TRAINERS' GUIDE TO MARKET STUDIES

one vision
one identity
one community

Trainers' Guide to Market Studies

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967. The Member States are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam. The ASEAN Secretariat is based in Jakarta, Indonesia.

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INTRODUCTION

1.1. Why a Trainers' Guide to Market Studies?

For any competition agency to do a good job of regulating the competitive process, it is of utmost importance that the agency understands how the market works and how competition functions in certain markets. Market studies constitute an immensely useful tool to help competition agencies obtain that understanding.

However, conducting market studies is not always a core mandate of competition agencies, except where the law formally provides for the agency the power to conduct reviews or enquiries 'in order to determine whether any feature or a combination of features of the market prevents, restricts or distorts competition'[1]. As a result, due their own human resource constraints, competition agencies around the world, including in the ASEAN region, have often outsourced the task of conducting market studies to other institutions, such as research institutes, think tanks, university departments, etc. The resulting products, however, do not always match up to the expectations or requirements of the competition agencies. This is because other institutions, despite their strong academic (legal and economics) capabilities, do not necessarily possess the same perspectives as the competition agencies, which require more than just a sector diagnostic report or a general economic assessment.

This Trainers' Guide is intended to form a convenient and user-friendly primer on how to conduct (competition) market studies. Even though it is designed as an in-house tool for competition agencies in the ASEAN region to train existing or new staff on this topic, it could also be used as general reading materials for other institutions and stakeholders who might at one point take on the task of conducting a market study for their national competition agency.

1.2. How Can It Be Used?

This document approaches the topic of 'how to conduct market studies' both from the process-side (various steps, important considerations for a market study, stakeholder management, etc) and from the substance-side (essential concepts to analyze competition, relevant techniques in information collection and analysis, etc).

On the process-side, the first question to be asked is naturally whether or not to start a market study. If conducting a market study is the desired course of action, then the competition agencies should think about other questions; such as what purposes such a market study would serve (which ultimately determine what types/forms the market study would take); whether to conduct it in-house or outsource it; who should be part of the core study team; what are its size, scope and timeframe; what are the resource requirements; who are the relevant stakeholders and how to manage them.

1 Section 11 - 'Power to conduct market review' of the Competition Act 2010 of Malaysia

And once the study is completed, whether to publicly announce the findings, what kinds of communication strategy should be selected, what follow-ups are required, whether to undertake evaluation, and whether to start another circle of market study. These are the decisions that the competition agencies have to take themselves, no matter whether the market study is to be conducted in-house or outsourced.

On the substance-side, unless there is already a policy decision that the state of competition within a particular sector/market is to be assessed, the first key task is naturally the selection of such sectors/markets. This is followed by steps that analyze the state of competition in each sector/market selected: identifying the 'relevant' markets and competitors, examining the market structure, looking for dominant firms with significant market power, identifying and evaluating barriers to entry, looking for anticompetitive conduct (and consumer abuses), and considering other issues such as innovation and efficiency, the impacts of government regulations and certain institutions on competition, and last but not least the impacts on consumers. Finally, based upon all the findings about the state of competition in the study sector/market(s) and the existence of any competition problems, to come up with suitable recommendations, evaluate and choose amongst different outcome options.

A Trainer's Kit is included towards the end, which contains guidance for trainers on using the contents of the document in future trainings, including suggested lesson plan, main topics, time allocation for different topics, and possible delivery formats. The guide is not meant to be prescriptive, and the users, including competition agencies in the ASEAN region, should select only the contents which are most relevant their needs, purposes and resources; then design their own respective trainings.

1.3. What Is a Market Study for and/or by Competition Agencies?

'Market studies' undertaken for and/or by competition agencies, if not specified, could be easily mistaken with the commercial market/industry research undertaken for and/or by private companies. The latter is usually concerned with gathering information about market size, purchasing power and potential, customers' needs and preferences, etc and understanding competitors so as to formulate a best-suited entry and business strategy. The former, on the other hand, is concerned with the strength of competition in the market(s) being assessed and focuses on issues such as: (i) market structure, (ii) entry barriers, (iii) anticompetitive conduct, and (iv) competition-restricting regulations, etc.

Market studies for and/or by competition agencies are also different from sector diagnostic studies undertaken by national governments or international organizations such as the World Bank. The main objective of a sector diagnostic study is to identify the most critical constraints that are facing a particular sector or industry of a specific country with a view to removing these constraints and helping the sector to develop its full potential and bring about highest welfare gains. These studies, therefore, would be concerned with topics such as export performance, infrastructure, productivity level, investment, employment and value chain analysis, etc. Market studies for and/or by competition agencies, on the other hand, focus on identifying any factors that impede more effective competition in a given market or sector. Where competition is found to be limited, the likely extent of the harm that results from this should be estimated and appropriate remedies are suggested.

> The International Competition Network (ICN) defines market studies as "*research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices are working. They are conducted primarily in relation to concerns about the function of markets arising from one or more of the following: (i) firm behavior; (ii) market structure; (iii) information failure; (iv) consumer conduct; (v) public sector intervention in markets (whether by way of policy or regulation, or direct participation in the supply or demand side of markets); and (vi) other factors which may give rise to consumer detriment.*"[2]

This working definition offers a good framework for us to understand the possible intended use and purposes of market studies conducted for and/or by competition agencies and what could be included within their scope. Throughout this document, the term 'market studies' would be used consistently to refer to, not only market studies, but also sector studies, sector enquiries, market reviews and other different terms that might be used by competition agencies in ASEAN Member States (AMS) to refer to 'research projects' as defined above.

2. ICN 2016 Market Studies Good Practice Handbook

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PURPOSES, USAGE, AND TYPES

2.1. Purposes and Usage

Competition agencies might conduct market studies for various purposes. Some such possible purposes include:

(1) For achieving a general understanding market & competition; while building the technical capacity of staff members

(2) To serve regular market-monitoring activities by the competition agencies

(3) To provide inputs/feedback/clarifications to legislative/regulatory proposals affecting competition

(4) As a precursor to enforcement, where the competition agencies observe/detect some signs of anticompetitive practices being at work in a sector/market but do not know the exact nature or the source of the competition problems yet

(5) In response to some concerns raised by stakeholders, especially that the markets are not functioning well for consumers, which do not however provide sufficient ground to start enforcement actions

(6) To understand emerging markets, especially those which are fast-moving with which the agencies have not had any prior experiences, but might anticipate future actions

2.2. Different Types of Market Studies

It follows from the different purposes and usage above that the market studies conducted for and/or by competition agencies in AMS so far might differ in forms and format. We propose to use the following classification for the different types of market studies that AMS have conducted:

Type I - General competition assessment	• This type of studies is usually conducted by a competition agency that is at the initial stage of institutional building and competition law implementation, such as the case of Lao and Myanmar. • This general competition assessment is different from a specific market study in that it usually looks at the whole economy, or at least the most important sectors/industries, and also includes an inventory of all laws and regulations that might affect competition or that interface with the competition law in some ways, and a perception survey of major stakeholder groups (government, business and consumer).
Type II - Rapid market studies	• This type of studies would cover all the issues that are supposed to be included within the scope of a market study (such as market structure, anticompetitve conducts, entry barriers, regulatory framework, etc) but are smaller in scale and less detailed. • A competition agency might select a fixed number of different sectors/ markets to be studied every year, to serve the purpose of regular market-monitoring, such as the approach in Vietnam. • This type of studies would also be useful for the purpose of competition advocacy, i.e. to respond quickly to a legislative/regulatory proposal that might affect competition, or to educate consumers or respond to public concerns, such as the approach in the Philippines.
Type III - Detailed, extensive market studies	• This type of studies is normally undertaken by more established competition agencies, who possess sufficient enforcement experiences and adequate resources, such as the case of Singapore, Malaysia and Indonesia. • This type of studies is often conducted as a precursor to enforcement, where the competition agencies observe/detect some signs of anti-competitive practices being at work in a sector/market but do not know the exact nature or the source of the competition problems yet.

