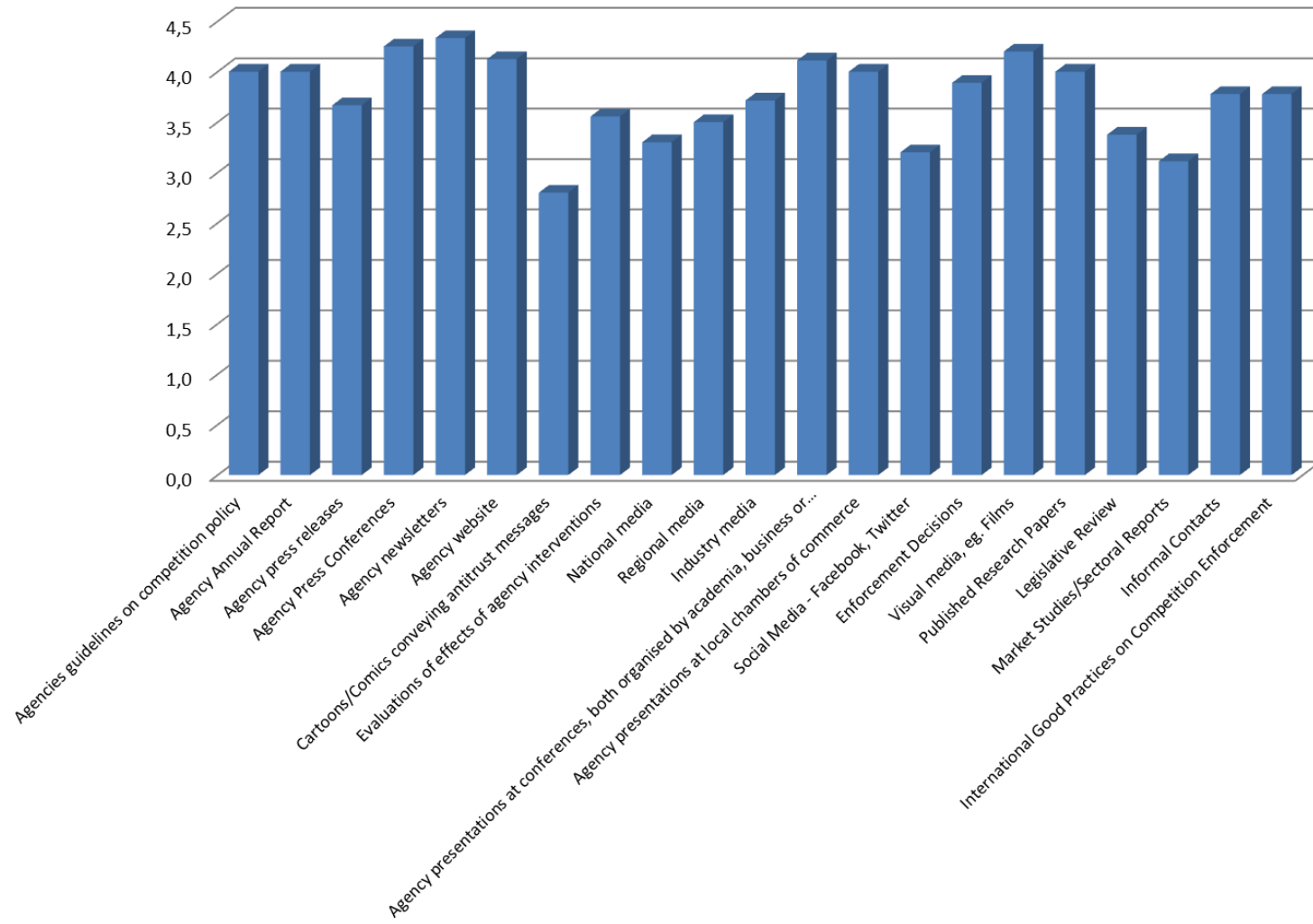
→ **Business Stakeholders**

Among the business respondents, the responses revealed that agency, followed by agency press conferences and visual media like films were the most valued forms of communication, whereas social media and cartoons and comics were the least valued. It is also apparent that value is seen across the entire spectrum of media, with only cartoons and comics scoring below 3.0 on average.

It is interesting to observe that visual media, agency press conferences and agency presentations at local chambers of commerce received high scores despite the fact that most respondents have never consulted them (see table 8 above). This anomaly might arise because although businesses may consider them to be very popular, they may not always be available in their respective jurisdictions. If this assumption is correct, and taking into consideration the high value attached to them, this may suggest that competition agencies should engage in these types of activities if they are not already doing so.



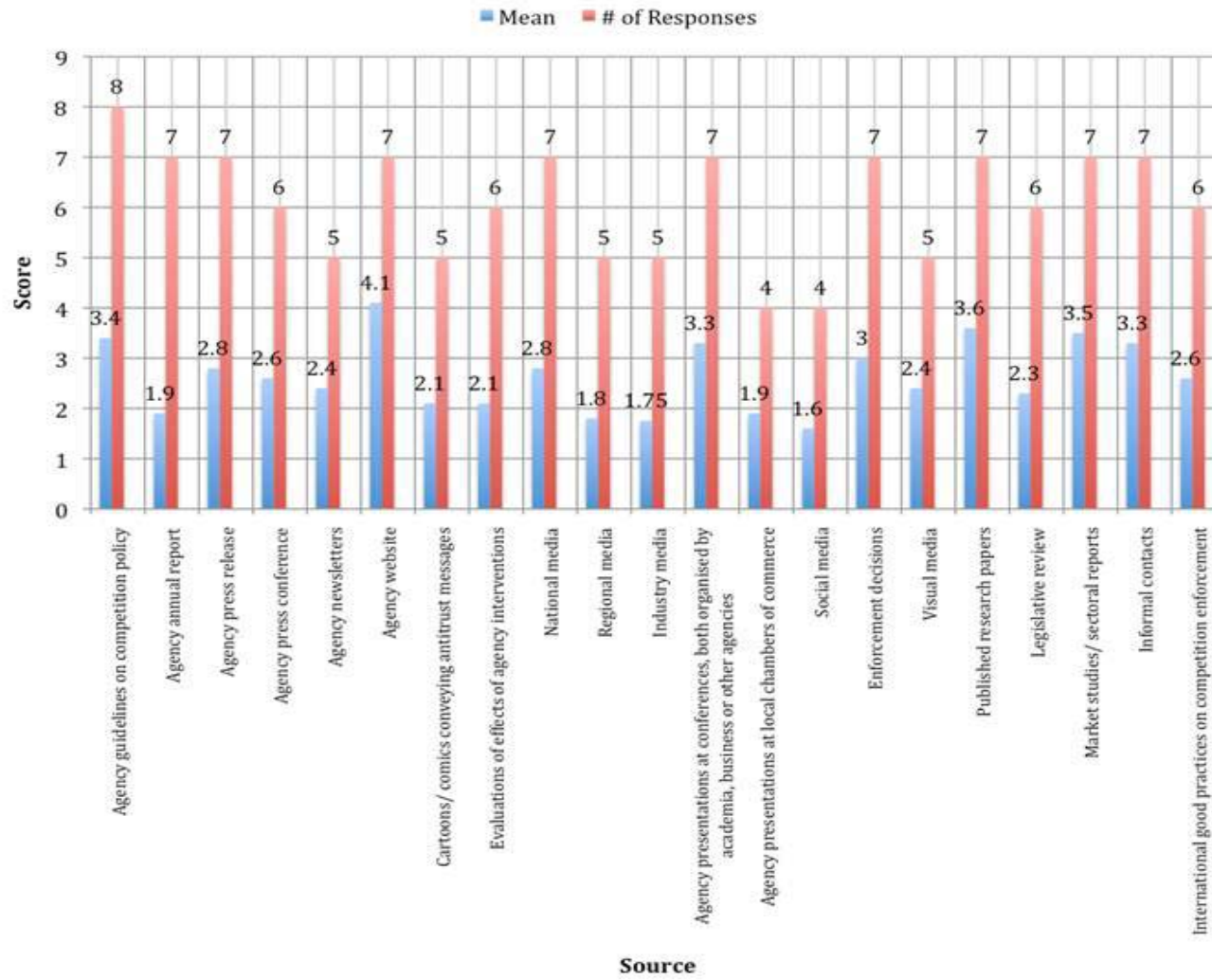
How useful do you find it (content, timeliness,transparency) for awareness of competition policy



→ **Consumer Associations**

Three areas stand out as most useful from the consumer organizations' perspectives: "Agency website," "Published research papers," and "Market studies/sectoral reports." "Social media" received the lowest score, despite its increasing presence in the everyday lives of a vast number of people around the world.

### Receipt of Information on the Benefits of Competition: How Useful Do You Find it for Awareness of Competition Policy?



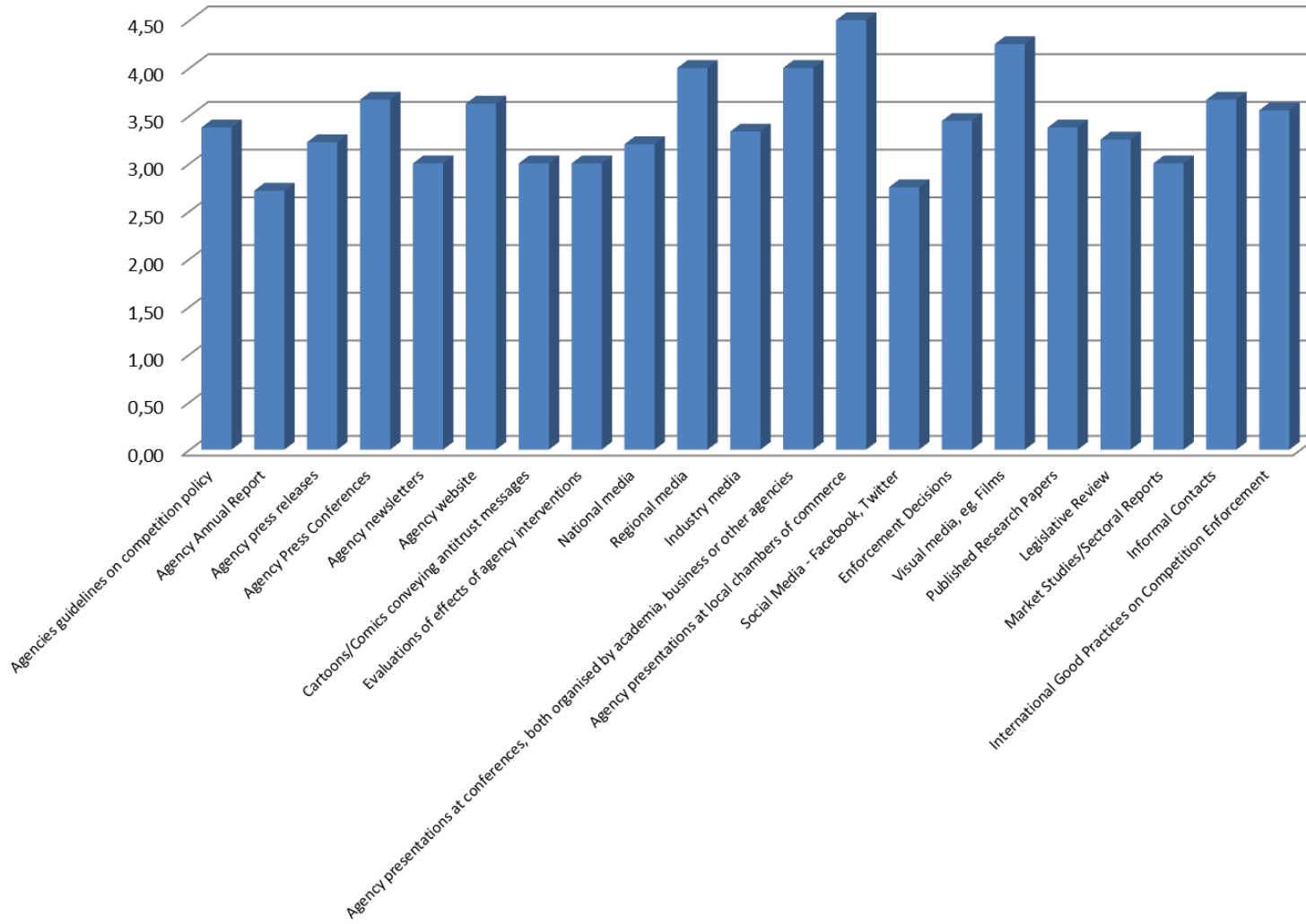
*c. Whether it was an effective way to learn about the benefits of competition or of agency policy?*

Respondents were asked to rate the effectiveness of each medium on a scale of 1 to 5.

→ **Business Stakeholders**

Agency presentations at local chambers of commerce were identified as the most effective way to learn about the benefits of competition, followed by Visual media, eg. Films. The least effective way according to the respondents to be educated on the benefits of competition was social media like Facebook and twitter.

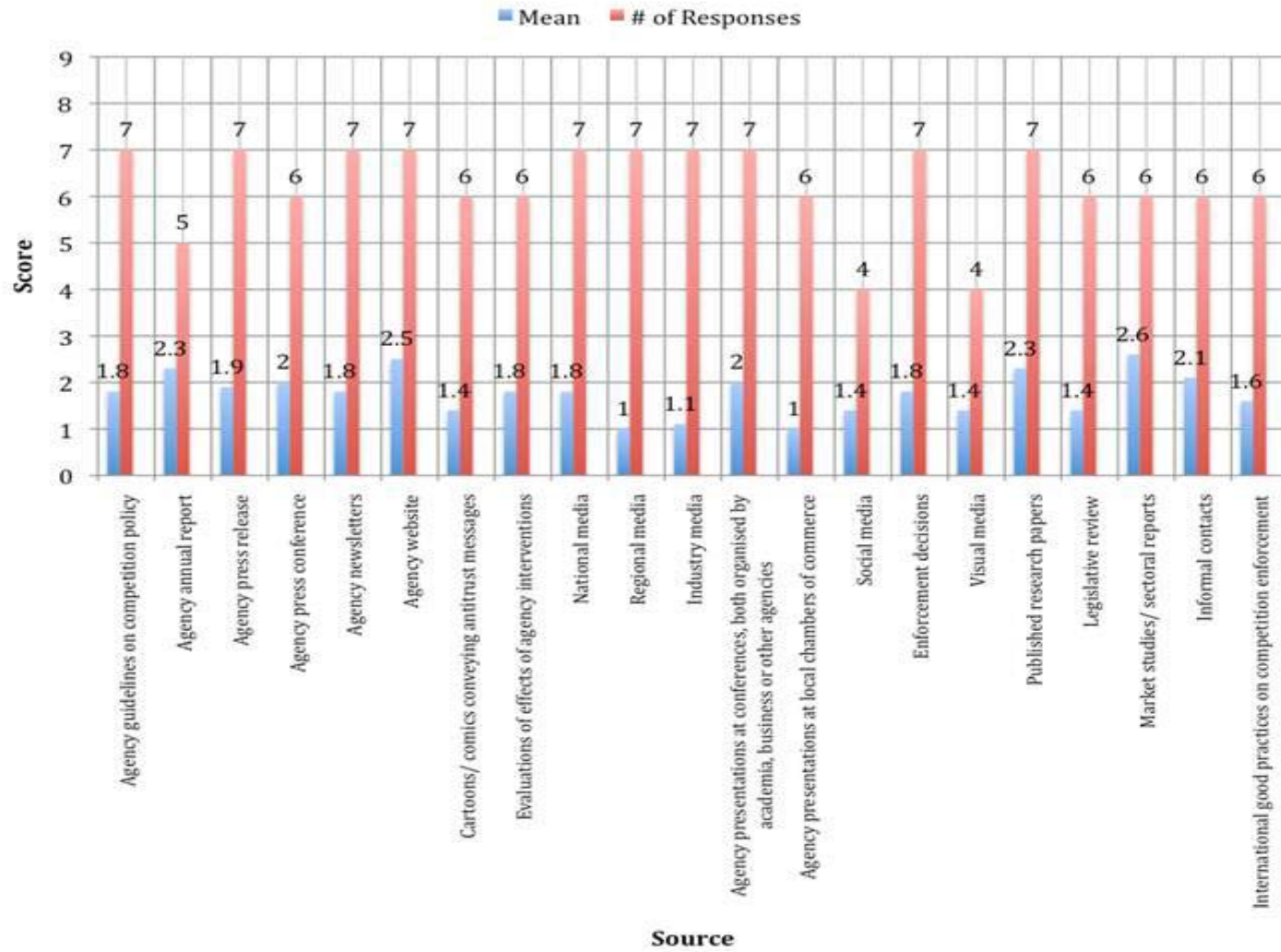
### Was this an effective way to learn about the benefits of competition or of agency policy?



→ **Consumer Associations**

Four areas stand out as the most effective ways of learning about the benefits of competition or of agency policy: “Agency website,” “Published research papers” and “Market studies/sectoral reports.”