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AN 8-STEP MARKET STUDY PROCESS

Market studies are not homogenous products. They may differ greatly depending on the executing agency/institution (their mandate and powers), the intended purposes and expected outcomes of the studies, available resources, the sectors/markets selected for studying, their scope and scale, time period, and employed methodologies, etc.

Having a standardized process for conducting market studies, however, could help to ensure effective project management and delivery. The resulting efficiency and transparency could also reduce the burden on affected stakeholders and help save agency resources.

Here below are the steps generally involved for conducting market studies. They would be applicable no matter which of the three types of market studies mentioned in the previous section are being undertaken, though some of the steps could be combined/split and/or slightly adjusted depending on the decisions of the executing agency/institution.

Step 1 – Selecting a Sector/Market to Study

- In some cases, there might already be a policy decision or decision at the top level within the competition agency to review the state of competition in a specific sector or market. This could be in response to widespread public concerns about the likelihoods of anticompetitive practices or competition not working properly in that sector/market, resulting in consumer detriments and/or welfare loss. A market study, in this case, is meant to clarify and respond to such concerns. Accordingly, this step could be skipped.
- In the absence of such a decision, the competition agency could examine and balance amongst a range of factors to select a sector/market to study. These factors would be discussed in more details in **Section 6** of this Guide.
- A competition agency could also maintain a unit/focal point for market monitoring, scanning & discerning competition concerns/problems, scanning and identifying legislative proposals that may affect competition, and receiving stakeholder feedback, etc. This would be the source of intelligence for the competition agency to draw from and select a sector/market to study as the needs arise.
- At this stage, the sector/market selected for assessment could be broad and encompassing.

Step 2 – Study Team Set-up and Planning

- Once the broad sector/market to study has been selected, the competition agency needs to set up a study team. The market study could be conducted in-house or outsourced to an external institution (such as a research institute, or a university department, etc). In either case, a mixed study team composition is recommended. When the market study is to be conducted in-house, competition experts from within the agency could benefit from the views of external sector specialists. And when the market study is to be outsourced, participation by the agency would ensure ownership and quality assurance.
- The study team would then discuss, in close consultation with the leadership of the competition agency, to draw up a project plan that outlines the envisaged timeframe, activities, resources, and overall organization (division of responsibilities, coordination, etc) of the market study. Important considerations that should be taken for this planning stage are discussed in **Section 4** of this Guide.

Step 3 – Scoping and Other Preparations

- **Scoping**: From the broad sector/market that has been selected above, it is important then to narrow down to the specific markets and the issues that the study team would like to focus on. Though this exercise might not be the same as the definition of relevant markets in enforcement actions, it might benefit from an understanding of the concept of 'relevant markets', based on which the study team could define the scope of the market study. **Section 7** of this Guide contains a discussion on market definition and other central concepts for analyzing competition.
- **Developing hypotheses**: It might also be useful for the study team, at this initial stage, to discuss and formulate a set of hypotheses about the competition problems that might be present in the market(s) being assessed. The problems could stem from, hypothetically, a highly concentrated market structure, the presence of anticompetitive conduct, information asymmetry, lack of innovation, or the existence of high barriers to entry, etc. These hypotheses could guide subsequent information gathering and inform the selection of analytical methodologies. See **Section 7** for more detailed discussion on these likely competition problems.
- **Preliminary information collection**: The collection of information already available elsewhere – on market structure, the profile of key market participants (their turnovers, market shares, inter-relationships, etc), product characteristics, consumption patterns (or prevailing consumer habits), and the relevant regulatory framework (all laws and regulations related to the market(s) being assessed – or from the competition agency's past cases is a good starting point for the research process. This step could help to further refine the scope of the market study, and identify key areas for further information collection. It also helps the study team to identify possible constraints/limitations and figure out ways/approaches to manage these constraints/limitations.
- **Stakeholder engagement planning**: As a preparatory step, the competition agency, or at least its representatives in the study team, needs to develop a strategy for stakeholder engagement for the market study. Such a strategy will typically identify the key stakeholders, consider their anticipated inputs, and describe how and when these stakeholders would be engaged/consulted. For a more detailed discussion on stakeholder engagement, see **Section 5** below.
- **Risk management strategy**: It is not crucial, but also a good practice, for the competition agency and/or the study team to have a risk management strategy, which identify key risks and the ways to deal with them.

Step 4 – Launching the Market Study

- The market study might be launched publicly by the competition agency, which could provide an opportunity to provide key information about the market study and solicit stakeholders' inputs.
- The launching could be done via press releases, public announcements, website/social media postings or any other communication channels deemed appropriate by the agency.

Step 5 – Collecting and Analyzing Information

- Commonly-used information-gathering methods for market studies include stakeholder interviews, (voluntary and/or mandatory) information requests, surveys, and data collection. The study team would decide on which types of information are required, which information collection methods to be used and at which stage of the market study process. Limited data availability, or new findings, may lead to the scope and approach of the market study being adjusted/further refined.
- More detailed discussions on information collection and analysis could be found at **Sections 7 & 8** of this Guide.

Step 6 – Validating Findings and Recommendations

- Once information has been collected and analyzed, the study team will draft a report to present their findings, and based on that, to propose a set of recommendations for resolving/correcting the competition problems found.
- These recommendations could be addressed towards the government to adopt/abolish or change their policies/regulations or to take some necessary actions (e.g. abolishing a government-owned monopoly). They could also be addressed towards some other stakeholders (such as the business or consumer) to change their practices, or towards the competition agency to take appropriate enforcement actions.
- Both the findings and the recommendations should be validated/consulted with stakeholders in advance, before the formal publication of the market study report, especially those stakeholders who are most significantly impacted by the outcomes of the market study. **Section 9** of this Guide contains more detailed discussion on Recommendations and Outcomes of market studies, as well as suggested approaches to ensure an effective uptake of the recommendations from market studies.

Step 7 – Publicizing and Communicating Results

- In addition to the main study report, the competition agency should also think about other side products that might be more effective for outreach purpose, including press releases, briefings, policy papers, etc.
- In case of Type-II market studies, the competition agency could build a database with the results of these market studies, for the purpose of monitoring markets and enforcement.
- The results of market study could be released/disseminated in conferences, workshops, seminars, relevant websites and social media pages, podcasts, etc.