**Receipt of Information in the Benefits of Competition: Was This an Effective Way to Learn About the Benefits of Competition or of Agency Policy?**



***d. Whether they had ever passed on information from this source to colleagues for their information (since this might provide some indication of how useful it was perceived to be).***

Respondents were asked to reply with a yes or no to this question on contact with various different types of agency communications.

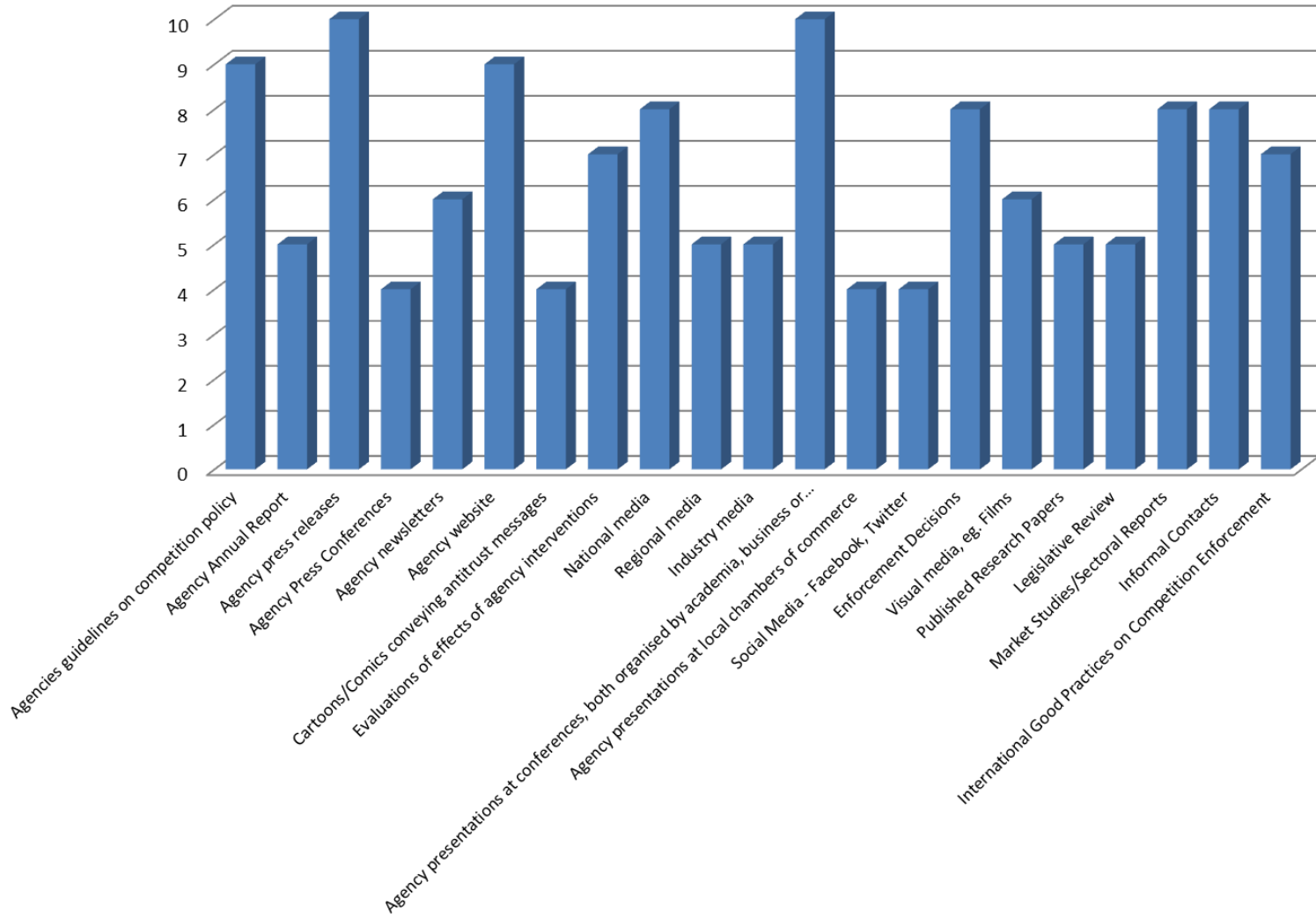
→ **Business Stakeholders**

As the table below reveals, businesses most often pass on information that they receive from agency press releases; agency presentations at conferences, both organised by academia, business or other agencies; and agency guidelines on competition policy.

Few businesses reported that they pass on information received through agency press conferences, agency presentations at local chambers of commerce, cartoons/comics conveying antitrust messages and social media like Facebook and twitter. However, given that many respondents indicated that they have never consulted these media before, (see above table 8 above) this is not unsurprising.

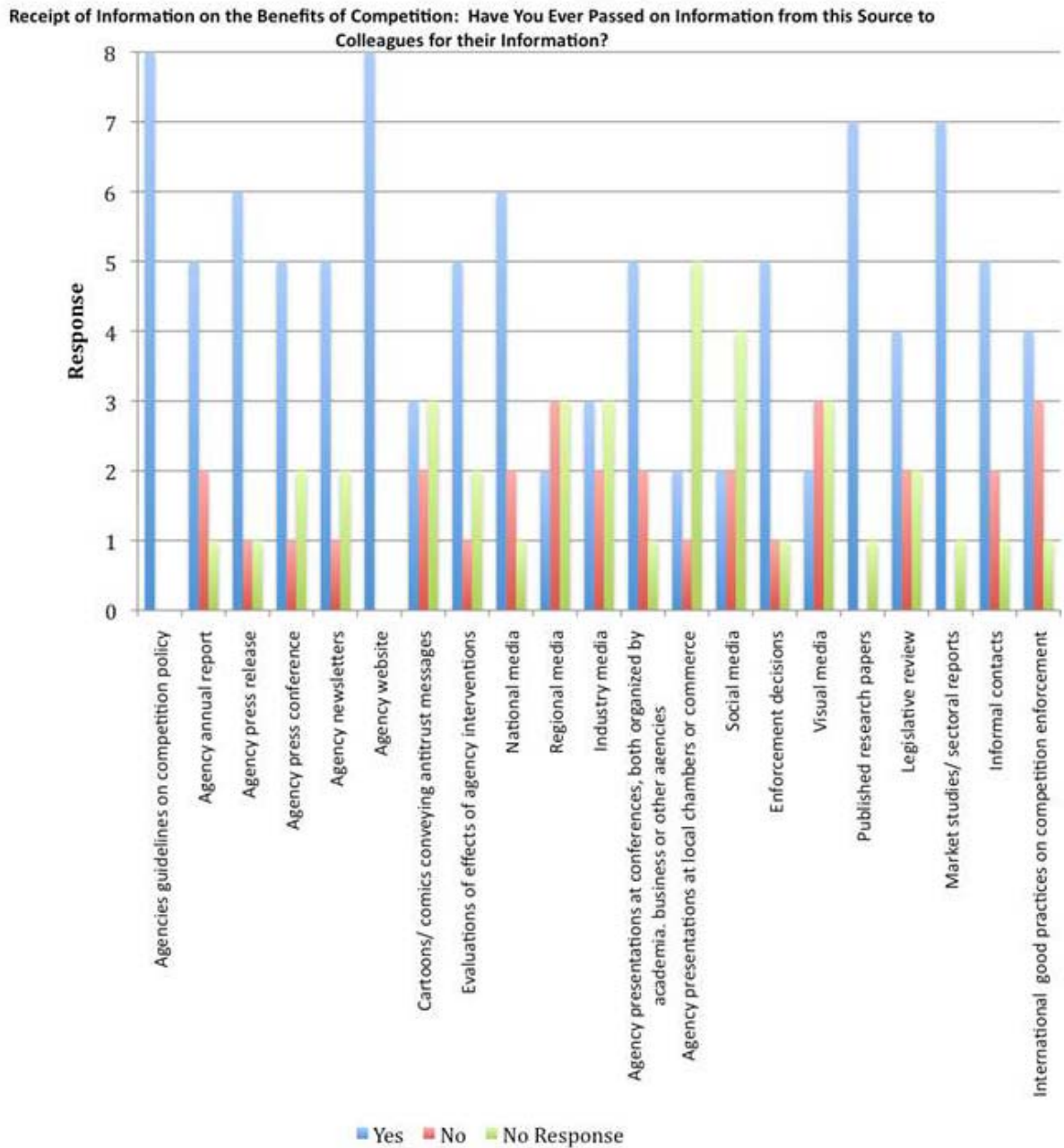


### Have you ever passed on information from this source to colleagues for their information?



→ Consumer Associations

The largest number of “yes” answers (and only ones that were unanimous) were “Agencies guidelines on competition policy” and “Agency website.” These were followed closely by “Published research papers” and “Market studies/ sectoral reports.”



- 5. Do you consider that the frequency and content of agency's communications on the benefits of competition are adequate insofar as they inform any potential intervention by you to attempt to influence a competition decision or policy?**

→ **Consumer Associations**

In general, the responses to this question highlighted the limitations of agency's communication on the benefits of competition to consumers. Comments were provided by a number of respondents. One comment that was made more than once is that agencies need to be more forthcoming in their communications and to reach a broader audience. One respondent considered that the frequency and content of agency's communication on the benefits of competition are adequate, stating they are informed by the press of cases which are relevant to them in order to request intervention as third interested parties and submit comments, documents, etc.

- 6. Are you aware of any type of communication which is used to particularly good effect by an agency?**

→ **Business Stakeholders**

Respondents mentioned a variety of tools which they thought agencies had used effectively:

- Various videos produced by OFT in the UK and FTC in the US
- Informal contacts
- Compliance materials/guidelines of ACCC, OFT, DG COMP and Canadian Competition Bureau
- EU competition policy newsletters
- Press releases on enforcement decisions
- Press conferences and agency presentations
- 'Combat the cartel day' organised by CADE

→ **Consumer Associations**

Consumer associations dominantly responded “Websites” as a communication mechanism that is used particularly well by agencies. Though some agencies did not identify any mechanism as being used to particularly good effect by agencies, a number of suggestions were provided including automated alert systems and streamlined research findings and reports. “Visual media/ cartoons and comics” were suggested by some as effective means of communication as well.

**7. Are there any other types of communication on the benefits of competition that an authority may use that companies would find useful for their activity?**

→ **Business Stakeholders**

All respondents had one or more suggestions. The list below represents a summary of their responses:

- E-mails alerting of new cases in specific industry sectors
- Press releases (in the many countries that do not issue them)
- Direct discussion with businesses
- Getting competition on the curriculum at business schools/high schools as a means of spreading the message
- Guidelines on enforcement practices and compliance
- Annual activities report
- Enforcement statistics
- Data bank of decisions by the agency and Court judgments

→ **Consumer Associations**

The answers to this question overlap significantly with the answers to question 2, but additional recommendations were made, including the use of briefing sessions, research papers, and education television programs. “Social media” was a common answer that seems to contradict with the category’s underwhelming scores in this section. It was also suggested that “a clear assessment of harm in order to facilitate follow-on actions is vital if agencies are to be relevant to ordinary people affected by anti-trust violators.”

**8. Compliance guidance produced by an agency typically contains information on the benefits of competition. Are you aware of any good examples of this? Please provide examples.**

→ **Business Stakeholders**

Compliance guidance materials produced by DGCOMP in Europe, the OFT in the UK, the Canadian Competition Bureau, ACCC in Australia and CADE in Brazil, were mentioned as examples of materials that contain useful information on the benefits derived from competition.

One of the respondents noted that although all these materials are of great importance, competition agencies globally should invest more time in producing easy-to-read guidelines that explain the benefits of compliance and the importance of investing sufficient resources in a credible compliance program.

→ **Consumer Associations**

Every respondent but one answered “no” to this question. The one respondent who answered “yes” stated: “there are some guidelines on the webpage of the Commission on Protection of Competition in Bulgaria on different issues related to competition, but they are more like explanations of different competition concepts, but not giving complete information on the benefits of competition.” This question’s particular focus on compliance for business may explain this tendency.

**9. What is the position within your company to whom competition policy information should best be addressed? (CEO; General Counsel; Regulatory Counsel; Staff).**

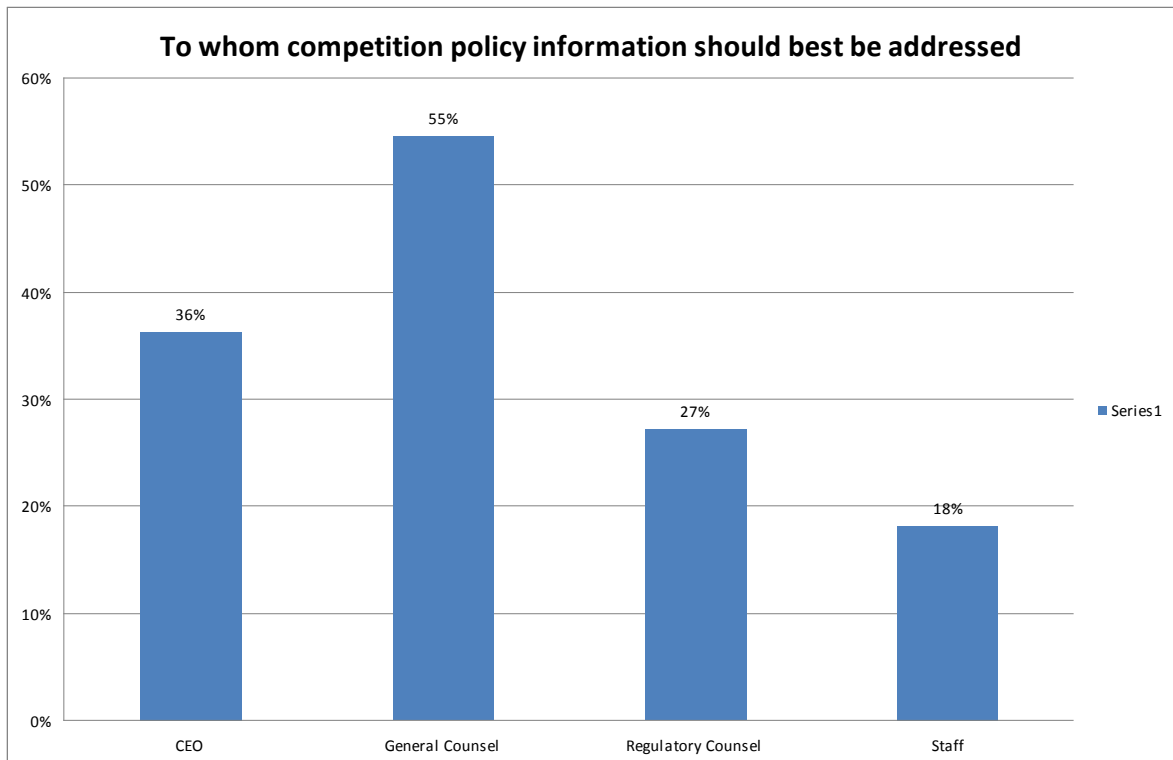
Business stakeholders were asked, specifically, who within a business they consider is the most appropriate addressee for communications regarding the benefits of competition. Most companies (55%) thought that competition policy information should best be addressed to the General Counsel, followed by the CEO (36%), the Regulatory Counsel (27%) and Staff (18%). This is an interesting finding especially when one takes into account that agencies-when communicating with business-most frequently address the CEO (77% of cases)<sup>3</sup>.

One company expressed the view that agencies need to engage at all these levels if they want to get their message across.

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<sup>3</sup> See above p11.

Finally, the group audit committee, external directors, public shareholders and ethics and compliance officers were also identified as persons with whom an agency needs to interact.



Whereas the first section of the questionnaire explored what businesses considered to be the benefits of competition and why, the second part of the questionnaire explored how businesses receive information about the benefits of competition and how agencies might improve this.

#### → Other Responses to the NGA Questionnaire

Responses were also received from an academic and a lawyer. In contrast with the views expressed by business (which attached importance to almost all of the potential benefits of competition listed in the questionnaire), the academic only scored the following with a "4": need to enable entry; facilitate innovation; enhance consumer access; provide choice and prevent competitor colluding. The other suggested benefits were seen as much less likely, scoring 3 or 2.

The need for more case studies; international comparisons and studies quantifying the benefits of enforcement activity was a theme in the response. Greater transparency from the

national competition authority in terms of its approach to compliance activities and a need for more industry roundtables on compliance issues were identified as areas for development.

The lawyer had similar views to the academic in terms of the value of suggested benefits (awarding similar scores in respect of the most valued benefits). However the lawyer identified additional benefits, namely 'minimizing corruption in the industry' and 'acting as a deterrent to potential perpetrators' - perhaps reflecting the practitioner's viewpoint. The lawyer emphasised the good use made by their national competition agency of media but identified a need for better explanation in decisions/press releases as to antitrust issues and how enforcement was intended to solve the issue. Like business stakeholders, the lawyer regarded agency guidelines and national media as key sources of information about antitrust interventions and regarded agency press conferences as less valuable.