Step 8 - Follow-up and Evaluation

- Publishing the final market study report should not be the end of the work. The competition agency should actively advocate for the realization of the recommendations that have been made and follow-up on their results. For example, discussions with policy-makers or relevant government agencies to enact/adopt policy changes, and/or taking necessary enforcement actions, and/or discussions with businesses to reform their conduct, etc. The same market(s) could be reviewed/revisited after a period of time (e.g. a few years) to see whether the study recommendations have been implemented and whether the competition problems have been addressed.
- The competition agency might also want to review the whole market process once it has been completed, to draw out lessons or insights for future studies, e.g. whether the study has brought value-for money, how to further streamline the process, or how to increase impacts.

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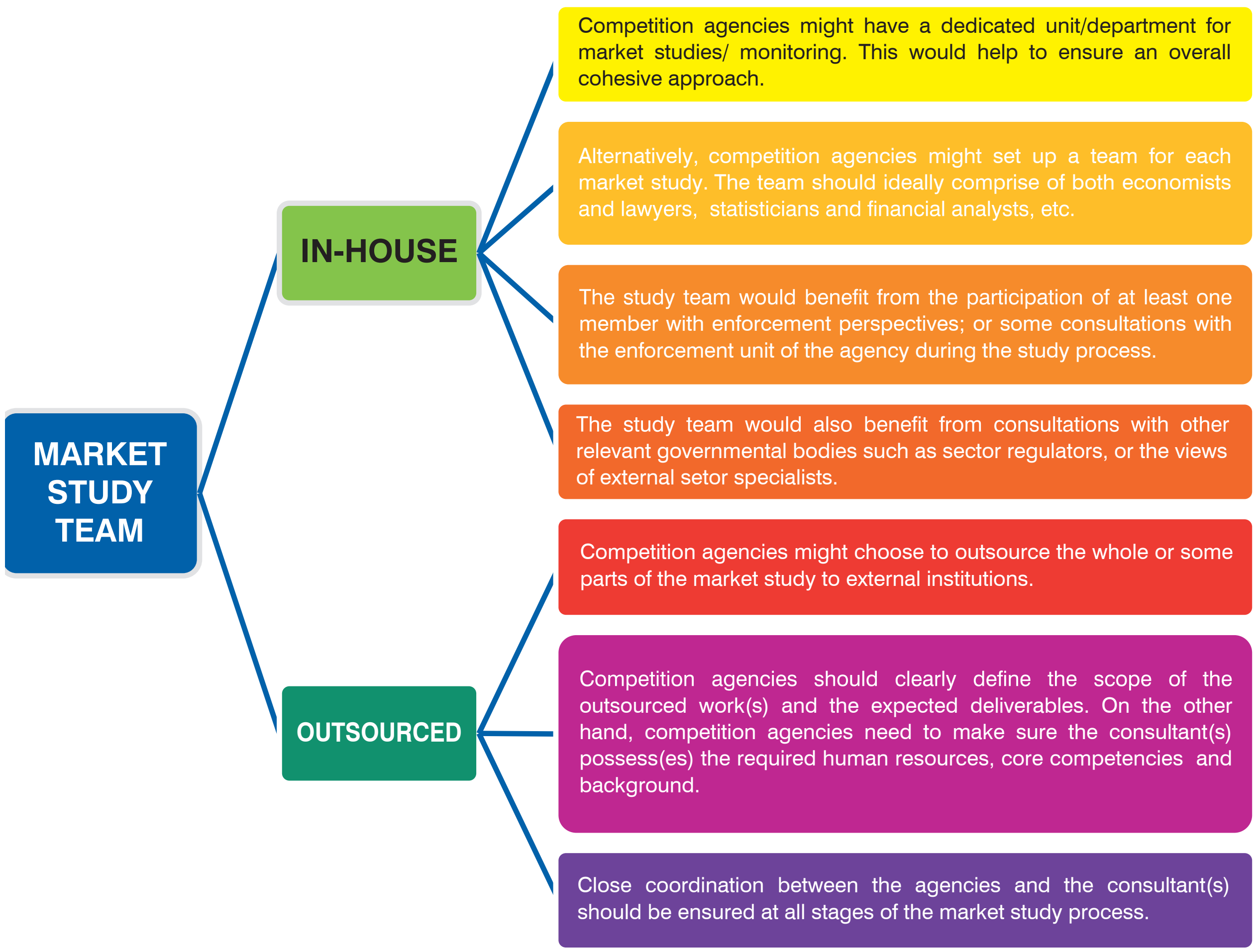
SOME IMPORTANT CONSIDERATIONS

4.1. Allocating Resources

Competition agencies would need to allocate two types of resources for market studies: Financial & Human Resources.

Human Resources: As mentioned in the previous sections, market studies could be undertaken in-house by competition agency staff or outsourced to an external institution. In either case, it is recommended to maintain a mixed study team composition to ensure quality assurance, ownership and cross-fertilization of expertise and viewpoints.



Lesson Learnt by the Competition Commission of South Africa Regarding the Use of External Experts for Market Studies

Specifically, at the core of market inquiries is a competition analysis, and over reliance on external industry experts or panels to conduct this task can lead to long lead times where these experts must first learn the approach to antitrust analysis, sometimes leading to tensions with the competition authority officials.

Market inquiries must find a home within the relevant competition agencies and be subjected to the same tools of analysis the agency uses for other antitrust cases, rather than being viewed as special projects requiring a different set of expertise. Care should also be taken to guide against over reliance on industry experts whose thinking is often captured by industry conventions, which would deprive the competition agency its usual open minded and fairly standard principles in its analysis of these cases.

Source: ***Methodologies for Conducting Market Studies –Note by South Africa***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.20 (of 20), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)25/en/pdf

Financial Resources: Competition agencies should also be prepared to allocate sufficient financial resources for conducting the market studies. Money might be needed for:

(i) hiring external consultant(s) to conduct some parts of the market study,
(ii) conducting surveys or mystery shopping,
(iii) purchasing data and other information from market research/statistic agencies, and
(iv) publication (design and printing) and outreach (organizing events).

An estimated budget could be drawn up together with the project plan at the outset. The financial resources could be carved out of the agency budget or mobilized from external sources. In case it is necessary to mobilize financial resources from external sources, competition agencies should take care to maintain the independence and neutrality of the market studies.

4.2. Scope of the Market Study

Clearly defining the scope of the market study would help to ensure that the project is focused, manageable, and of the right quality. On the other hand, some degree of flexibility should be maintained to allow for minor adjustments at a later stage should these be necessary in light of emerging findings.

Recommendations from the The Federal Cartel Office in Germany

A better definition of the questions that the sector inquiry is supposed to answer, as well as a refinement of the relevant theory of harm, helps structuring and focusing the surveys and the collection of information in general. This refinement aims at avoiding the risk that very comprehensive market investigations are carried out which, in the end, contribute little to the result of the sector inquiry.

Source: ***Methodologies for Conducting Market Studies – Note by Germany***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.8 (of 14), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)6/en/pdf

Competition agencies might seek inputs from stakeholders even prior to the launch of the market study to define its scope. On the other hand, the agencies or the study team should also be prepared to defend the scoping decisions and justify exclusions and inclusions in case they are called on by stakeholders to do so publicly.

The scope of the market study should be communicated during its launch. This would help to increase transparency, while allowing the impacted stakeholders a period of time to organize and respond to any information request the agencies might have later on.

4.3. Timeframe

A realistic and appropriate timeframe should be decided since if the timeframe is too long, even though the market studies would be ultimately completed, the stakeholders might lose their interests/commitment along the way, or the economic conditions described in the study become obsolete. The decision on timeframe needs to be taken at the agency-level, of course in consultation with the study team since timeframe is inadvertently tied to their scope of work.

Similar to the scope of the market study, competition agencies might want to communicate transparently with stakeholders about its tentative timeframe, along with a set of milestones (and allocated time period for each milestone). This would help to retain a certain degree of flexibility for minor adjustments, in case the agencies and/or the study team find out that the study process will require more or less time than anticipated at the outset, due to changing circumstances.

Any substantial change to the timeframe should be consulted with relevant stakeholders, to avoid undermining the credibility of competition agencies.

4.4. Project Management Perspectives

Effective project management can enable competition agencies to conduct market studies consistently and successfully.

To start with, the study team needs to draw up a project plan with details on the following:

- Activities: literature review, information collection, analysis, report-writing, etc;
- Deliverables: market study report, executive summary, briefings, policy papers, etc;
- Deadlines for each deliverable and for the overall market study process;
- Division of responsibilities amongst the study team: who is responsible for which activities, or for delivering which deliverables, sub-groups, etc;
- Timeframe with milestones; and
- Indicative budget.

The project plan should be periodically reviewed and updated (during study team meetings), to ensure that the progress of the market study is actively monitored, kept on the right course and adjusted as necessary.

The study team should also report regularly to the (leadership of) competition agencies about progresses, including activities concluded, any new developments or concerns, and the immediate next steps. Records of such reporting should be maintained for the purpose of evaluation at the end of the project.

STAKEHOLDER MANAGEMENT

5.1. Mapping Stakeholders

> The ICN defines 'stakeholder' as '*any corporate or natural individual, group of individuals (whether internal or external to the authority), organization or group of organisations that has an interest in the market, or can affect and/or could be affected by the market and/or the issues that are the focus of the market study, and/or any outcomes that may come out of the study*.'[3]

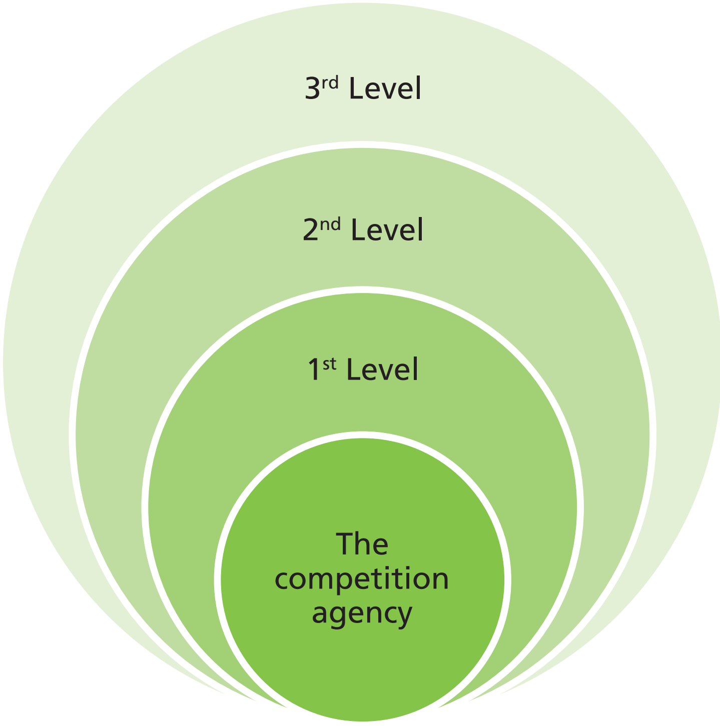
Stakeholders might include:

- Policymakers, parliamentarians;
- Government agencies, ministries and departments, regulators and other public bodies of all levels;
- Businesses: representatives from businesses and corporations involved in the market(s) being studied, including producers, distributors/wholesalers, retailers, transporters, agents, importers/exporters etc of inputs, substitutes and adjacent/complementary products, foreign investors;
- Consumers: customers and end users, consumer associations;
- Professional organizations, trade unions, industry associations, chambers of commerce and industry;
- The media: print, online, television and radio, etc;
- Domestic and international academics and experts with expertise in the sector/market(s) being studied; and
- Any other relevant parties with an interest in the market.

The study team might want to group stakeholders depending on their similar interests in the market, or their level of closeness to the study and place them on a map for ease of reference.

- Situated at the core is 'the competition agency' – who has the highest interest in a successful market study, and is the main institution driving it;
- The 1st level would include stakeholders/stakeholder groups whose inputs and support are essential to the success of the market study;
- The 2nd level would include stakeholders/stakeholder groups whose inputs are relevant to the market study, but are not significant enough, or who are too many in numbers and cannot be dealt/consulted with on a one-on-one basis;
- The 3rd level includes stakeholders or groups whose inputs are not crucial to the market study and whose interests in the market study are from moderate to low.

3 ICN 2016 Market Studies Good Practice Handbook



5.2. Why is Stakeholder Management Important?

Competition agencies and/or market study teams should actively engage with stakeholders throughout the course of the study process. This is because:

- Stakeholders could provide crucial inputs (i.e. information, feedback, etc) at all stages of the market study process;
- Stakeholders' support could help competition agencies to secure the desired outcomes for the market study;
- Engaging stakeholders would help to increase transparency in the work of competition agencies, thus contributing to their reputation and credibility; and
- Stakeholder engagement during the study process is another effective way to conduct competition advocacy and ensure compliance.

Each stakeholder group, however, has their own motivations and perspectives. What's important is that competition agencies and/or market study teams maintain a neutral position and do not get too cozy with any stakeholder or any stakeholder group.

Perspectives of the OECD Business and Industry Advisory Committee (BIAC) on Involvement of Market Participants

A market study cannot be carried out in isolation or without involvement of appropriate stakeholders, especially if the authority wants to understand the market dynamics thoroughly. In some countries, consultation with stakeholders is commonplace, yet market studies in other countries are carried out without an apparent consultation involving stakeholders. The lack of such consultation might results in an academic exercise where the outcome will be of limited value. Experience indicates that early stakeholder involvement can help identify pertinent questions and existing information sources, that can help to develop effective market studies. This seems to be supported by most authorities. In the European Union, DG Competition has stated that it values dialogue with stakeholders over both scope and process. In the UK, the CMA generally writes to a range of stakeholders who are associated with the market to seek both factual information and views.