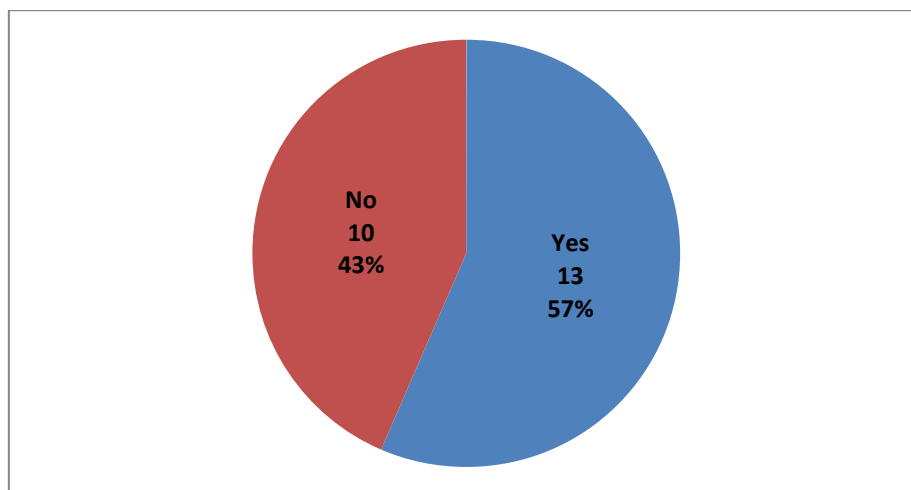
## Part 2: Evaluating competition interventions

The objective of this section of the questionnaire was to gather learning on how agencies evaluate their competition interventions in the context of how to best demonstrate and explain the benefits of competition. The purpose of this report is to summarise the results of that stocktaking exercise.

The questionnaire defined “competition interventions” broadly to include any enforcement action taken in respect of anti-competitive mergers, cartels or unilateral conduct as well as any market studies, sectoral inquiries, or advocacy efforts aimed at increasing the level of competition in a market.

The survey also distinguished between two kinds of evaluations: “ex-post evaluations” and “impact estimations”. Ex-post evaluation was defined as the measurement or estimation, whether qualitative or quantitative, formal or informal, of the benefits and/or costs of a competition intervention, using both pre- and post- intervention information. Impact estimation was defined as an evaluation relying solely on pre-intervention information.<sup>4</sup>

1. Do you perform ex-post evaluations of your competition interventions? (*Select “Yes” if you have done so for at least one competition intervention in the past 5 years*)



<sup>4</sup> For example, an agency may wish to evaluate the effect of an enforcement action taken against a cartel. A study which compares pre- and post- intervention prices would be considered a form of “ex post evaluation”; whereas, a study which takes pre-intervention prices and assumes removal of a given percentage overcharge over a given volume of sales and duration of time would be considered an “impact estimation.”



Thirteen agencies (57%) responded that they have performed an ex-post evaluation of at least one competition intervention in the past 5 years.<sup>5</sup>

Two additional agencies (9%) noted that they have ex post evaluation projects planned or currently underway.<sup>6</sup>

Examples of ex-post evaluations cited by respondents included the following:

- **Ireland** -- Informally following up on recommendations in market studies and submissions to public consultations to see if they have been implemented and what the impact has been.
- **Russia** -- Assessing impact of interventions in respect of regulated utilities and public procurement, relying mainly on qualitative indicators.
- **DG Comp** -- Evaluating specific merger cases.
- **Mauritius** – Evaluating the impact of an abuse of monopoly situation case in the market for block processed cheddar cheese.<sup>7</sup>
- **Netherlands** – Ex post evaluation of price effects of Dutch hospital mergers<sup>8</sup>
- **UK OFT** -- Evaluating the impact of an abuse of dominance case.<sup>9</sup> Evaluating the impact of an investigation into bid rigging in the construction industry.<sup>10</sup>
- **US FTC** - Retrospective assessment of consummated hospital mergers.<sup>11</sup>

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<sup>5</sup> Germany, Ireland, Jamaica, Japan, Mauritius, Mexico, Netherlands, New Zealand, Pakistan, Russia, Switzerland, UK OFT, and US FTC

<sup>6</sup> Chile and DG Comp

<sup>7</sup> "Evaluation of CCM Case: IBL Consumer Goods Sales Contracts with Retail Stores" (November 2011) available at: [www.gov.mu/portal/sites/ccm/pdf/INV001-EvaluationReport-Non-Confidential.pdf](http://www.gov.mu/portal/sites/ccm/pdf/INV001-EvaluationReport-Non-Confidential.pdf)

<sup>8</sup> "Price effects of Dutch hospital mergers: an ex post assessment of hip surgery", NMA Working paper (October 2010) available at: [www.nma.nl/images/Price\\_effects\\_of\\_Dutch\\_hospital\\_mergers22-156978.pdf](http://www.nma.nl/images/Price_effects_of_Dutch_hospital_mergers22-156978.pdf)

<sup>9</sup> "Evaluating the impact of the OFT's 2001 abuse of dominance case against Napp Pharmaceuticals" (June 2011) available at: [www.of.gov.uk/shared\\_of/ca-and-cartels/OFT1332.pdf](http://www.of.gov.uk/shared_of/ca-and-cartels/OFT1332.pdf)

<sup>10</sup> "Evaluation of the impact of the OFT's investigation into bid rigging in the construction industry" (Europe Economics, June 2010) available at: [www.of.gov.uk/shared\\_of/reports/Evaluating-OFTs-work/oft1240.pdf](http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1240.pdf)

<sup>11</sup> For a review of the FTC's retrospective assessment of consummated hospital mergers, see Farrell, Pautler, and Vita, Economics at the "FTC: Retrospective Merger Analysis with a Focus on Hospitals", *Review of Industrial Organization*, 35(1), 369-385 (October 2009). For the most recent published assessment of FTC consummated hospital merger studies by an FTC economist, see Steven Tenn, "The Price Effect of Hospital Mergers: A Case Study of the Sutter-Summit Transaction", *International Journal of the Economics of Business*, 18(1), 65-82 (April 2009).

**2. If not, why not? Have you ever considered it? Do you have any plans to conduct ex post evaluations in the future?**

Agencies who have not conducted ex post evaluations cited various financial and/or human resource constraints, including: lack of personnel, lack of skills/expertise, and the high cost of external consultants.

**Slovakia** noted that recent interventions have been annulled by the courts, meaning there is no space to realise ex post evaluations.

**DG Comp** of the European Commission stated that ex post evaluations can require substantial econometric expertise and detailed datasets, which render them costly. As such, they are only conducted for a small number of cases. Similarly, the US FTC stated that the number of retrospective studies is limited by agency resource constraints and the costly, time-consuming nature of such research.

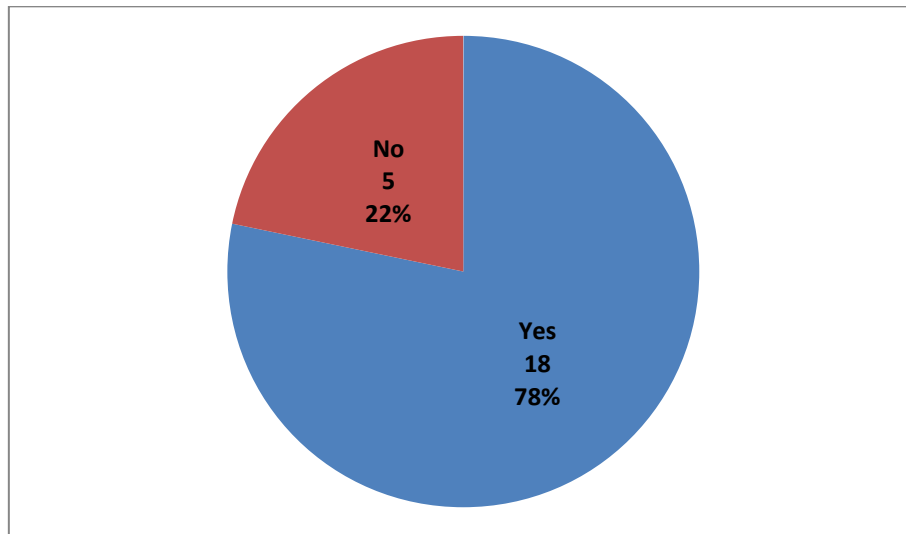
**Mexico** stated that it does not evaluate all of its interventions, but only chooses to do so when the result of the intervention and the merits of the case are deemed to have relevance to the markets, and where such evaluation is part of its strategy to illustrate the positive effects of competition policy among different audiences.

Five agencies (22%) noted that they are considering conducting ex post evaluations in the future.<sup>12</sup> In particular, **Bulgaria** stated they consider ex post evaluation to be useful and are going to draw on the experiences of other competition authorities that have good practices in this field.

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<sup>12</sup> Bulgaria, Slovak Republic, Spain, Tanzania, and Turkey.

3. Do you perform impact estimation of your competition interventions? (Select “Yes” if you have done so for at least one competition intervention in the past 5 years)



Eighteen agencies<sup>13</sup> (78%) indicated that they have performed an impact estimation of at least one competition intervention in the past 5 years.<sup>14</sup>

Respondents noted that impact estimations can take many forms and can serve many purposes. For example:

- *Impact estimation in prioritisation of cases:* Several agencies noted that impact estimation can arise in the context of case selection - prioritising high-impact cases or complaints for investigation.<sup>15</sup>
- *Impact estimation as benchmarking activity or accountability commitment:* Several agencies noted that impact estimation is part of a regular benchmarking activity or public accountability commitment. For example:
  - **DG Comp** -- DG Competition's Annual Management Plan and Annual Report 2011 benchmarks the observable consumer benefits from cartel decisions and merger decisions (prohibiting a horizontal merger or clearing such a merger subject to remedies).<sup>16</sup>

<sup>13</sup> Brazil, Bulgaria, Chile, DG Comp, Germany, Ireland, Mauritius, Mexico, Netherlands, New Zealand, Pakistan, Poland, Russia, Spain, Switzerland, Tanzania, Turkey, and UK OFT

<sup>14</sup> Of these seventeen, nine also performed ex post evaluations. Only two agencies performed neither ex post evaluation nor impact estimation (India, Slovakia).

<sup>15</sup> Chile and Ireland.

<sup>16</sup> See DG Comp Management Plan 2012 (pp 20-30) available at: [http://ec.europa.eu/atwork/synthesis/amp/index\\_en.htm](http://ec.europa.eu/atwork/synthesis/amp/index_en.htm)

- **UK OFT** -- Under the Comprehensive Spending Review 2010 (CSR10), the OFT has committed to meeting a set of impact indicators including publishing annual estimates of direct consumer savings from its activities, and benefit to cost ratios for different OFT tools.<sup>17</sup>
- **Mexico** -- Following recent amendments to the Federal Law of Economic Competition CFC Mexico is required to produce a report every five years containing a quantitative and qualitative assessment of the impact on consumer welfare of its actions.
- *Impact estimation as justification for an intervention:* Several agencies noted that, as it was defined in the questionnaire, impact estimation would also include the ordinary course analyses that agencies use to decide whether an intervention is merited in the first place.<sup>18</sup> For example, when agencies analyse the likely effects of a restriction on competition they are also (at least indirectly) evaluating the impact of an intervention that would remove that restriction from the market.

**4. If not, why not? Have you ever considered it? Do you have any plans to perform impact estimation work in the future? If yes, provide an example.**

The reasons for not conducting impact estimation were similar to the reasons respondents gave for not conducting ex post evaluations, namely, agency resource constraints.

**Ireland** noted that they would like to do more impact estimation but are prevented by not having sufficient internal resources and by the high cost of external consultants.

Similarly, **Jamaica** noted that limited human resources together with a high number of market studies being undertaken do not allow time to undertake impact estimation. **Japan** stated that there was no need to conduct more detailed estimation, that is impact estimation, since the JFTC usually conducts quick estimation before the JFTC selects the target area.

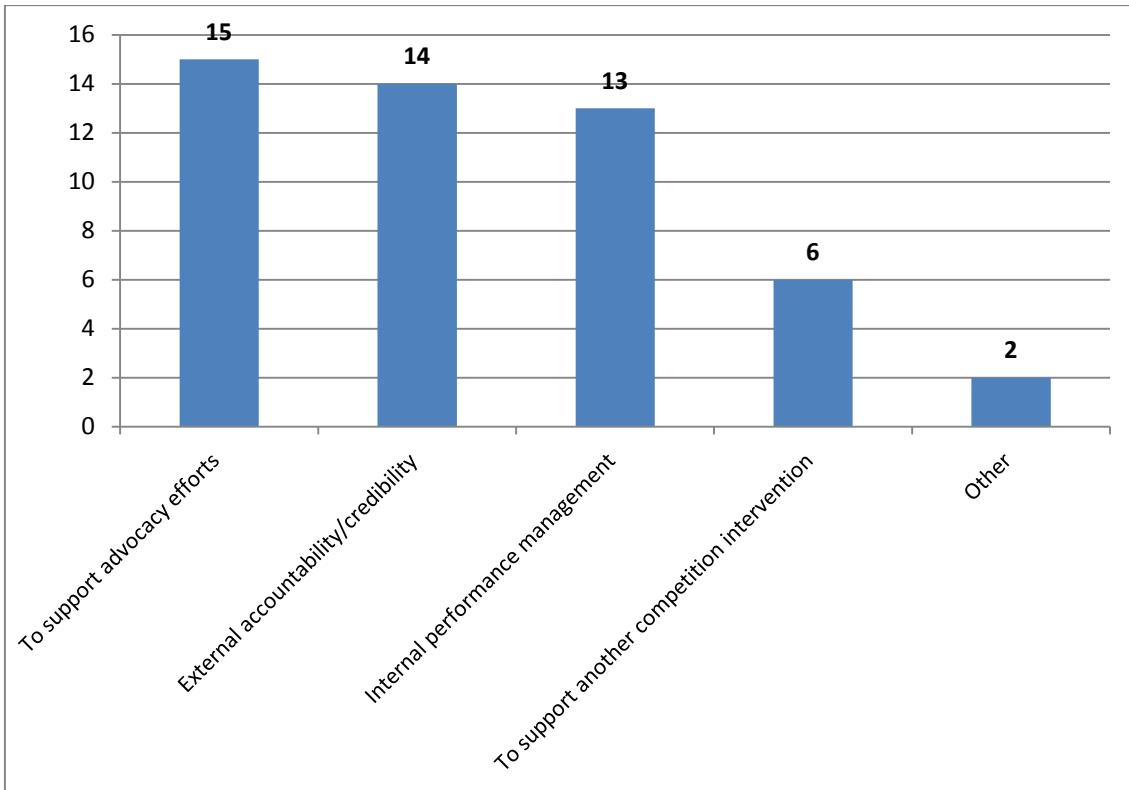
None of the agencies who responded “No” to Question 3 cited plans to perform impact estimation work in the future.

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<sup>17</sup> OFT's Positive Impact notes (2005-present) are available on the OFT website: [www.offt.gov.uk/OFTwork/publications/publicationcategories/reports/Evaluating/Describe](http://www.offt.gov.uk/OFTwork/publications/publicationcategories/reports/Evaluating/Describe)

<sup>18</sup> Bulgaria, Russia, Ireland, Pakistan, Poland, Slovakia, and Turkey.

5. For what purposes do you conduct evaluations? (Select all that apply. If more than one, please rank in order of least important purpose to most important purpose in the text box)



The most cited purpose of conducting evaluations was “to support advocacy efforts”, followed closely by “external accountability/credibility”, and “internal performance management.” A smaller number of agencies conduct evaluations “to support another competition intervention.”

**DG Comp** noted that if "impact evaluations" serve exclusively advocacy purposes, then "ex-post evaluations" aim at learning from past experiences in order to improve the quality of the enforcement and policy development.