Source: ***Methodologies for Conducting Market Studies – Note by BIAC***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.3 (of 7), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)28/en/pdf

5.3. Developing a Stakeholder Management Strategy

Competition agencies and/or market study teams should develop a stakeholder engagement strategy early in the process to identify relevant stakeholders and plan for how and when to engage them.

The stakeholder management strategy should:

- Map all the relevant stakeholders and consider whether they are going to be influential, supportive or unsupportive of the market study, its findings and outcomes;
- Define the role of each stakeholder (group), consider their potential inputs and plan for how and when these inputs can/should be solicited; and
- Describe how and when these stakeholders can be engaged throughout the study process.

This is, however, an internal working document and there is no fixed format or standard for the same. The agencies and/or the study teams may choose to maintain only a simple map as above.

6

SELECTION OF SECTORS/MARKETS

In the absence of a policy decision to study/review the state of competition within a specific sector or market, competition agencies would consider and balance amongst a wide range of factors to select a broad sector/market for assessing. The resources (financial and human) available with competition agencies are usually scarce; while the resources that might be required for conducting a market study are often substantial. Competition agencies, therefore, should be judicious in their judgments and decisions so as to achieve the best outcomes possible with the limited available resources.

Type I – General Competition Assessment

A general competition assessment should typically be done for the whole economy. However, for practical reasons, such as lack of information, the study team may choose to look into only regulated sectors (telecoms, electricity, petrol and gas, water, health services, passenger transport by air or by railways, etc) or sectors/markets with concentrated market structure, where competition problems are most likely to exist.

Type II – Rapid Market Studies

Competition agencies might also decide to study/review the state of competition within a rotating number of markets/sectors per year, as part of their regular market-monitoring mandate. The selection of sectors/markets, in this case, should take into consideration the socio-economic development priorities/situation of respective countries in that review period. Questions that could be asked to identify the sectors/markets for assessment include:

- Is the sector/market important to economic growth?
  - Whether it makes a significant contribution to national income, or
  - Whether it has linkages with other sectors/industries as a provider of inputs and services, or
  - Whether it provides scope for wider gains through innovation, improved distribution and business processes, or
  - Whether it is significant for investment and productivity levels?
- Is the sector/market important to consumers/the public at large?
  - Whether it supplies goods or services that are essential, or that account for a significant part of consumer spending; or
  - Whether it directly or indirectly affects the quality of life of the people; or
  - Whether it contributes to the alleviation of poverty?

Type III – Detailed, Extensive Market Studies

For the more detailed and extensive market studies that competition agencies might want to undertake, not on a regular basis, but only as the needs arise (such as a precursor to enforcement actions, or to provide inputs for competition advocacy activities), the agencies could consider and balance amongst the following factors for selecting the study markets/sectors:

- o Concerns by consumers or some firms about prices and availability of products/services, or access to suppliers;
- o History of alleged anticompetitive conduct in the sector/market (e.g. collusion, etc);
- o Existence of high barriers to entry or expansion by prospective new suppliers;
- o High barriers preventing firms from carrying out business in some certain ways;
- o Patterns of mergers and acquisitions (M&As) that result in reductions in the number of substantial suppliers;
- o Existence of strong vested interests that might oppose increased competition; and/or
- o Long-term pattern of high market concentration, absence of new market entries, lack of innovation (no new products or services), or price hike with some price leaders.

Other cases that might also merit close considerations by the agencies include:

- o Sectors/industries that were previously considered natural/administrative monopoly, which might/should be opened up for competition;
- o Sectors/industries that were previously closed from foreign entry (green-field FDI or through M&As) or import competition which might/should be liberalized soon; and/or
- o Emerging sectors/industries that merit better understanding by the competition agencies (e.g. digital platforms, e-commerce, etc).

Experiences of the Korea Fair Trade Commission (KFTC) on Selecting Candidates for Market Study

In the preliminary test stage, the KFTC identifies the sales revenue, size of import and export and market structures by utilizing publicly available information such as market structure examination results by the KFTC and credit report. Then, the KFTC figures out the profitability ratio through measurement indices such as return on assets and cost to selling price ratio. Moreover, the KFTC examines information such as the regulations by the government on the candidate industries and voluntary regulations implemented by the enterprises themselves, the KFTC's previous decisions and consumer damages and complaints in detail.

Once the analysis on the candidates is completed, the final target industries are selected by comprehensively considering the market size, market concentration and profitability ratio based on quantitative indices including market structure index and market performance index. For market structure index, the entry barrier, industry concentration, import ratio, consumer switching cost and easy availability of information on cost and quality are taken into consideration. For market performance index, elements such as price and cost margin rate, rate of productivity increase, rate of R&D investment and the number of times the consumers filed complaints are considered.

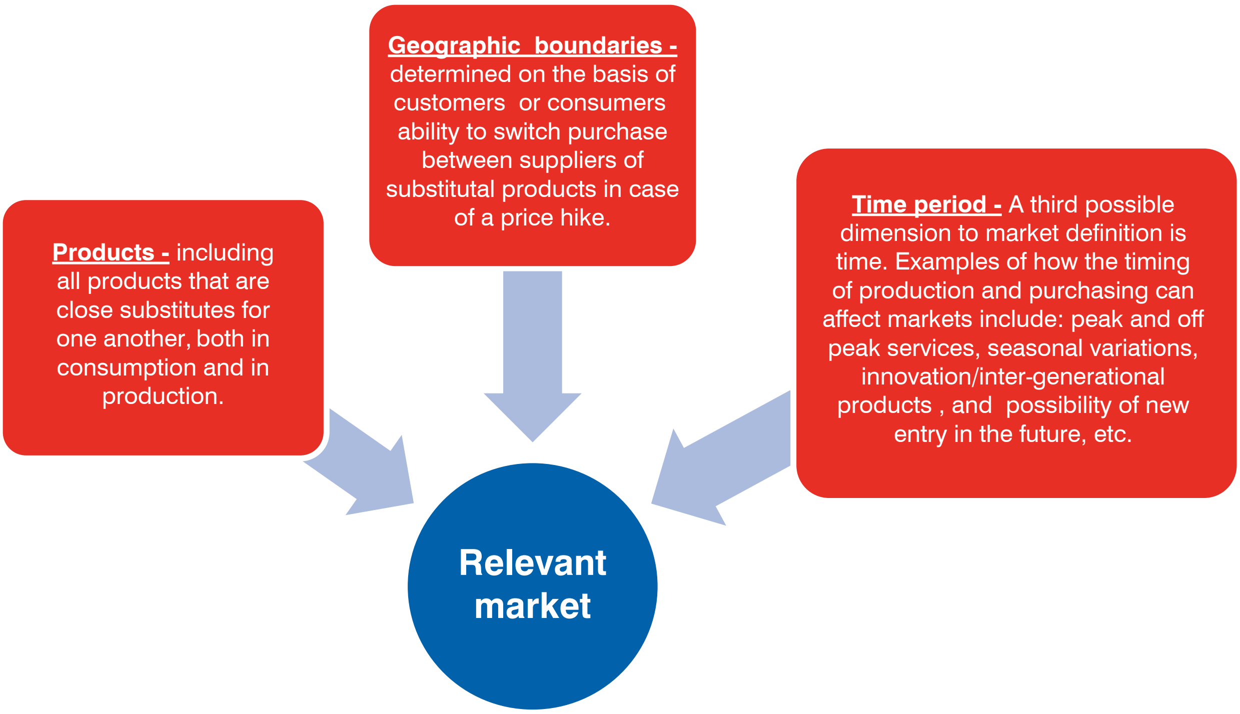
Source: ***Methodologies for Conducting Market Studies – Note by Korea***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.3-4 (of 9) available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)11/en/pdf

For analyzing competition in a market study, it is crucial that the study team is well aware of key concepts of competition law and economics such as market structure, market power, entry barriers, etc and is able to recognize different types of anticompetitive conduct, or to assess possible competition distortions caused by government policies, laws, regulations and certain institutions. Other issues that the study team needs to be well aware of include: the significance of intellectual property rights (IPRs) and innovation in general vis-à-vis competition and consumer welfare, and the impacts on consumers of certain competition issues (such as market structure) or firm conduct. Possessing knowledge of these issues and having the ability to apply them would make competition analysis in market studies richer and more relevant to the expectations of competition agencies.

CENTRAL CONCEPTS TO ANALYZE COMPETITION

7.1. Market Definition

A central concept in almost any competition analyses is that of the 'relevant market'. 'Relevant market' identifies the extent of effective competitive constraints in the market, in terms of product/services, time and location. It follows from here that to define the relevant market for a particular competition case, one usually looks at three dimensions: the 'Products' and the 'Geographic Boundaries' in a specific 'Period of Time'.

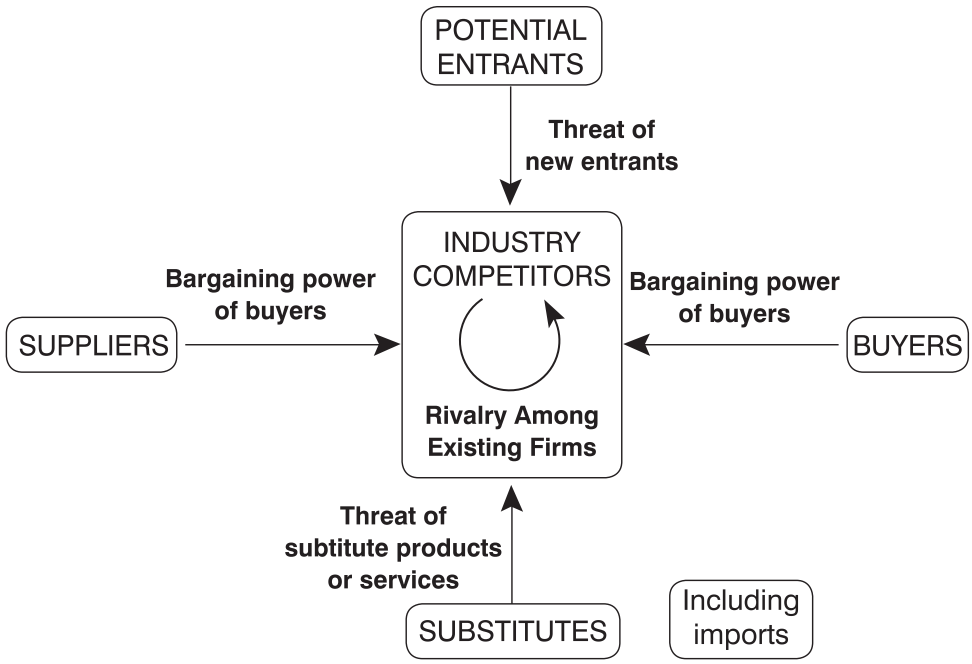


Recommendations

This approach could also be applied for market studies, however without necessarily applying market definition tests or other economic techniques that might be otherwise required in specific competition cases.[4] The study team could start with a working definition of what the market might be, and then refine this through discussions with stakeholders, and through reviewing relevant literature. The tighter the definition of the market, the more likely that sound analysis could be done and accurate conclusions could be drawn about the state of competition therein.

In case a broad sector is the study subject, it is recommended that the study team divides this broad sector into smaller markets/sub-sectors, for more accurate analysis. For example, the broad logistic sector would contain many smaller markets such as postal services, freight-forwarder and other services, goods transportation (by railways, by road, by river route, by sea, by air), etc. Besides, many such markets are linked as the upstream or downstream markets of each other, and thus their inter-linkages should also be taken into account by the study team.

Once the market has been defined, the natural next step is to identify the different players therein. For this step, a useful framework has been constructed by Michael E. Porter, commonly referred to as Porter's Five Forces[5]:



4 One commonly-used test is the Hypothetical Monopolist or SSNIP (Small but Significant Non-Transitory Increase in Price) Test, which examines whether a hypothetical monopolist would profitably and permanently increase prices by 5-10% in a given candidate market.

5 Porter, Michael E., Competitive Strategy: Techniques for Analyzing Industries and Competitors, 1980 and new introduction in 1998, The Free Press, New York, NY.

7.2. Different Types of Market Structure/Competition

In economics, markets are classified according to the structure of the industry serving the market. Industry structure is categorized on the basis of market structure variables which are believed to determine the extent and characteristics of competition therein. Those variables which are most popular are the number of buyers and sellers, the extent of product substitutability, costs, ease of entry and exit, and the extent of mutual interdependence. In the traditional framework, these structural variables are distilled into the following taxonomy:

Types of Market Structure/Competition

Perfect competition	*Normal competition*	*Oligopoly*	*Monopoly*
• A market structure in which all firms produce a homogeneous, perfectly divisible output; producers and consumers have full information, incur transaction costs and are price takers; and there are no externalities. Since perfect competition is rarely, if ever, encountered in the real world, it is mentioned here only as an ideal against which to compare other types of market structures.	• A market structure in which a large number of firms compete with each other by making similar but slightly different products. Each of the firm has some control over the prices it charges since products are differentiated. In this type of market structure, there are usually no significant barriers to entry and products are closely substitutable. No firm can affect the market as a whole, as a result. Such market structure is often referred to as 'normal' or 'workable competition'. • Many markets can be classified in this category, for example, the markets for books, clothing, films and service industries in large cities.	• A market structure in which the market is dominated by a small number of sellers or buyers (oligopolists). Because there are few participants in this type of market, each oligopolist is aware that it can affect market price and hence its competitors' profits: Ford cannot and does not ignore Honda when making decisions regarding automobile production, and similarly Airbus and Boeing when it comes to airplanes. Oligopolistic markets, thus, can be said as being characterised by inter-relationships between market participants. A firm must consider rival firms' behaviours to determine its own best policy.	• A market structure characterised by a single firm selling a product for which there are no close substitutes and by substantial barriers to entry. In this case the monopolist can maximise its profit by charging the highest price the market will bear. • ***Natural monopoly:*** A market structure where one firm can supply the entire market at a lower price than two or more firms can. A typical example of a natural monopoly is tap water. It is economically more efficient to have just one company providing a network of water pipes and sewers because there are very high capital costs involved in setting up a national network of pipes and sewage systems.