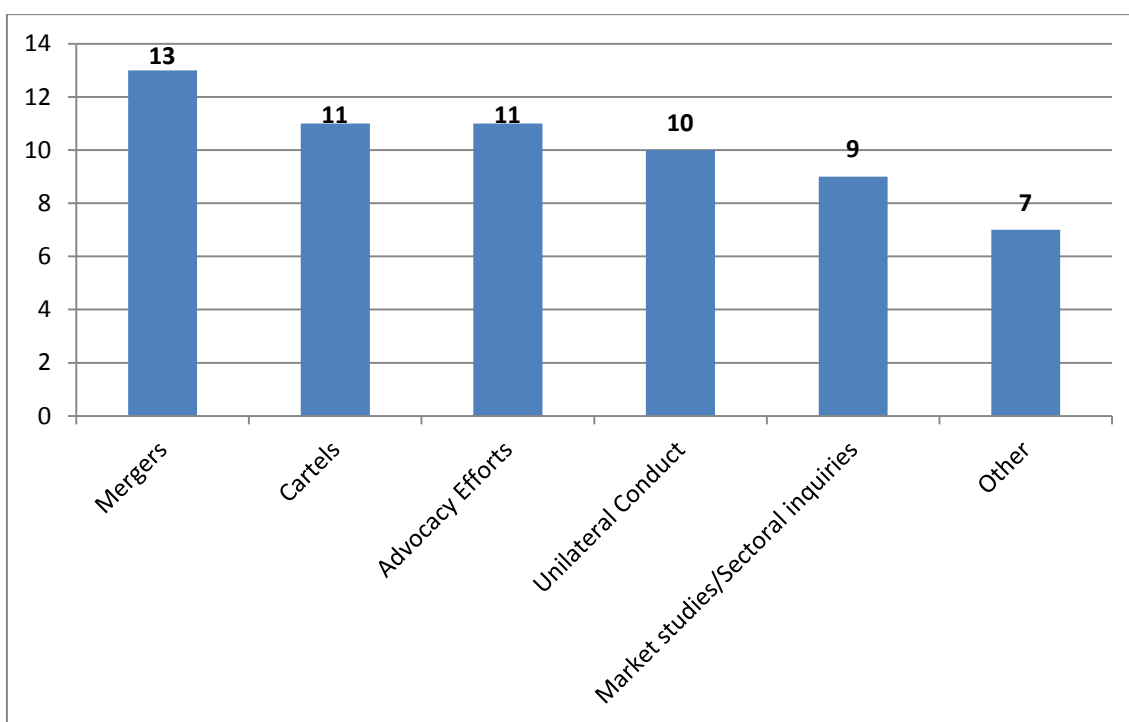
**Ireland** noted that estimating the impact of interventions in advance and getting regular feedback from stakeholders is key to spending limited resources wisely (i.e., internal performance management) and also establishing credibility as a regulator/enforcer that goes after the “right” targets (i.e., external accountability/credibility). Also, recommendations to policy makers and others to make changes will not be implemented if they are not well-tested to be workable solutions with a high likelihood of the benefits materialising (i.e., support advocacy efforts). Finally, ex-post evaluation of specific decisions or overturned decisions can build credibility but also support future similar interventions.

**New Zealand** noted that “Internal performance management” would be better described as internal performance *improvement* as they view ex post evaluations as contributing to their objective of continually reviewing/improving their analytical frameworks.

The **UK OFT** noted that its evaluation programme primarily aims to meet two needs: a) external accountability: to evaluate whether the OFT delivers its objectives and does so cost-effectively, and b) internal management: to help OFT prioritise, conduct, and follow up on their work to ensure they maximise their impact.

Other purposes for evaluations include: legal obligation (**Switzerland**) and to help evaluate the possible impacts of notified mergers on prices in the market (**Turkey**).

#### 6. What types of competition interventions do you evaluate?(Select all that apply)



The most common type of intervention evaluated was “mergers” followed closely by “cartels” “advocacy efforts” and “unilateral conduct.” A slightly smaller number of agencies evaluate “market studies/sectoral inquiries.”

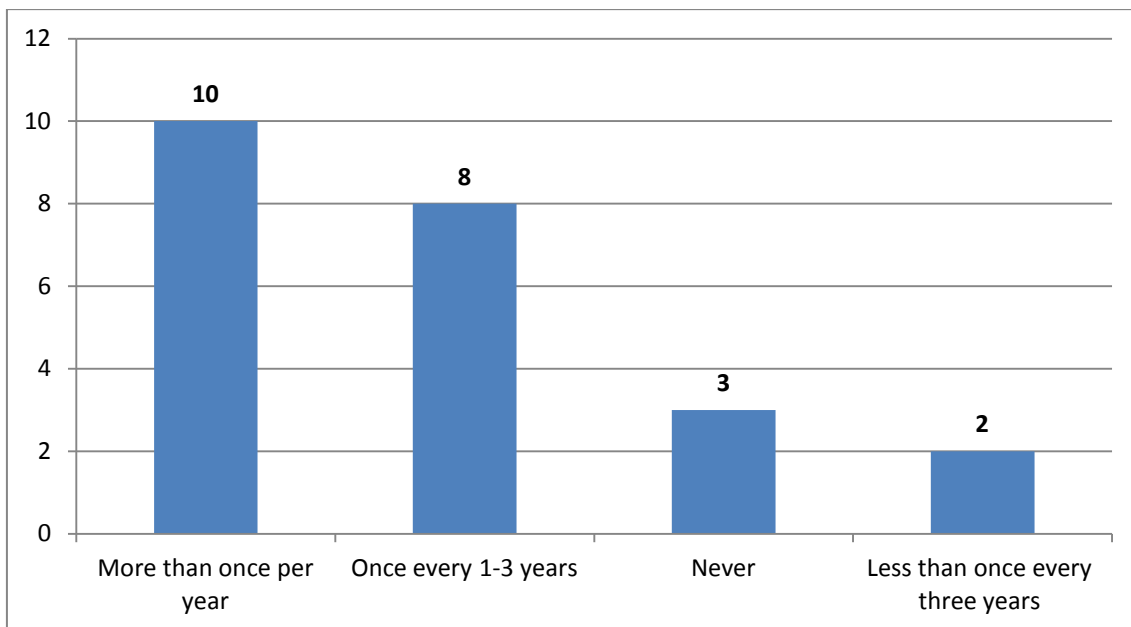
**Russia** noted that market studies and sectoral inquiries are mainly used as a source of information for market intervention or prioritization and planning of ex-officio investigations and therefore are not evaluated as such, unlike target oriented market interventions. **DG COMP** noted that due to methodological issues, impact evaluations focus only on cartels and

horizontal mergers. **Mauritius** has conducted an ex post evaluation of a unilateral conduct case, but expects to evaluate other types of interventions in the coming years as they conclude more cases. **Pakistan** is open to conducting evaluations of all types of competition interventions but is more focused on evaluating cartels and unilateral conduct cases.

Others types of interventions evaluated include:

- **Brazil** -- Regulatory proposals from agencies and bills from legislators/government
- **Russia** -- Sector liberalization programs; and programs on improvement of the public procurement by means of introduction of electronic bidding systems
- **Ireland** -- Raising awareness of the role and benefits of competition (surveys of consumer awareness)
- **Japan** -- Vertical restraints
- **Mexico** -- Outcomes of Judicial Reviews

**7. How frequently do you evaluate competition interventions on average?**

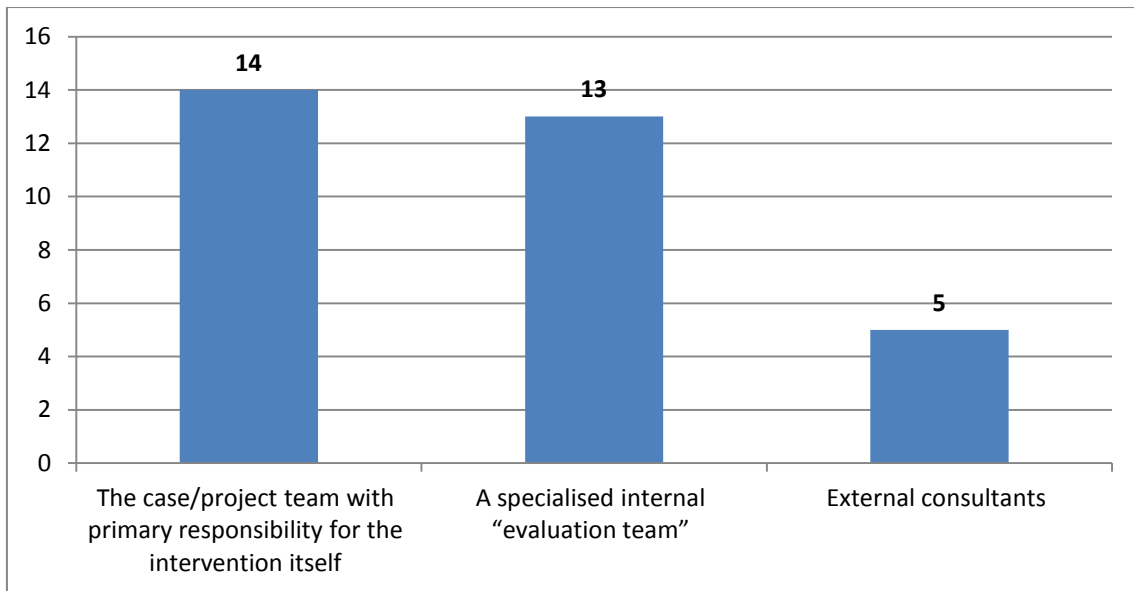


Ten agencies reported evaluating competition interventions “more than once per year”, eight agencies reported “once every 1-3 years”, and two agencies “less than once every three years”. Two agencies have not evaluated competition interventions.

The data cannot distinguish the frequency of “ex post evaluations” from the frequency of “impact estimations.” However, there is at least anecdotal evidence that agencies perform impact estimations more frequently. For example, **Chile** noted that impact estimation is a regular step in the process for selecting cases for investigation. Similarly, **Ireland** noted that

prioritisation principles and ex ante estimations of market studies and advocacy efforts are applied on an ongoing frequent basis. The Netherlands noted that they conduct impact estimations every year, whereas ex post evaluations are only incidental. The **UK OFT** reported that they conduct approximately 10-15 impact estimations and 2-3 ex post evaluations per year. **DG COMP** noted that, owing to the costs involved, ex post evaluations cannot be systematic; they should only cover a select number of cases.

**8. Who conducts the evaluations? (Select all that apply)**



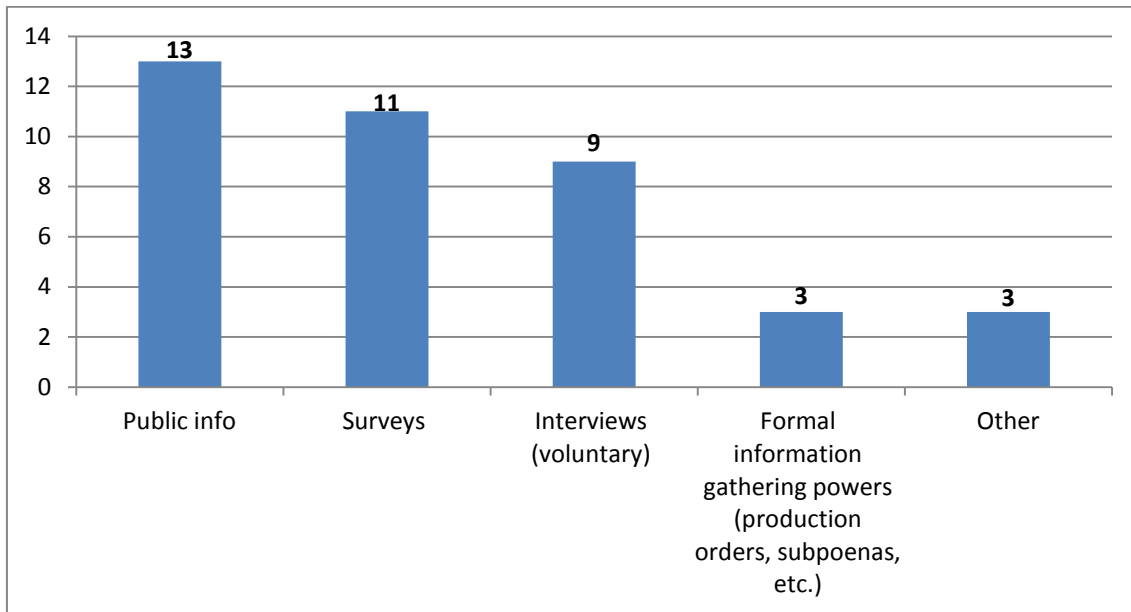
Responses suggest that evaluations are most often conducted by the case/project team with primary responsibility for the intervention itself or by a specialised internal evaluation team.

A smaller number of agencies indicated that evaluations have been conducted by external consultants.<sup>19</sup> The **UK OFT** noted that the decision of whether to outsource is done on a case-by-case basis with regard to a number of factors including the availability of internal resources and the anticipated scope of the evaluation. For example, the OFT typically relies on consultants when an ex post evaluation will require a consumer/business survey to be conducted.

<sup>19</sup> Ireland, Japan, Pakistan, Switzerland, and UK OFT



9. **How do you gather the post-intervention information for ex post evaluations?** (Select all that apply)



The most frequently used methods for gathering post-intervention information for ex post evaluations were through the use of public information<sup>20</sup> and surveys.<sup>21</sup> Many of the agencies also use voluntary interviews as an information source for ex post evaluations.<sup>22</sup> Other methods listed include getting relevant information from sector regulators (**DG COMP** and **Russia, Netherlands**) or purchasing relevant data (**DG COMP**).

In contrast, only three agencies -- **Ireland, Mexico** and **Pakistan** -- reported using their formal information gathering powers (subpoenas, production order, etc) to collect post-intervention information for ex post evaluations. Ireland states that it uses its formal power to summon witnesses to provide information and/or produce documents under oath. In contrast, **the UK OFT** does not have statutory powers to require the production of information for the purpose of conducting ex post evaluations.

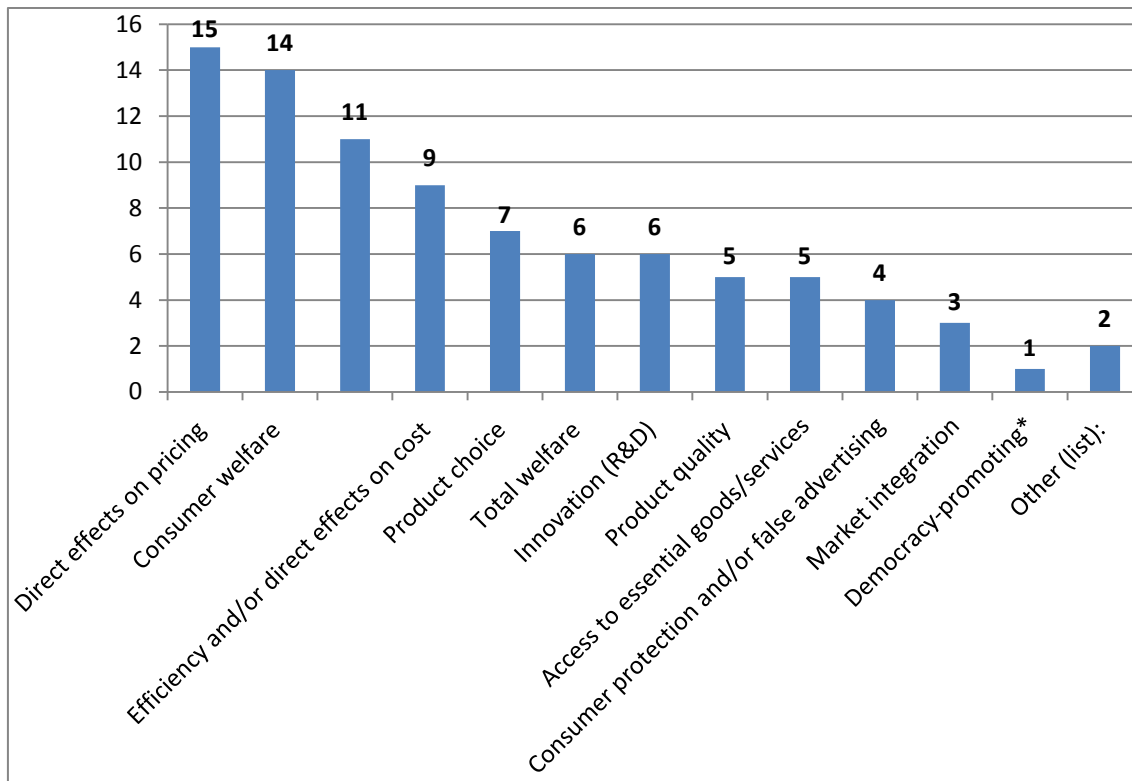
**Slovakia** reports that although it has not yet done an ex-post evaluation, it assumes it could acquire relevant information through the use of public information, surveys, and the use of formal information gathering powers. **Chile** also reports that the methods used to collect information for ex-post evaluations are currently under review.

<sup>20</sup> Bulgaria, DG Comp, Germany, Ireland, Jamaica, Japan, Mauritius, Mexico, Pakistan, Russia, Spain, Switzerland, and UK OFT

<sup>21</sup> Bulgaria, DG Comp, Germany, Ireland, Japan, Mexico, New Zealand, Pakistan, Russia, Switzerland, and UK OFT. Mauritius noted that they are considering using surveys for future evaluations.

<sup>22</sup> Germany, Jamaica, Japan, Mauritius, New Zealand, Pakistan, Russia, Switzerland, and UK OFT.