Recommendations

Once the market has been defined and the competitors clearly identified, the study team should then seek to identify what type of competition is at work in the market. This means examining the market structure and see what types of relationships exist amongst competitors. While perfect and normal/workable competition is the desired scenario, oligopolies and monopolies are usually more problematic. When a small number of firms account for most sales or production capacity, the market is said to be highly concentrated. There are two widely used measures of market concentration: Concentration Ratios and the Herfindahl-Hirschman Index (HHI), which could be used by the study team.

Concentration ratios = the percentage of market turnover that is accounted for by a small number of the largest firms	**HHI** = summing the squares of the market share percentages of each firms in the market
• The aggregation of the largest four firms is most often used, and the resulting percentage is called the CR4 ratio. Other numbers of firms are used in some situations, such as three or five, which result in the CR3 and CR5 ratios respectively. • There are no absolute measures on the level of concentration likely to raise competition concerns. Often, a CR4 of 40% or more could be said to indicate 'oligopoly'. • In smaller economies, a relatively high level of market concentration might be considered unavoidable where the minimum economic scale of operation in the relevant markets is large in relation to demand.	• The HHI might be less frequently used in market studies, for the simple reason of lack of information (one needs to have market shares data of all firms in the market for calculating the HHI). • The following scale could be used to assess the significance of the HHI: (a) An HHI of a little more than zero (0) means the market comprises a very large number of only very small suppliers; (b) An HHI of less than 1000 is low, and there are no concerns about market concentration; (c) An HHI between 1000 and 1800 is moderate, and competition concerns are not considered likely; (d) An HHI above 1800 is high, and might raise competition concerns; and (e) An HHI = 10,000 means 'monopoly'.

Market shares are usually measured by the value of sales, but the quantity of goods sold or the production capacity of firms may also be relevant. Here it should be noted that publicly available information on market shares can be unhelpful when it does not relate to the(relevant) markets that have been defined.

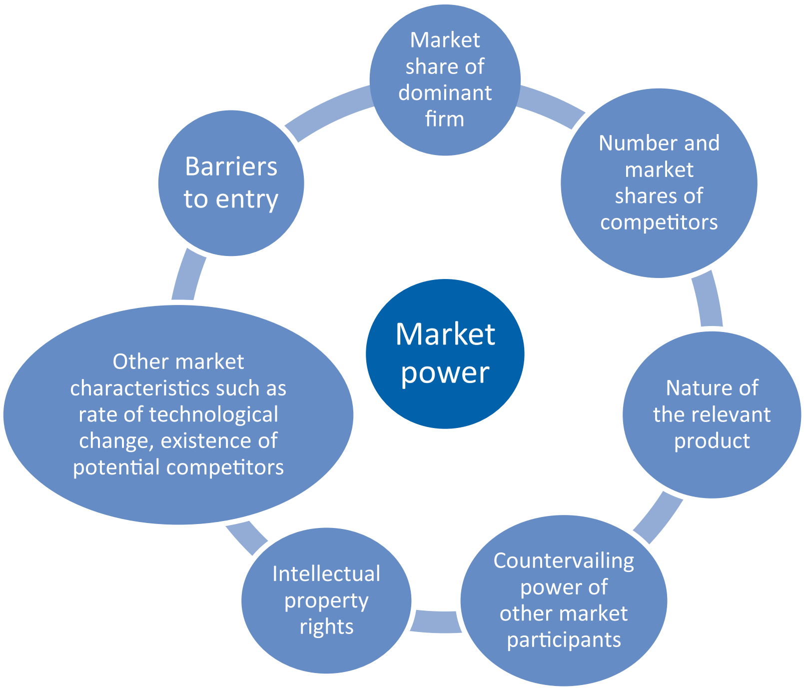
In addition to calculating market shares of competitors or at least the few largest firms in the market and determining the prevailing market structure, it is also worthwhile, where availability of information permits, for the study team to check the stability of the market shares of the major firms, or the stability of the prevailing market structure, over a long period of time. If the market shares/prevailing market structures have been stable, this might indicate the existence of significant barriers to entry or anticompetitive conduct by the incumbent firms, such as predatory behaviors or collusion.

7.3. Market Power

'Market Power' is the other key concept in competition analysis. Without market power, no anticompetitive practices by firms could achieve their intended goal.

'Market power' refers to the ability of an individual firm or a group of firms to raise and maintain price above the level which would prevail under competition. The highest degree of market power is associated with a monopoly, although all firms, except for those operating in perfectly competitive markets, possess some degree of market power.

High market share is generally considered a necessary, though not sufficient, condition to establish market power. Other important factors that must be considered in measuring the market power of a firm or a group of firms, other than market share, include:



Recommendations

The goal here is to identify those players in the market with significant market power, because the way they behave in the market would have most impacts on competition therein as well as the consumers. Amongst the factors mentioned above, barriers to entry play a central role in determining market power. Market power does not exist if entry to a market is easy. A firm with a 90 percent share of the market is not considered as having market power, or being 'dominant', if, as soon as it raises the price of its goods, other firms would enter its market and sell their goods at more competitive prices.

7.4. Barriers to Entry

Barriers to entry are diverse in nature, which range from government regulations, intellectual property rights, to access to capital, considerable costs of entry, economies of scale necessary to penetrate the market, a well-organized distribution system, advertising, customer loyalty and brand recognition, etc. Essentially, any factor that may affect the ability of would-be competitors to enter a given market would be considered a barrier to entry. Sometimes, barriers to entry may include strategic behavior by the dominant businesses already operating in the field trying to protect their position.

The Organization for Economic Co-operation and Development (OECD) differentiates between the following 4 types of barriers to entry[6]:

Natural barriers	Natural barriers are those that arise due to natural factors such as economies of scale arising from fixed (or overhead) costs, or very special geographical conditions.
Sunk-cost related barriers	Barriers to entry could also occur in markets where the sunk costs of entry are high. High sunk costs often arise in the case of highly-specialised productive inputs or those with limited alternative uses.
Strategic barriers	Strategic barriers are actions by incumbent firms to protect their position in the market, most often with detrimental effects on competition, for examples, fixed-term/exclusive contracts to lock-in customers, denying/restricting access to essential facilities, patent 'extensions', etc.
Regulations-induced barriers	Regulations by government and professional organisations may create barriers to entry, for example those that impose restrictions on new entry in a certain market, lengthy and costly bureaucratic procedures to start new businesses, local certification requirements, subsidies, etc.

Recommendations

For a market to remain competitive, it must be possible for new firms to enter, and for existing firms to expand or to leave. If there are barriers that either prevent entry or would delay it considerably, or that would make it costly to enter the market, the existing competitors might be able to raise prices above the competitive level. Actual entry, or the likelihood of entry, can constrain the market power of incumbent firms.