10. Which of the following indicators/criteria do you base your evaluations on? (For each indicator/criteria selected, please try to provide a brief example to elaborate)



\*Democracy promoting or other political governance-related effects of deconcentration/anti-cartel policies

The two most frequently used indicators/criteria for evaluations were “Direct Effects on Pricing”<sup>23</sup> and “Consumer Welfare”.<sup>24</sup> followed by “Direct Financial Benefit to Consumers/Consumer Savings” and “Efficiency and/or direct effects on cost.”<sup>25</sup>

The **UK OFT** states that the majority of its evaluation work is focussed on these three most frequently used indicators. The other indicators/criteria are not assessed in every evaluation nor will they always be relevant to every case. However, when relevant and when the necessary information has been available, the OFT has based evaluations on a number of the other indicators/criteria as well.

<sup>23</sup> Brazil, Bulgaria, Chile, DG Comp, Germany, Ireland, Japan, Mauritius, Mexico, Netherlands, Pakistan, Russia, Switzerland, Turkey, UK OFT

<sup>24</sup> Brazil, Chile, DG Comp, Germany, Ireland, Jamaica, Japan, Mauritius, Mexico, Netherlands, New Zealand, Pakistan, Russia, and UK OFT

<sup>25</sup> Brazil, Chile, Germany, Japan, Mauritius, Mexico, Pakistan, Russia, UK OFT

**New Zealand** estimates the ex-ante impact of its competition interventions (declined mergers and successful restricted trade practice cases) by estimating the financial benefits/savings to consumers using a consumer welfare approach. This also includes aspects of direct financial benefits to consumers (estimated only), product quality and product choice. It is arguable that the Commission's overarching standard for assessing mergers is a total welfare standard. However, the Commission states that, in its view, use of a total welfare standard is not feasible for impact measurement because:

- It is not possible to calculate the total welfare implications of an intervention using simple, low cost "rules of thumb";
- The majority of business acquisitions are considered under a provision using a consumer welfare standard, and therefore case specific information relevant to the total welfare standard is unlikely to be available; and
- To accurately apply a total welfare standard, the dynamic effects, such as the impact on productivity and innovation, would need to be taken into account. Such dynamic analysis is not feasible in the context of a comprehensive impact evaluation.

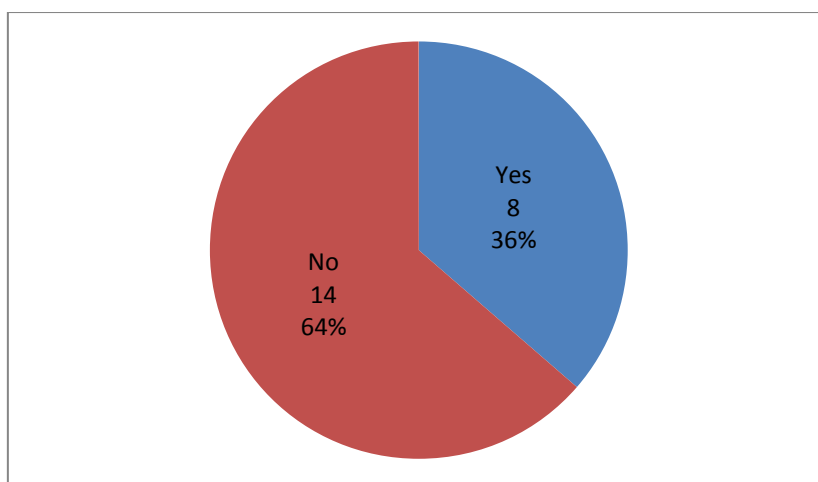
**Russia** provides the following examples for some of the above-listed criteria based on its experience in impact assessments:

- **Direct financial benefits to consumers** -- the reduction in prices or prevention of their increase for various types of consumers. This measure was most successfully applied in public procurement by evaluating savings on government outlays that amounts to US\$1 – 1.5 billion per year compared to the previous level of outlays for similar purposes.
- **Direct effects on pricing** -- a direct effect on pricing by decreasing the prices of goods and services procured to the government by private companies by 20 – 40%.
- **Consumer welfare** -- increase in the volume of service in a particular sector.
- **Total welfare** -- growth of the rail transportation market measured in terms of assets employed and service delivered.
- **Efficiency and/or direct effects on cost** -- comparison of costs for establishing e-procurement trade spots compared to annual savings in public spending, the second indicator exceeds the first one by many times.
- **Democracy-promoting or other political governance-related effects of deconcentration** -- growth of SME share or share of independent suppliers in a particular relevant market is generally considered as a politically desirable effect.
- **Access to essential goods/services** -- achieving equal access of air companies to airport services after separation of air transportation and airport services businesses.

In addition to the criteria listed above, other criteria mentioned by agencies were (1) market developments after intervention (e.g., merger remedies) (**Germany**), and (2) direct effect on customers' (of merged entity or two entities refused permission to merge) ability to negotiate and reposition (**Ireland**).

Finally, **Slovakia** reports that although it has not yet done an ex-post evaluation, it assumes that the following market criteria would be relevant: direct effects on pricing, consumer welfare, efficiency and/or direct effects on cost, innovation (R&D), product quality, and product choice.

**11. Do you evaluate the “deterrence” effects of your competition interventions? If not, why not? If so, how? Provide example.**



In response to Question 11, 8 responding agencies said that they evaluated the deterrence effect of competition interventions,<sup>26</sup> while 14 responding agencies responded that they did not.<sup>27</sup>

Examples of how agencies have attempted to measure the deterrence effect of competition interventions include the following:

- **Japan** -- The JFTC promotes competition law compliance by promoting and enhancing various guidelines and responding to the prior consultations from enterprises. It attempts to evaluate these activities. For example, in FY2011’s policy evaluation, the JFTC opined that publishing Guidelines Concerning Unjust Low Price Sales under the Antimonopoly Act in December 2009 and promoting these guidelines could be a part of the reasons for the decrease in the number of complaints and warnings of the unjust low price sales cases in the retailing industry since FY 2009. This could be because the publication and the promotion of the Guidelines improved the predictability for the enterprises and resulted in the decrease of the acts that are likely to lead to unjust low price sales.

<sup>26</sup> Chile, Jamaica, Japan, Netherlands, Russia, Slovakia, Switzerland, and UK OFT

<sup>27</sup> Brazil, Bulgaria, DG Comp, Germany, Ireland, Mauritius, Mexico, New Zealand, Pakistan, Poland, Spain, Tanzania, Turkey, and US FTC.

- **Netherlands** - The NMa commissioned a study on the “anticipation effects” of its cartel enforcement and merger control, which involved a survey of businesses and lawyers.<sup>28</sup> The study showed that for every 100 mergers notified to the NMa, 5 are modified and 13 others are abandoned owing to anticipated competition concerns. In the case of cartels, for every penalty decision of the NMa there are approximately 5 other cases in which a prohibited practice has been discontinued or modified to comply with competition law.
- **Switzerland** -- Approximately one or two years after the entry into force of the revised Cartel Act introducing financial sanctions and a leniency programme, COMCO sent a questionnaire to more than a hundred attorneys, legal counsels, companies and business associations to evaluate the deterrent effects of the new law and of our competition enforcement.<sup>29</sup>
- **UK OFT**-- The OFT states that it has primarily focused on evaluating the “deterrence” effects of its competition enforcement activities as a whole. This has largely occurred through surveys of businesses and lawyers.<sup>30</sup> The latest research (by London Economics) shows that sanctions and enforcement in the UK have a substantial deterrent effect. For each completed competition enforcement case, up to 40 potential competition law infringements are deterred. The report by London Economics also assessed the deterrent effects of specific enforcement interventions. This was done by specifically asking businesses if they had changed their behaviour due to a specific competition intervention. Generally, the survey results suggest that very few behavioural changes occurred as a direct result of specific interventions. The OFT states this does not imply that the UK competition regime as a whole does not have a large deterrent effect. Indeed, the evidence above strongly suggests otherwise.

Of the agencies that do not attempt to measure the deterrence effects of competition interventions, DG Comp, New Zealand and Pakistan cited difficulties in measurement as a reason for not doing so, while Brazil mentioned a lack of resources. Bulgaria states that insufficient time has passed since amendments to its competition law, which introduced a new turnover-based approach in setting sanctions, to assess a deterrence effect, although it expects a stronger deterrence effect to arise from its amended law. Mauritius noted that this was something they could consider undertaking in the future.

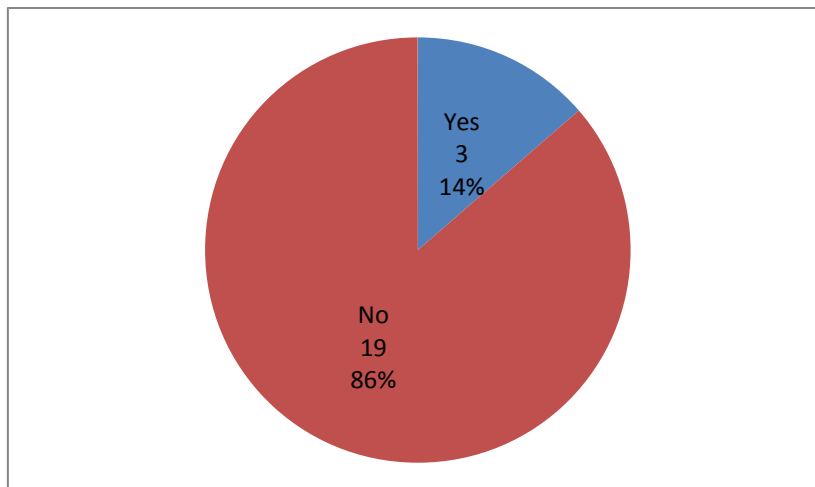
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<sup>28</sup> “ Study of the anticipation effects of cartel enforcement and merger control (2011)” available (in Dutch) at: [www.nma.nl/images/Anticipatie\\_op\\_kartel-en\\_concentratietoezicht\\_Eindrapport22-154614.pdf](http://www.nma.nl/images/Anticipatie_op_kartel-en_concentratietoezicht_Eindrapport22-154614.pdf)

<sup>29</sup> See [www.weko.admin.ch/dokumentation/00216/01035/index.html?lang=de](http://www.weko.admin.ch/dokumentation/00216/01035/index.html?lang=de)

<sup>30</sup> See “The impact of competition interventions on compliance and deterrence” (London Economics, December 2011) (available at [www.of.gov.uk/shared\\_of/reports/Evaluating-OFTs-work/oft1391.pdf](http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft1391.pdf)); and “The deterrent effect of competition enforcement by the OFT” (Deloitte, November 2007) (available at [www.of.gov.uk/shared\\_of/reports/Evaluating-OFTs-work/oft962.pdf](http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft962.pdf)).

**12. Do you evaluate the “compensatory” effects (e.g., redress), if any, of your competition interventions? If so, how?**



In response to Question 12, only 3 responding agencies said that they evaluated the compensatory effect of competition interventions,<sup>31</sup> while 19 responding agencies responded that they did not.<sup>32</sup>

Examples of how agencies have attempted to measure the compensatory effect of competition interventions include the following:

- **Jamaica** -- The JFTC states that where a Consent Agreement is concluded, in which the respondent is required to pay the agency’s costs, issue a public apology and/or provide redress to the aggrieved party or parties, it generally evaluates the respondent’s conduct on a periodic basis.
- **Pakistan** -- The Commission has tried to evaluate the compensatory effects in a few of its cases. One example is the Commission’s case against Bahria University in which the institution tied the sale of laptops to the admission of students. The Commission closely followed and ensured that the educational institution did as it pledged to the Commission, namely that it would reimburse students the amount above the then market price.

Of the agencies that stated they do not evaluate the compensatory effects of competition interventions, **Brazil** stated that it lacked adequate resources to do so, while **Bulgaria** cited a lack of practice in this area. **Russia** states that while its enforcement efforts are primarily directed at promoting deterrence, it is working with the Russian bar to facilitate private claims

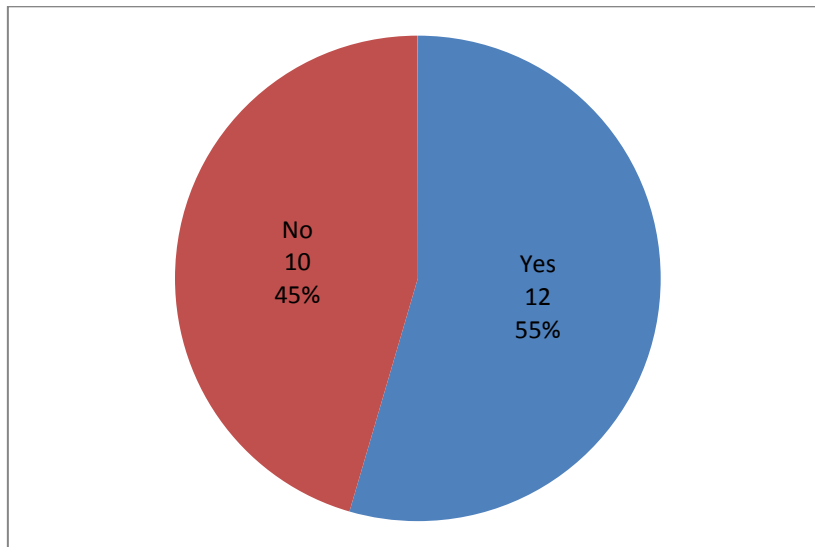
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<sup>31</sup> Jamaica, Japan, Pakistan.

<sup>32</sup> Brazil, Bulgaria, Chile, DG Comp, Germany, Ireland, Mauritius, Mexico, Netherlands, New Zealand, Poland, Russia, Slovakia, Switzerland, Spain, Tanzania, Turkey, UK OFT, and US FTC.

based on alleged competition law infringements, which would have a direct compensatory effect for injured parties.

**13. Do you evaluate the internal costs of competition interventions (e.g., internal resource costs associated with an enforcement case)? If so, how?**



In response to Question 13, 12 responding agencies said that they evaluated the internal costs of competition interventions,<sup>33</sup> while 10 responding agencies responded that they did not.<sup>34</sup>

Examples of how agencies evaluate the internal costs of competition interventions include the following:

- **Chile** -- These kind of costs are particularly considered when evaluating an alternative dispute resolution mechanism, whether before or after FNE's complaint. The costs considered by this assessment are mainly litigation costs, since these are costs the FNE has to bear.
- **Russia** -- If the internal costs of an intervention are measurable and not mixed up with the routine expenses of the agency (like wage expenses) FAS tends to calculate and compare them with measurable effects of the intervention.
- **Ireland** -- The Irish Competition Authority estimates the number of man hours that it will take to complete a project per the staff members that would be appointed to the project.
- **Mexico** -- As part of the report which is referred to in the response to question 1 of "Part II: Evaluating competition interventions" an indicator has been developed to

<sup>33</sup> Chile, Germany, Ireland, Jamaica, Japan, Mexico, Netherlands, New Zealand, Slovakia, Russia, Tanzania and the UK OFT.

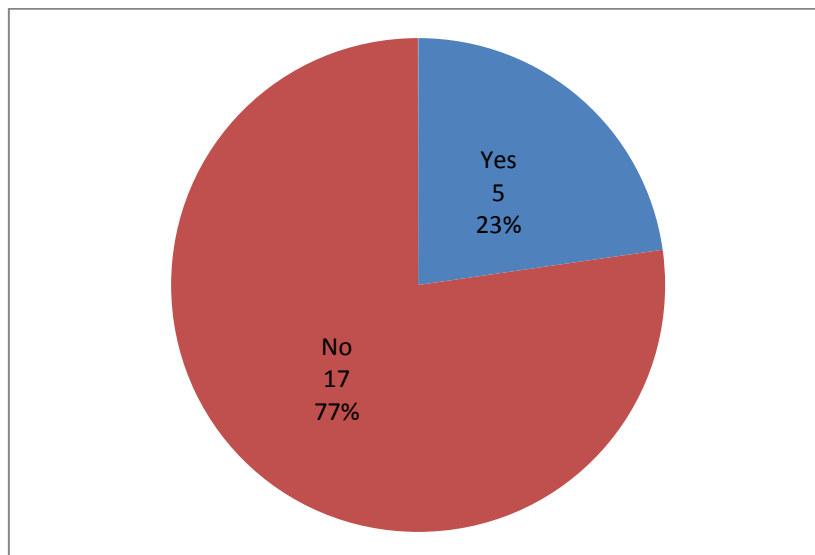
<sup>34</sup> Brazil, Bulgaria, DG Comp, Mauritius, Pakistan, Poland, Switzerland, Spain, Turkey, and US FTC.

measure prioritization and allocation of human resources (man-hour) dedicated to each case/investigation within the CFC.

- **New Zealand** -- The New Zealand Commerce Commission adds up all the costs involved and compares this to the estimate of savings, to come up with a ratio of costs to savings.
- **Slovakia** -- The Authority reports that in some cases it calculates the amount of work of particular case handlers (number of hours for each case handler).
- **UK OFT** -- For ex post evaluations the OFT estimates the internal resource cost tied to the particular case being evaluated. This is done by estimating the portion of departmental budget allocated to the case in question, including both staff and non-staff costs.

Of the agencies that stated they do not evaluate the internal costs of competition interventions, **Brazil** states that it lacks the human and financial resources to do so. **Pakistan** states that the internal costs of competition interventions are already factored in the operational budget of the Commission.

**14. Do you evaluate the external costs of competition interventions (e.g., business chilling effects, burden to business)? If so, how?**



In response to Question 14, only 5 responding agencies said that they evaluated the external costs of competition interventions,<sup>35</sup> while 17 responding agencies responded that they did not.<sup>36</sup>

<sup>35</sup> Chile, Netherlands, Pakistan, Tanzania, and the UK OFT.

<sup>36</sup> Brazil, Bulgaria, DG Comp, Germany, Ireland, Jamaica, Japan, Mauritius, Mexico, New Zealand, Poland, Russia, Slovakia, Switzerland, Spain, Turkey, and US FTC.



Examples of how agencies evaluate the external costs of competition interventions include the following:

- **Chile** -- States that these criteria seems relevant in regulated sectors, where antitrust intervention may be considered a deterrent for investment, after following a dynamic approach. The consideration of these kind of costs justifies the choice between abstention (leaving private enforcement to operate alone) or pushing forward an alternative dispute resolution mechanism.
- **UK OFT** -- The OFT does not evaluate the business chilling effects of particular competition interventions, stating that in principle this would be difficult. The OFT has, however, examined the business chilling effects of its competition enforcement overall. This was done through surveys of lawyers and businesses conducted by Deloitte LLP for OFT in 2007.<sup>37</sup> This report suggests that the business chilling effect is present, but rare:
  - In relation to mergers, Deloitte asked respondents to indicate on a scale of 1 to 4 (where 1 is never and 4 is frequently) how often they thought that the UK regime deters mergers that would not be anti-competitive. 87 per cent of lawyers and 76 per cent of companies said that this had happened never or rarely.
  - In relation to competition law, Deloitte similarly asked respondents how often they thought that the UK competition regime deters agreements or conduct which would not be anti-competitive. 76 per cent of lawyers and 89 per cent of companies said that this had happened never or rarely.
  - Both sets of respondents found that the most frequent form of business chilling is where firms are concerned their behaviour might be seen as a cartel (including resale price maintenance and information exchange)

Of the agencies that stated they do not evaluate the external costs of competition interventions, **Brazil** states that it lacks the human and financial resources to do so. **Jamaica** responds that although an evaluation of external costs and effects are not done in a formal manner, it is considered in the JFTC's deliberations of deciding upon the most effective remedy/solution to the issues at hand.

**15. Do you have any public guidance documents on how you evaluate competition interventions? If so, please provide hyperlinks to the extent possible.**

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<sup>37</sup> "The deterrent effect of competition enforcement by the OFT" (Deloitte, November 2007) (available at [www.of.gov.uk/shared\\_of/reports/Evaluating-OFTs-work/oft962.pdf](http://www.of.gov.uk/shared_of/reports/Evaluating-OFTs-work/oft962.pdf)).

The following table lists the specific guidance documents listed by agencies in their responses.

Agency	Document	Hyperlink
<b>European Commission</b>	Public version of the DG Competition's Annual Management Plan	<a href="http://ec.europa.eu/atwork/synthesis/amp/index_en.htm">http://ec.europa.eu/atwork/synthesis/amp/index_en.htm</a>
<b>Irish Competition Authority</b>	ICA Prioritization Principals	<a href="http://www.tca.ie/images/uploaded/documents/Prioritisation%20booklet.pdf">www.tca.ie/images/uploaded/documents/Prioritisation%20booklet.pdf</a>
<b>Japan Fair Trade Commission</b>	Policy evaluation (English version of the result of Policy Evaluation in FY 2011 will be posted on the JFTC's web site in the future.)	<a href="http://www.jftc.go.jp/info/seisaku.html">www.jftc.go.jp/info/seisaku.html</a>
<b>Netherlands Competition Authority</b>	Working paper: Outcome van NMa-optreden: Een beschrijving van de berekeningsmethode (in Dutch)	<a href="http://www.nma.nl/images/Outcome_van_NMa-optreden22-156918.pdf">www.nma.nl/images/Outcome_van_NMa-optreden22-156918.pdf</a>
<b>Comco (Switzerland)</b>	Materialien zu Wirksamkeitsüberprüfungen / Evaluationen	<a href="http://www.bj.admin.ch/content/bj/de/home/themen/staat_und_buerger/evaluation/materialien_.html">www.bj.admin.ch/content/bj/de/home/themen/staat_und_buerger/evaluation/materialien_.html</a>
<b>UK OFT</b>	A guide to OFT's impact estimation methods (July 2010)	<a href="http://www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft1250.pdf">www.offt.gov.uk/shared_offt/reports/Evaluating-OFTs-work/oft1250.pdf</a>

## 16. Do you disseminate the results of your evaluations? If so, how? To whom?

In response to Question 16, 11 responding agencies said that they disseminate results of their evaluations,<sup>38</sup> while 10 responded that they do not.<sup>39</sup> The agencies that disseminate the results of their evaluations tend to publish their reports on the agencies' websites, release the results through the national press, and/or disseminate results broadly through legal community publications, journals and international news sources (Mlex and the Global Competition Review being named specifically). Moreover, the DG Comp states that the results of impact evaluations are included in speeches made by senior agency officials. The agencies that do not disseminate the results of evaluations use them for internal purposes only.

<sup>38</sup> Brazil, DG Comp, Japan, Mauritius, Mexico, Netherlands, Pakistan, Poland, Russia, Switzerland, and the UK OFT

<sup>39</sup> Bulgaria, Chile, Germany, Ireland, Jamaica, New Zealand, Slovakia, Spain, Turkey, and US FTC.

#### 4. Conclusions

A number of useful general conclusions can be drawn from the questionnaire answered by 23 NCAs. From the answers provided by competition agencies, we can reach one main conclusion, that there is no one-size-fits-all policy.

On average, all stakeholders are considered to be relevant, although the collated results indicate that the majority of NCAs view government legislators and business as being the most important stakeholders with whom to communicate. However, as the difference between the figures is so small, we can state that all stakeholders are important for all CAs. However, there are some differences when we analyse the answers country by country. These differences show that every CA's task depends on its circumstances, such as the problems in regulated sectors, the country's development or the government role in the economy, among others. Notably, the Indian authority, however, regards students as being one of the most fundamental stakeholders requiring attention.

The majority of NCAs regard, as the most important central messages of their communications, that competition law is necessary to "keep competitors from colluding" and to "facilitate the launch of new products". When considering how to best target their stakeholder group, therefore, competition agencies need to adapt as not all stakeholders are receptive to the same messages. It is important to address personalized messages to each stakeholder. From the results of the questionnaire, it is possible to see that certain important elements for competition policy cannot be used to promote competition at all. These elements are necessarily important for competition authorities, but they are not necessarily important for stakeholders, so they should not be used when communicating with them.

As for the frequency of contact with each stakeholder, it is directly associated with the relevance of the contact, that is why government is the stakeholder most often contacted on average.

Most NCAs appear to adopt the view that their message, in the context of business as a key stakeholder, is best communicated to CEOs and not to, for example, General Counsels.

In relation to the means of communication, it also depends on the stakeholder. The means have to be adapted to each stakeholder to be more efficient. In general, an agency website is considered a good instrument. The results indicate the following: that when communicating with government or legislators, the majority of NCAs utilise market studies and sector reports; when communicating with the legal fraternity, the majority of NCAs utilise enforcement decisions; and, more generally, when communicating with the public the use of the Internet (including individual NCA websites) was the preferred method of communication.

Notably, over 75% of the NCAs that completed the questionnaire have dedicated teams (ranging in size – due to resource availability) handling external public relations. A high number of NCAs have, amongst these external relations teams, journalists. They also sign agreements and partnerships with other institutions.

In sum, we can deduce that CAs consider all stakeholders equally important, although the government stands out as a priority. But agencies have to adapt the messages and the means of communication to each stakeholder, as each recipient is prone to receive better some messages through some means. Therefore, agencies must make a fine tuning in order to successfully transmit the importance of competition to stakeholders.

The NGA consumer association responses reflect that the agencies have a considerable distance to go if their communications about the benefits of competition are to be very effective. The education level of the constituents of consumer associations bring to the table less sophistication than business respondents in terms of their basic grasp of competition issues. In general, the types of communications that have the most impact tend to relate directly to the benefits to individual consumers, e.g. lower prices, protection against collusion by sellers. The most effective form of communication, according to this survey, is the agency website.

The agencies should consider how they might improve their communications to consumer associations and, through the associations, to consumers, since consumers are a logical constituency for the agencies. This could involve (a) systematically identifying the organizations within the civil society that can best intermediate with the consumer public; (b) through focus groups and interviews, ascertaining how the agency can improve its communications, e.g. by utilizing words and concepts that are more familiar to consumers, and (c) assuring that the agency's website is maximizing its potential as the likely best means of communicating to consumers and their associations. Given the apparent importance of social media in much of the world today, but the low scores for this in the view of the respondents, it would seem appropriate to explore whether more or better use of social media tools is likely to be a viable option.

Certain conclusions can be drawn about the evaluation of competition interventions. To the extent that these NCAs are representative, we can infer generally that resource constraints strongly influence the evaluations that take place. Such constraints affect not only the quantity, but also the type, of evaluations that NCAs undertake.

Notwithstanding resource constraints, the majority of NCAs (57%) in the survey have done ex-post evaluations of their competition interventions during the past five years. And more than three-quarters (78%) have done an impact estimation for at least one competition intervention in the past five years. A significant proportion(43%) reported evaluating competition interventions more than once per year. Those agencies not performing ex-post evaluations or impact estimations largely cited costs and personnel constraints. Typical subjects of study for ex-post evaluations include merger review actions, abuse of dominance cases, and interventions involving regulated industries. These are logical subjects to choose because of their importance and their greater focus on (testable) predictions of anti-competitive effects compared to, for example, hard-core cartels or bid-rigging (which are per se illegal in many jurisdictions).

Examples of impact studies included estimates of the consumer welfare effects from NCA actions; such estimates can be quite useful in competition advocacy, particularly when communicating the benefits of competition to government, legislators and the general public. Relatedly, respondents cited direct effects on pricing (65% of respondents), consumer welfare (61%), and direct financial benefit to consumers/consumer savings (48%) as the most frequently used indicators/criteria for evaluations.

The methods and subjects of the evaluations understandably reflect resource and/or personnel considerations. Evaluations are largely carried out internally, by either the case/project team primarily responsible for the intervention (according to 61% of respondents) or a specialized internal evaluation team (57%), rather than by external consultants (only 22% of respondents). Evaluations rely significantly on the cost-effective means of using public information (57%) and conducting surveys (48%) for information gathering. Efficient use of resources also influences the substance of the evaluations. Significantly, more respondents evaluate the deterrence effects (8 respondents) of interventions than evaluate the compensatory (redress) effects (3 respondents); that may be due to the scope of their authority, but it is also likely much less resource-intensive to track the number of similar cases before and after the intervention or to survey changes in corporate attitudes or perceptions. Similarly, more respondents evaluate internal costs of competition interventions (12 respondents) than evaluate external costs (5 respondents). While the focus on internal costs may be driven by administrative needs, particularly in connection with budgeting, it is also the case that internal costs will consume fewer resources to assess than external (social) costs.

## ***5. Recommendations for Future Work in the Framework of the Benefits Project***

Following on from these conclusions, and as set out in the 2011-2012 Advocacy Working Group Plan, this Interim Report should provide recommendations for the Benefits Project Work during the 2012-2013 ICN year.

The conclusions have shown that agencies, when explaining the benefits of competition, have to adapt themselves to their circumstances and type of stakeholder; it will be difficult to establish a single recipe for all situations. It may therefore be useful to continue this year's work by drafting a "good practice" paper, an Executive Summary or a "toolkit" in order to provide competition authorities with possible instruments to get their message across, allowing agencies to benefit from others' experiences.

Regarding the second part of the Benefits Project that focussed on evaluation of competition interventions, there are various possibilities for future work. In terms of Impact Estimations, many of the responding competition authorities stated that they are deterred or prohibited from conducting impact estimations due to their complexity and associated cost and resource requirements. However, despite these challenges there are many examples of agencies

conducting impact estimations to support their advocacy activities. Additional work could be done to facilitate the exchange of information and sharing of experiences by the agencies that have completed impact estimations. Specifically, as part of the Benefits Project, perhaps a catalogue of the various assumptions used in impact estimations (for example, assumptions on the percentage overcharge for cartels) can be created, which would include the assumptions and what they are based on and how they are applied in practice. Similarly, agencies might share the methodology employed in arriving at calculations reflecting the impact of cartels. The goal would be to lower the perceived costs of undertaking impact estimations by sharing experiences on the fundamental models and assumptions that have been used as a basis for past studies.

In terms of Ex-Post Evaluations, and similarly to impact estimations, the agencies that have not yet engaged in ex post evaluations most often cite complexity and resource/cost requirements as reasons for not doing so. Therefore, sharing past experiences and specific methodologies used by agencies that have done ex post evaluations could be useful, as well as establishing a mechanism of sharing all publicly available and published ex-post evaluations, or at least links to agency websites where they may be obtained. The goal would be to further share experiences and lower the associated complexities and costs of engaging in ex post evaluations. It is noteworthy to mention, however, that the ICN Agency Effectiveness Working Group has reference to this field of work in their long-term planning, and so could be an area of synergy between ICN working groups.

In developing future work, the Group should take into consideration work developed, or currently being developed, by other international organisations, such as UNCTAD or the OECD, to build on synergies between work products. In this regard, the Advocacy Working Group recognizes that the evaluation of competition interventions is currently a strategic theme of the OECD's Competition Committee.<sup>40</sup> This project is intended to facilitate in "assisting members to evaluate their competition regime[s], as an aid to improving the effectiveness of those regimes and as a way of sharing and deepening their knowledge . . . as an advocacy tool."<sup>41</sup> As part of this work, the OECD intends to develop best practice recommendations with respect to both annual reporting (i.e., impact estimations) and ex post assessments. Given the close similarities of the OECD's planned project to the Advocacy Working Group's Benefits Project, their complementary goals, and the substantial overlap in membership between the OECD and ICN's Advocacy Working Group, it makes sense to closely coordinate any future work in this area.

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<sup>40</sup> See OECD, *The Competition Committee's Two Strategic Themes for 2012-2014: International Co-Operation and Evaluation of Competition Interventions* (15 Feb. 2012).

<sup>41</sup> *Id.* at 13.

## Appendix

### Appendix A – List of agencies who responded to this questionnaire

Competition Agency	Cited in this report as
Secretariat of Economic Monitoring of the Ministry of Finance (SEAE)	Brazil
Commission on Protection of Competition (Bulgaria)	Bulgaria
Fiscalía Nacional Económica (FNE)	Chile
European Commission – Directorate General for Competition	DG Comp
Bundeskartellamt	Germany
Competition Commission of India	India
The Competition Authority (Ireland)	Ireland
Fair Trading Commission of Jamaica	Jamaica
Japan Fair Trade Commission	Japan
Competition Commission of Mauritius	Mauritius
Federal Competition Commission (CFC Mexico)	Mexico
Netherlands Competition Authority	Netherlands
New Zealand Commerce Commission	New Zealand
Competition Commission of Pakistan	Pakistan
Office of Competition and Consumer Protection (UOKiK Poland)	Poland
Federal Antimonopoly Service of Russia	Russia
Antimonopoly Office of the Slovak Republic	Slovakia
Comisión Nacional de la Competencia (CNC Spain)	Spain
Swiss Competition Commission	Switzerland
Fair Competition Commission (Tanzania)	Tanzania
Turkish Competition Agency	Turkey
UK Office of Fair Trading	UK OFT
US Federal Trade Commission	US FTC

## Annex B – NGA Respondents

<b>Non-governmental advisor / Institution</b>	<b>Jurisdiction</b>
CB	The Netherlands
Active Consumers	Bulgaria
Consumers Patrosa	Croatia
EC	UK
Hanoi Resource Center	Vietnam
CUTS NRC	Kenya
IEA	Kenya
American Antitrust Institute	USA



Annex C: Table on the Average Relevance of the Suggested Benefits of Competition

	Local		Business/			Consumer		
	Government /legislators average	Government/ Legislators average	Regulatory Agencies average	Business Association average	Legal community average	Judges average	Media average	Associations average
1-Enables entry into the market	4,56	4,41	4,56	4,44	3,56	3,17	3,83	3,56
2-Conducive to innovation	4,56	4,18	4,44	4,44	3,44	3,22	3,94	4,33
3-Facilitates winning new customers	2,17	2,59	2,44	4,72	2,89	2,39	3,06	3,06
4-Enhances consumer access to products and services at low cost	4,44	4,29	4,28	3,50	3,61	3,56	4,61	4,89
5-Enables access to supplies on fair terms	3,44	3,35	3,78	4,00	2,67	2,67	3,22	2,94
6-Facilitates launch of new products	3,72	3,35	3,89	4,50	3,11	2,67	4,06	4,39
7-Protects the 'underdog'	2,63	2,53	2,31	2,69	2,38	2,50	2,69	2,19
8-Minimizes corruption in the industry	3,56	3,29	3,50	3,00	3,56	3,56	3,56	3,11
9-Acts a deterrent to potential perpetrators	3,83	3,41	3,83	4,17	4,17	3,67	3,67	3,11
10-Permits failing firms to exit	2,89	2,71	3,39	3,22	2,72	2,56	2,67	2,56
11-Makes available a choice of various quality products	4,56	4,18	4,00	3,67	3,56	3,33	4,56	4,78
12-Promotes more efficient public procurement	4,72	4,88	4,33	3,28	3,06	2,94	3,67	2,78
13-Promotes fair setting of standards	3,78	3,41	4,17	3,67	3,17	2,61	2,83	2,83
14-Keeps competitors from colluding	4,44	4,29	4,72	4,28	4,33	4,33	4,00	4,11
15-Reduces ability of large firms to use muscle power over small and mid-sized firms	3,71	3,75	3,71	4,00	3,53	3,59	3,59	3,12
16-Others	5,00	5,00	5,00	4,50	4,00	3,50	3,50	2,00
<b>Total</b>	<b>3,82</b>	<b>3,66</b>	<b>3,84</b>	<b>3,85</b>	<b>3,33</b>	<b>3,12</b>	<b>3,60</b>	<b>3,45</b>

On the table the highest value for each stakeholder is highlighted.

Annex D: Cases studies of how competition agencies communicate the different benefits to the various types of stakeholders:

**Brazil:**

I/ Concrete Reinforcing Bars

In 2006 SEAE participated, under ABNT's commission, in the revision of the technical standard ABNT NBR 7480, on concrete reinforcing bars. Within the commission, discussions focused on three issues raised by consumers of steel: (a) the inclusion of CA-40 class, said to be more common in the global market and easier to import than CA-50 class, used in Brazil; (b) NBR 7480 wouldn't follow the characteristics of the main international standards, thus introducing technical barriers, and (c) the compulsory certification of reinforcing bar would be a barrier to imports.

Regarding the inclusion of CA-40 class, SEAE concluded that it shouldn't be allowed, mostly because: (i) there was no predominance of its use in the international market; (ii) better international practice didn't recommend its use; (iii) it could create a greater risk of collapse (as it has a yield stress 20% lower) for popular constructions; (iv) it would result in increased costs of production, inventory and distribution, as well as increase the final product price; and (v) the contestability of the domestic market through imports was already assured with the CA-50 steel class. SEAE also verified that the compulsory certification, as well as the mandatory marking requirement for reinforcement bars raised no barriers to imports, as they did not innovate regarding to congenerous national and international standards. SEAE's opinion was taken into account by the commission and the draft standard to NBR 7480 was submitted to public consultation and then became the technical standard ABNT NBR 7480:2007.

II/ Brazilian regulation of cable TV service in force dates from 1997 and did not meet the needs of the competitive market. Although it was initially expected a larger amount of grants for the provision of cable television service, in practice, ANATEL, the regulatory body for telecom, issued no such permits for years, resulting in a virtual monopoly on cable service in all regions of Brazil. However, the approval of Law 12,485, which among other important changes in the conditional access services, allows the entry of telecom companies in the market for cable TV, created a demand for the issuance of new permits.

The main debate was whether such permits should be auctioned to a limited number of participants for the highest price, or provided to all interested in paying the administrative cost of \$ 9,000.

In this context, in June 2011, ANATEL published a Public Consultation No. 31 on the proposed new Regulation of Cable TV Service (TVC), proposing the second option, following the majority position of the Directors.

SEAE understood that coverage obligations proposed for entrants represented a significant barrier to entry, which would result in minimal investment only feasible for large companies,

which was not compatible with the option of administrative grants for the price. According to SEAE, by the proposed rules not only an entrant in the city of Sao Paulo would have to serve about 500,000 households, but should be ready to serve immediately over 300,000 households. SEAE then proposed to reduce these requirements, or reduce the size of the concession area, limited to the options area municipality or national code. That would also allow the many illegal operations, especially in the outskirts of large cities, to be brought to the legality.

It was also suggested to differentiate the sharing obligations of the network according to the operator's significant market power, thus providing incentives for network deployment to the smaller operators.

Finally, SEAE suggested stimulating the secondary market for decoders as a way of reducing barriers to entry. For this, we proposed to prohibit the operator to restrict the connection of the subscriber decoder's property to their networks as long as approved by ANATEL, which would guarantee the security of networks.

#### **Bulgaria:**

The Bulgarian Commission on Protection of Competition (CPC) organizes seminars and conferences for the business in order to raise their awareness of competition rules and to explain the benefits of competition. For this purpose the CPC has also adopted various guidelines. The Guidelines against Bid Rigging in Public Procurement Award Procedures aim to outline the main competition concerns in public procurement award procedures, the factors determining bid rigging behaviour, as well as the indicators of its presence. The Guidelines on information sharing among competitors aim to provide guidance to undertakings and their associations about the essence, forms and effects of exchange of information among competitors and its assessment under competition law. The CPC has also adopted a Decision block exempting certain categories of agreements, decisions or concerted practices from the prohibition under Article 15 of the Law on Protection of Competition (LPC).

As part of the series of events marking its 20th anniversary in March 2011 the Commission on Protection of Competition held a seminar in order to enhance the knowledge of the business community about the new regime of block exemptions for certain categories of agreements prohibited under EU and national law, as well as on the recent developments of the CPC's leniency policy. The leniency program was presented to the seminar audience through an interactive stage play. After that the video of the play was uploaded on CPC website.

The CPC provides information about its activities to the general public and the mass media in observing the principle of transparency. For some of the decisions adopted by the CPC press releases are drafted. The press releases are published on the CPC website and are sent by email to all major national media – including daily and weekly newspapers, magazines, TV and radio channels and news agencies. In addition, the press releases are published on the official website of the Commission. Besides CPC representatives participated in discussions, talk shows and interviews in broadcast media. In 2007 the CPC received the Golden Key award as a Best

Institutional Provider of Information to Citizens. The award was presented by the Access to Information Programme on the occasion of the International Right to Know Day.

The competences of the CPC in the field of competition advocacy are specified in the Law on Protection of Competition (Art. 28). In order to protect free economic enterprise and prevent restriction or distortion of competition, the Commission shall assess the compatibility with the provisions of the law of:

- draft legislative or regulatory administrative or general administrative acts;
- legislative or regulatory administrative or general administrative acts in force;
- draft acts of associations of undertakings, which regulate the activities of their members.

Besides, the Bulgarian Commission on Protection of Competition (CPC) has adopted Guidelines for assessment of compliance of legislative and general administrative acts with competition rules. The document goes in line with the CPC's continuing efforts to strengthen its role in competition advocacy. Its aim is to foster competition culture, to enhance knowledge of competition rules and to encourage protection of competition.

The Guidelines underline the benefits of having draft legislation reviewed in advance. Preliminary impact assessment will ensure accurate phrasing of competition relevant provisions and avoidance of potential distortion of competition.

**Chile:**

Exclusionary cases help to illustrate the point. For instance, in the case of independent breweries harmed by market foreclosure due to exclusionary clauses and arrangements between the dominant brewery and premium distribution channels (i.e. restaurants, bars, etc.) a number of different benefits were perceived by groups of stakeholders. The case finished with a settlement between the FNE and the defendant, in 2008. The latter agreed to cease setting up those exclusionary patterns. The press reported the benefits for both independent producers and consumers, which included enabling alternative firms to enter into the market and facilitating the launch of new products, as well as increasing the choice of products and enhancing access to better products.

When an active outreach initiative in the area of bid rigging in public procurement took place in 2008-2009 various groups of stakeholders were identified and messages with different nuances were disseminated. For instance, the duties of public procurement officers, auditors and comptrollers are not the same and thus, different aspects of similar conducts had to be emphasized.

**Mexico:**

Proposing a change in the competition law requires a great deal of effort, especially for competition agencies, because any amendment might have an impact over the interest of firms, consumers, and the way the authority intervenes in the marketplace. The CFC realized that before getting involved in the legislative process that resulted in the recent amendments

to the Federal Law of Economic Competition (FLEC). Thus, the CFC planned ahead and embarked into building a political strategy which focused on emphasizing the benefits that could be expected from the reform, especially those that would have a direct impact on consumers and the performance of the economy.

The strategy centered on gathering support from different groups and building public awareness by making the discussion as public as possible, using plain and practical language to get the message across the different audiences and invoking international practices and experiences to illustrate the proven results from similar amendments in other jurisdictions. This strategy was implemented prior and during the discussion of the bill in several public events, meetings and discussions with congressmen.

In addition, to effectively gather support from different audiences it was important for the CFC to identify and explain how each stakeholder might benefit from the proposed amendments, and explain those particular benefits to them. For instance, when addressing the general public through the media, the CFC emphasized on plain consumer benefits, such as, prices to consumers, increase in product choices, etc. On the other hand, politicians might pose a higher interest on raw numbers such as performance of the economy. Explaining those individual benefits to each stakeholder helped to consolidate the constituency that supported the bill.

#### **New Zealand:**

The Commission has published 'Guidelines on How to Recognise and Deter Bid-Rigging'. The guidelines are for procurers of goods and services, and particularly public procurers. The guidelines themselves contain key messages to illustrate the benefit of competition to procurers (i.e., you will achieve better value for money if you use these guidelines) and to the taxpayer, in the case of public procurement (i.e., the taxpayer will pay less for goods and services).

A media statement was issued when the guidelines were published. The statement contained the key messages for media, for the legal community (who monitor our media releases) and for the general public (i.e. illegal collusive conduct damages the welfare of all New Zealanders; the Guidelines promote more efficient procurement, both public and private).

The Commission sought the support of central government in promoting the guidelines to public procurers. The key messages communicated to the relevant ministry were that competition is the best way for public procurers to achieve value for money, by ensuring choice, quality, and innovation as well as competitive prices.

We have commenced a programme of speaking engagements to promote the guidelines. For example we have delivered presentations to industry or interested groups (e.g. procurement professional associations) and met with public officials. The key messages are tailored to the audience being addressed.

#### **Poland:**

One of the main areas of the Polish Competition Authority's activity within the framework of competition advocacy is the engagement in the process of legislation. Through the review of draft laws and the identification of possible restrictions of competition in the legal provisions, the Competition Authority communicates with the government and presents the benefits that can result from a competitive market. Another important element of the activity of the Office is the drafting of reports on the state of competition in particular sectors of the economy. With these documents, the Office informs the government as well as legislators and other stakeholder of the possible threats to competition in these markets and the consequences they can bring to the economy as a whole. In many reports UOKiK presents also proposals of changes in regulations and procedures in order to provide competition working.

Another task of the Polish Competition Authority is the development of a competition culture in society. This takes place through public promotion of the advantages derived from competition and the importance of competition law. The Office makes an effort to try to keep the general public informed of the activities of the Competition Authority. In 2010, UOKiK issued over 203 press releases, held 11 press conferences and released 2.5 thousand pieces of radio and TV coverage broadcast in relation to decisions of the President of the UOKiK. The basic aim of these initiatives is to cooperate with the mass media in order to communicate to the general public the advantages that stem from a competitive market and thus raising awareness in this matter among all market participants.

Apart from the general public, the Office wishes to communicate the benefits of competition to the legal community and to the businesses which they represent. To this end, collection of issued decisions are published on the website of the Office, guidelines are developed and interpretations of the law, studies and articles and educational materials are prepared and made accessible to anyone. Moreover, law practitioners as well as business participants take part in various conferences, seminars and training where the benefits of competition are discussed and further analysed.

Since a portion of competition violations result from insufficient knowledge of communes regarding competition protection law, which often breach the law, when playing a double role, on one hand of utility services providers and on the other hand of local law legislators who limit the access to the market for local companies, UOKiK carries out educational campaigns in order to inform municipalities about typical anticompetitive practices. The projects are mainly targeted at municipal executive officers and representatives of municipal enterprises. A number of training sessions focused on competition infringements committed by municipalities. Also, a guide entitled Competition on local markets with selected decisions by the President of UOKiK was published. It was distributed to the participants of the training sessions and all municipalities in Poland.

Another educational campaign encompassed sending letters and educational materials explaining, in a clear and accessible manner, how competition law assesses and sanctions different anticompetitive practices, such as abuse of dominant position, price fixing or bid rigging. These materials contain examples of the Office's decisional practice.

**Spain:**

The National Competition Commission (CNC) has made a report on relations between manufacturers and distributors of food products in terms of their relative bargaining power and the effects which that have on the functioning of the food sector (November 2011).

In order to promote the report, the CNC published a press release that did not have a great impact, or at least not the expected.

That's why, the CNC decided to emphasize the report by editing it, printing it, posting it on the website and traducing it into English.

Furthermore, the CNC contacted "5 Días", the second most important Spanish economic newspaper, to announce they were going to prepare a breakfast presentation of the report and they wanted to be in the newspaper. In fact the new was published on the front cover. In return, "5 Días" gave its newspaper during the presentation.

Agrifood firms, consumer associations, legal community, regulatory agencies and media attended the presentation.

Besides, during the presentation, the reports were distributed between the attendees and the introduction was made from the President of the CNC.

In addition to all, the report and the presentation have been broadcast on twitter.

So the CNC has followed a diffusion strategy in order to circulate the report to various stakeholders.

In recent years, following a similar trend to that experienced in other countries, food distribution in Spain has undergone a considerable transformation. This has been accompanied by an increase in the bargaining power of distributors in their dealings with their suppliers amongst which the increase in concentration and the strong development of distributors' own brands are of particular note.

The CNC considers it appropriate to make certain recommendations for an adequate functioning of the food distribution sector.

First of all, the CNC urges all public authorities with powers in relation to the regulation of retail distribution to eliminate the restrictions on the establishment and undertaking of commercial activity that still persist within the regulatory framework and to transpose the Services Directive correctly.

Secondly, the CNC considers it necessary to establish adequate mechanisms to facilitate the precise knowledge of the characteristics and level of incidence of commercial practices in distribution that may negatively affect competition and the efficient functioning of the market, and to advocate certain measures aimed at limiting the harmful effects of specific commercial practices.

**Pakistan:**

“The Commission has ensured to be visible and accessible to all.” The benefits of competition are communicated to various stakeholders through the Commission’s speaking Orders, meetings of the Competition Consultative Group, Annual Reports, State of Competition Reports, sector studies, information booklets, Press Releases, CCP’s website [www.cc.gov.pk](http://www.cc.gov.pk), Public Hearings, Policy Notes, Advocacy Seminars/Workshops, and national/international conferences.

Various stakeholders are communicated different messages explaining the benefits of competition:

- Consumers: Competitive markets encourage greater choice, availability of options, and lower prices. The ability to take action against “deceptive marketing” also ensures that consumers are not misled when purchasing goods and services.
- Governments: Competitive bidding results in deriving the best value possible for goods and services purchased. Pakistan, because of its large public sector, spends an estimated 25 to 30 percent of its GDP on public procurement. With such an enormous public procurement volume, the importance of restricting collusive bidding is paramount.
- Businesses: Businesses not only sell to consumers but are consumers themselves in that they must procure items and services down the supply chain. Competition in the market enables them to procure their required goods and services from sources that offer the best value and in turn, provide their goods and services to their consumers at best value.

**India:**

The CA communicates the benefits of competition by using examples of the benefits of competition for consumers in India. For instance, the success story of competition in the telecom sector in India exemplifies the role of competition in reduction of prices and increasing quality of services for the consumers. Two decades ago consumers used to wait for long time to get a new telephone connection and there was no choice. But now one can easily get a new connection from various operators available in the market and the call prices are one of the lowest in the world.



## Annex E: Table regarding means of communication

	Local Government/ legislators average	Government/ Legislators average	averageRegu latory Agencies	Business/ Business Association average	Legal community average	Judges average	Media average	Consumer Associations average	Specific group of consumers/cust omers average	General Public average
01-Agencies guidelines on competition policy	3,72	3,35	3,61	4,53	4,79	3,42	3,00	2,89	2,88	2,89
02-Agency Annual Report	4,55	3,53	3,84	3,55	4,00	2,75	4,00	3,42	3,22	3,26
03-Agency press releases	3,85	3,26	3,45	4,00	4,00	2,63	4,76	3,95	3,95	4,05
04-Agency Press Conferences	3,21	2,82	3,28	3,44	3,26	2,29	4,79	3,33	3,22	3,17
05-Agency newsletters	3,57	3,58	4,00	4,31	4,38	2,85	4,00	4,00	3,21	3,31
06-Agency website	3,89	3,72	4,11	4,52	4,45	3,05	4,62	4,40	4,37	4,35
07-Cartoons/Comics conveying antitrust messages	1,93	2,17	1,85	3,00	2,31	1,85	2,69	2,85	2,64	2,77
08-Evaluations of effects of agency interventions	3,82	3,53	3,60	3,06	3,50	2,50	3,44	3,13	3,07	2,93
09-National media	3,95	3,72	3,74	4,47	3,90	2,95	4,84	4,37	4,05	4,63
10-Regional media	2,69	3,73	2,47	3,50	2,81	2,00	4,27	3,13	3,31	3,56
11-Industry media	2,29	2,25	2,81	4,29	3,24	2,13	3,44	2,56	2,76	2,25
12-Agency presentations at conferences	3,48	3,42	3,75	4,57	4,48	3,50	3,38	3,30	2,83	2,67
13-Agency presentations at local chambers of commerce	1,83	2,63	2,44	4,05	2,84	2,00	2,61	2,45	2,53	1,94
14-Social Media - Facebook, Twitter	2,46	2,64	2,42	2,92	2,73	2,18	3,00	3,25	3,00	3,08
15-Enforcement Decisions	4,00	3,84	4,55	4,50	4,79	4,16	3,90	3,84	3,68	3,63
16-Visual media, eg. films	2,23	2,46	2,38	3,62	3,08	1,92	3,33	3,31	3,08	3,46
17-Published Research Papers	3,13	2,87	3,31	3,31	4,00	3,00	2,75	2,73	2,40	2,63
18-Legislative Review	4,45	4,28	3,95	3,32	3,95	3,44	3,00	2,53	2,35	2,44
19-Market Studies/ Sectoral Reports	4,53	4,12	4,39	4,17	3,72	2,65	3,94	3,67	3,50	3,35
20-Informal Contacts	3,68	3,47	3,63	3,39	3,89	2,76	3,59	3,41	3,18	2,24
21-International Good Practices on Competition Enforcement	3,95	2,56	3,39	2,94	3,67	2,94	3,17	2,82	2,76	2,53
22-Other	3,50	3,33	4,00	4,00	4,67	5,00	4,00	3,00	4,00	2,67
<b>Tota</b>	<b>3,47</b>	<b>3,28</b>	<b>3,45</b>	<b>3,84</b>	<b>3,77</b>	<b>2,79</b>	<b>3,70</b>	<b>3,32</b>	<b>3,18</b>	<b>3,12</b>

On the table the highest value for each stakeholder is highlighted.

Annex F: Cases studies of the means of communication competition agencies have used to explain the benefits of competition to the various types of stakeholders.

**Brazil:**

SEAE also has an advisory role in antidumping and unfair import competition proceedings. Complaints from private parties alleging unfair imports are investigated by a department in the Ministry of Development, Industry and Foreign Trade, which, after receiving comments from interested parties and other government agencies, transmits its recommendation to CAMEX for decision. SEAE participates with another secretariat in the Ministry of Finance in formulating the Ministry's recommendation in these cases. SEAE's role in this regard is to address the competitive effects from the imposition of trade policy duties, which is a topic not ordinarily considered by the investigating agency. SEAE has had some notable successes in such cases. In 2005, for example, it persuaded CAMEX to terminate antidumping measures affecting the Brazilian insulin market, after investigating a merger that had occurred in that market. It also persuaded CAMEX to suspend certain antidumping measures in cement as a means of promoting competition in cement in the north of Brazil.

**DG COMP:**

In 2011, we have published a "compliance brochure" targeting businesses and their legal advisors. We chose the topic because it is of particular interest to businesses and their advisors, who wish to know how the Commission views compliance programmes and what we advise in this respect. In a user-friendly format, we recalled why it is important that businesses comply with EU competition law, insisting on the importance of in-house compliance programmes. We used this occasion to also promote the merits of our leniency policy from a business perspective. The brochure has been widely distributed and is also available on the COMP website. It has been welcome by the business and legal community and has received media attention.

We have also prepared a video explaining in plain language why cartels are bad, how they can harm consumers and how consumers can assist competition agencies in their work against cartels. This is because consumers may not be aware of what a cartel is and how they can be harmed by one. We also believed it was important in the current economic conditions, to reiterate that competition agencies work for consumers, to promote their interests.

In addition, DG Competition has created a consumer-friendly website hosted by our main homepage, and explaining in plain language what our agency does, with practical examples related to cases in the consumer-goods sector.

**Jamaica:**

Depending on the stakeholder, different communication methods are used:

1. Government/legislators – One to one meetings, reports on specific issues, written opinions, quarterly and annual newsletters

2. Regulatory agencies - One to one meetings, seminars/workshops, reports on specific issues, written opinions, quarterly and annual newsletters
3. Business/Associations, Legal Community - One to one meetings, written opinions, seminars/workshops, quarterly and annual newsletters
4. Judges – Workshops in which judges are the sole participants, quarterly and annual newsletters
5. Media – Press Advisories, quarterly and annual newsletters, interviews
6. Consumer Associations, Groups of Consumers - Quarterly and annual newsletters, reports on specific issues, one to one meetings
7. General Public – Press Releases, newspaper articles

Workshop for Judges – Experienced practitioners and/or academics conduct interactive sessions in which the fundamentals of competition law and policy as well as complex issues are explained and discussed using real life examples and precedent from cases. Sessions also include simulation and mock trial exercises in which challenges, opinions and various methods and approaches to issues are explored. At the end of the workshop a review of the issues that were discussed is conducted.

**Mexico:**

The leniency programme was introduced to the Mexican competition regime as part of the 2006 amendments to the FLEC. The CFC, recognizing the importance of leniency program in cartel enforcement, acted accordingly by disseminating its existence among different stakeholders and through different means.

For instance, the CFC has developed an Immunity Guideline which is available to the general public, firms, media, etc., through the CFC’s webpage (Links: <http://www.cfc.gob.mx/index.php/QUE-HACEMOS/programa-de-inmunidad.html> & <http://www.cfc.gob.mx/images/stories/Documentos/guias/cfcguia.pdf>).

Additionally, the CFC has made public announcements and held presentations among different stakeholders (e.g. media, consumer groups, business associations, etc.) regarding the operation and benefits of the program. These events have provided an opportunity to answering one-on-one questions from the different stakeholders regarding the procedure to submit a leniency notice.

It should be noted that regardless of the means used by the CFC to promote the program, it is important to carry a clear message on the benefits and how to obtain them, because clear rules will help to motivate firms to come forward and submit a leniency notice.

**Poland:**

The first target of our advocacy efforts is the government. The Polish Competition Authority explains the benefits of competition to legislators by participating in the Ministerial Committee for European Affairs and in the Permanent Committee of the Council of Ministers and thus influencing the law making process.

In parallel, we present the advantages of competition to the market players through various educational and informational activities. We issue guidelines on how our Office applies competition law, for example we have published Guidelines on the leniency programme as well as Guidelines on setting fines for competition-restricting practices. We also organize conferences and seminars devoted to competition protection provisions, where competition officials and entrepreneurs can exchange their views on problematic issues. For instance, in 2010, on the occasion of the 20<sup>th</sup> anniversary of the Office, UOKiK organised 8 conferences and debates where experts and practitioners had the possibility to discuss the benefits of competition law. Furthermore, we try to address the advantages of competition to the business and general public by launching many campaigns popularising the knowledge of competition law. One of our most successful initiatives was the TV, radio and internet spot launched in 2009 which aimed at promoting the leniency programme. In these educational programmes, we try to compose an understandable message tailored to the recipient. Therefore, we avoid using the legal jargon and explaining the problem from scratch, illustrating it with practical examples. In addition, the President of the Office sent letters to 500 largest enterprises operating in Poland informing them about the programme and about the opening of a special helpline.

In 2010 the Office recognized the need to provide the businesses with information on the rules relating to the procedure for notifying the intended concentration. We aimed at explaining the rest of market participants how the excessive concentrations may restrict or eliminate competition on the market.

UOKiK launched communication campaign “Mergers under control” which consisted on a package of radio and TV programs on concentration control. The 10-episode series covers key issues such as: why the mergers are under state control, how the mergers are implemented, who and when has to notify the intention of concentration, why and how UOKiK conducts the market analysis. The program also presents the details of the concentration procedure and explains how to appeal from the Office’s decision.

Additionally, the TV and radio programs were accompanied by online resources. On UOKiK’s website special subpages were created in order to help to understand the undertakings how the whole concentration procedure works. They contain the “Questions and answers” list and the series “Mergers under control” which can be viewed online. The undertakings who are interested in other issues related to mergers and acquisitions can contact the Office via direct info-line or by e-mail dedicated to the campaign.

In summer 2011 the Office sent a package of materials to undertakings and their organizations (chambers of commerce). It consisted on the guidance of the concentration procedure and a document on the market analysis conducted by UOKiK in cooperation with the businesses.

We have also invested in our internet projects. In February 2010, a new information portal of UOKiK was launched. Using the latest IT solutions, clear structure and new layout, users were provided a better access to information. Moreover, the Polish Competition Authority tries to

draw the attention of academic students to the benefits of competition law and to encourage them to deepen their knowledge in this field. To this end, in 2010 the second edition of the contest for the best Master's thesis on the subject of competition was held.

### **Spain:**

The CNC made a Guide on Business Associations to explain the benefits of competition in 2010. This Guide was promoted by a press release and also it has been presented at the CNC at a breakfast conference. To the presentation, business associations, Chambers of Commerce, professional associations and colleges were invited. Furthermore, the Guide was edited and had been distributed between the attendees.

This presentation had been highly valued by attendees and by media. Since then, the Guide is published in the CNC website.

Indeed, business associations play an important role in Spain given the social and economic functions they perform and the strong tradition of using the association model in the different sectors of the economy.

The organisation of different business corporations into associations is a well-entrenched tradition in our country. Leading examples are the Chambers of Commerce, Industry and Navigation, the various associations and groups that belong to the Spanish Confederation of Business Organisations (Confederación Española de Organizaciones Empresariales — CEOE), professional associations and colleges, the councils that regulate denominations of origin in the agricultural sector, and even the more recently created self-regulating industry entities to promote codes of good practices.

The continued vigour of business associations is due to the usefulness of the services they provide to their members and to the economy as a whole.

However, when the associations provide a forum for collaboration between companies that compete against each other in the market, their actions must be especially cautious with respect to competition rules.

Both the associations and the executive officers that represent them must be mindful that their actions may run afoul of competition law if they are capable of disturbing the normal functioning of the market, mainly by serving to unify the conduct of members and that of other parties as well.

There are numerous cases in which the National Competition Commission (CNC) and its predecessor, the former Competition Tribunal (TDC), have dealt with the conducts of business associations and imposed sanctions on them where pertinent.

Moreover, the CNC has published a video explaining the benefits of competition and how necessary it is, which is available in our web page (only in Spanish).

[www.cncompetencia.es/Inicio/InfografíaCNC/tabid/246/Default.aspx](http://www.cncompetencia.es/Inicio/InfografíaCNC/tabid/246/Default.aspx)

### **Switzerland:**

The Swiss Competition Commission has to be consulted by the Government/Local Government when a new law, which could possibly have effects on competition, is passed (art. 45 Act on Cartels). This explains the frequency of the contacts.

When it comes to communicating the benefits of competition, the legal community, the business associations and the media are the most important stakeholders. The legal community will be the first contact for companies seeking for advice on competition law. Business associations have been for a very long time in Switzerland the vehicles of “naked cartels”. Advocacy among business associations is very important and enables to reach SME.

The Swiss television reported on a bid-rigging case, which had been decided by the Swiss Competition Commission (COMCO). This film was very well made comprising interviews of the head of our agency, interviews of the companies targeted in the case and their legal counsels. It also demonstrated the leniency programme functions (one can see the leniency fax arriving at the Comco). This report is available in German on our Website.

#### **Turkey:**

First of all, the Turkish Competition Authority prepares opinions on draft legislation and submits them to the relevant government entities. These opinions are made publicly available through its website and some of the most important opinions are also included in the Annual Report of the Turkish Competition Authority.

Secondly, the Turkish Competition Authority itself or in cooperation with relevant stakeholders organizes several events in the field of competition law and policy.

Thirdly, the Turkish Competition Authority conducts regular training seminars for various personnel of the government entities such as executives, experts and inspectors, for professional associations, the Bars, university students and as well as for non-governmental organisations.

Fourthly, the Turkish Competition Authority published a Booklet in 2002 entitled “Why Competition?” as part of its intention to develop a culture of competition. This Booklet was prepared to give information on the benefits of competition, on the Turkish Competition Authority and the competition rules together with sample decisions and their implications for the consumers. It also contained a section including frequently asked questions.

Following the Booklet, it was thought that there was a need to reflect the experience of the Turkish Competition Authority obtained until then and to contribute to responding the demands for information from various stakeholders. The resulting document was the publication of “Manual of Competition Law” including basic information on the legislation, decisions of the Competition Board, which is the decision making of the Turkish Competition Authority, and competition law in a simple, plain and easily comprehensible manner. The Manual is intended to be a guidance book targeting a wide range of stakeholders including consumers, businessmen, executives and employees with an aim to generally respond to their information needs.

Fifthly, on behalf of the Turkish Competition Authority the President of the Turkish Competition Authority personally issued annual competition letters to draw the attention of various stakeholders to matters on competition. Such letters are not only made public on the website of the Turkish Competition Authority but also sent to relevant stakeholders such as government and public administration, regulatory authorities, political parties, public and private undertakings, chambers of industry and trade, associations of undertakings, non-governmental organisations, media, and universities informing them on competition, various aspects of competition law and the activities of the Turkish Competition Authority.

#### **Pakistan:**

While we are not clear about the term 'case study' as used in this context, we have discussed instances of the means of communication used by the Commission to explain the benefits of competition to stakeholders. These include press releases, annual reports, sectoral competition assessment studies, regular electronic and print media appearances, State of Competition reports, CCP information booklets, Voluntary Competition Compliance Code (VCCC) and the Commission's website ([www.cc.gov.pk](http://www.cc.gov.pk)).

The VCCC establishes a formal internal framework for undertakings to ensure compliance with the provisions of the Competition Act, 2010 (<http://cc.gov.pk/images/Downloads/vccc.pdf>). The Commission has also published booklets both in English and Urdu languages on the subject, Protection from Anti-competitive Practices.

([http://southasia.fnst.org/files/389/2011\\_EFN-CPP - Protection from anti-competitive practices.pdf](http://southasia.fnst.org/files/389/2011_EFN-CPP_-_Protection_from_anti-competitive_practices.pdf)).

Further, the Commission has conducted press briefings, Public Hearings, Advocacy Seminars/Conferences, Competition Consultative Group meetings, and Speeches by the Chair, the Members and other senior officials at various fora.

#### **Japan:**

We currently conduct the explanation of the benefit of competition to the various types of stakeholders mainly by the following means:

- Inviting opinions on the competition policy from the Antimonopoly Policy Cooperation Committee members
- Hosting Advisory Panel on Antimonopoly Policy
- Hosting Meetings with local experts by commissioners, etc. and Meetings with other local experts by the heads of local branches
- Hosting "JFTC for One Day" which is an event to promote the PR activities and consultation of the AMA and the Subcontract Act
- Hosting seminars for consumers
- Hosting lectures on the AMA for students
- Press Conference by Secretary General
- Press Release
- PR Brochure (English version)

- [http://www.jftc.go.jp/en/about\\_jftc/role/index.html](http://www.jftc.go.jp/en/about_jftc/role/index.html)>
- PR DVD (English version)
- <[http://www3.stream.co.jp/www11/jftc/090330/01\\_500k.asx](http://www3.stream.co.jp/www11/jftc/090330/01_500k.asx)>
- Website (English version) <<http://www.jftc.go.jp/en/index.html>>
- Email newsletter

#### **USA (FTC):**

The FTC communicates the benefits of competition to the general public and its stakeholders through descriptive reports and interactive multimedia materials linked to its Bureau of Competition entry on its website, at <http://www.ftc.gov/bc/index.shtml>. Current FTC press releases dealing with competition are also found linked to the Bureau of Competition entry. For example, the benefits of competition to members of the general public are highlighted in a 2005 FTC press release, explaining how an antitrust settlement may have saved California gasoline purchasers over \$500 million a year in lower gasoline prices. See Dual Consent Orders Resolve Competitive Concerns About Chevron's \$18 Billion Purchase of Unocal, FTC's 2003 Complaint Against Unocal: In Major Victory for Consumers, Unocal to Halt Enforcement of Reformulated Gasoline Patents; Will Release Relevant Patents to the Public, available at <http://www.ftc.gov/opa/2005/06/chevronunocal.shtm>.