However, for a threat of new entry to provide a significant constraint, it must be likely, sufficient and timely. For entry to be ‘likely’, it would have to be commercially feasible. For it to be ‘sufficient’, it would have to be on a scale large enough to cause the incumbent firms to modify their market conduct. Unless possible entry would also be ‘timely’, it would not be likely to influence the conduct of the incumbent firms.

As a result, any competition analysis must make a proper evaluation of all relevant barriers to entry and the likelihood of entry by new competitors within a reasonable time frame. Past information of successful entry into the study market might be used as ‘proxy’ here, in particular information about how long the new firms stayed in the market, how successful they were in winning market share and how long it took them to get to a significant size.

7.5. Anticompetitive Conducts

Another important part of competition analysis is to identify possible anticompetitive conducts by firms and evaluating their impacts on competition in that market. Competition laws generally proscribe three broad types of anticompetitive conducts as follows:

6 OECD (2017), *Competition Assessment Toolkit: Volume 2. Guidance*, www.oecd.org/competition/toolkit

Three broad types of anticompetitive conducts prohibited by competition laws		
Anticompetitive agreements	Abuse of dominant position	Mergers and acquisitions negatively affecting competition
Horizontal agreements	Vertical agreements	

Cartels

Being horizontal anticompetitive agreements by nature, cartels are arrangements between groups of firms that produce and sell the same product for the purpose of exacting and sharing monopolistic rents.

Recommendations

Industries or markets which have the following characteristics are more prone to cartelization:

- Markets where there are a relatively small number of firms and a large number of customers;
- Market demand is not too variable;
- Products/services are generally homogeneous, and there are no substitutable products;
- Individual firms' outputs, asking prices and sale turnovers can be easily monitored by the cartel organisations, for example in the retail petrol market, where the retail prices are displayed all the times at all gas stations (so as to discourage cartel members from cheating and breaking up the cartel); and
- The existence of trade association(s) or a single retailer who might play a facilitating/ coordinating role.

Price-fixing cartels: The most common practice undertaken by cartels is price-fixing. This is the term generically applied to a wide variety of concerted actions taken by competitors having a direct effect on price. The simplest form is an agreement on the price or prices to be charged on some or all customers. In addition, the followings are also considered price-fixing, if the firms agree:

- on price increase;
- on a standard formula, according to which prices will be computed;
- to maintain a fixed ratio between the prices of competing but non-identical products;
- to eliminate discounts or to establish uniform discounts;
- on credit term what will be extended to customers;
- to remove products offered at low prices from the market so as to limit supply and keep prices high;
- not to reduce prices without notifying other cartel members;
- to adhere to published prices;
- not to sell unless agreed on price terms are met; and
- to use a uniform price as starting point for negotiations.

Market-sharing cartels: These are horizontal agreements that divide markets by territory or by customers among competitors. If anything, such arrangements are even more restrictive than the most formal price-fixing agreement, since they leave no room for competition of any kind.

Output-restriction cartels: Under this type of agreement, enterprises producing/supplying the same products/services agree to limit their supplies to a lower proportion of their previous sales.

The effect of limiting supplies is to create scarcity in the market, which makes it possible for sellers to raise prices of products/services.

Bid-rigging cartels: Bid rigging usually involves competitors collaborating in some way to restrict competition in response to a tender, regardless of whether the tender is issued by a public authority or a private entity. It is universally viewed as one of the worst ‘hard-core’ cartel-type offences alongside price-fixing, output restriction and market allocation, and is often a combination of these practices.

Some most typical forms of bid-rigging include:

- **Bid suppression**
  - One or more competitors who otherwise would be expected to bid, or who has previously bid, agree to refrain from bidding, or withdraw a bid already subimitted, so that the designated winning competitor win the bid.
- **Complementary bidding**
  - Some competitors agree to submit bids that are either too highly-priced or contain unacceptable terms, so that the designated winning competitor win the bid.
- **Bid rotation**
  - All competitors submit bids but take turns to be the lowest bidder.
- **Sub-contracting agreement**
  - Competitors, who agree not to bid or to submit a losing bid, would receive sub-contracts or supply contracts instead from the successful bidder.

Other types of horizontal agreements

Many non-cartel horizontal agreements may be efficiency-enhancing by promoting research and development, may create new or improved products or methods of distribution, or may improve information flow. Many, on the other hand, may eliminate competition, restrict output and raise prices.

One example of such agreements is the case of standard-setting organisations. Efficiency justifications happen when, for instance, some trade association or testing company says this kind of electrical socket will safely fit in this kind of socket, or this quality, grade, or whatever is safe to eat or safe to use in construction. These standards usually do not forbid the use of alternatives (unless they are put into a building code or health code) but buyers are generally afraid to use uncertified products so the effect is similar to a refusal to deal. And the standard-setting process can be also abused to keep out competitors or keep up prices which can be a violation of competition laws.

Vertical agreements

Vertical anticompetitive agreements involve businesses operating at successive stages of a production process. Simply put, in a vertical arrangement, for example bilateral, one party is the supplier of inputs to the other party's business activity. Vertical agreements are, generally speaking, treated less severely than horizontal ones, often under the rule of reason by competition agencies.

Resale price maintenance

Resale price maintenance is the practice whereby a manufacturer and its distributors agree that the latter will sell products of the former at certain prices (resale price maintenance), at or above a price floor (minimum resale price maintenance) or at or below a price ceiling (maximum resale price maintenance).

Resale price maintenance sometimes might have benign effect, or help promote business efficiency, and would accordingly be treated under the rule of reason. It is most often an instrument for encouraging services of all types at the retail level. One of the most common areas of resale price maintenance is branded products. Another area where resale price maintenance routinely occurs is franchising.

Exclusive Dealing

Exclusive dealing is a vertical agreement by which a retailer or wholesaler is 'tied' to purchase from a supplier on the understanding that no other distributor will be appointed or receive supplies in a given area.

Exclusive dealing agreements could help a firm to organize their distribution more efficiently. In such cases, where these agreements result in cost reduction or some other efficiency dividend, there might not be any competition problems associated with them, or only some minimal ones.

On the other hand, such agreements also tend to have adverse effect on competition, since they may restrict the access of upstream rivals to distributors. Rivals may be foreclosed from the market altogether or, more commonly, forced to use higher cost, or less effective, methods to bring their products to market. In either case, competition can be reduced through either reducing the number of manufacturers serving the market or by artificially raising the costs of some manufacturers.

Tied selling

Tied selling is the practice of making the sale of one good (the tying goods) to customers on the conditions of the purchase of a second good (the tied goods). Some kinds of tying, especially by contract, have historically been regarded as anti-competitive as it is implied in this that one or more components of the package are sold individually by other businesses as their primary product, and thereby this bundling of goods would hurt their business. It is also implied that the company doing this bundling has a significantly large market share so that it would hurt the other companies who sell only single components.

Tying has also been defended as maximizing overall welfare in a variety of circumstances. If the main product works better with the tied product than with others, the manufacturer may tie the products to avoid quality problems that could lead to product liability lawsuits or loss of reputation. Tying may also be used with or in place of intellectual property to help protect entry into a market, encouraging innovation.

Abuse of dominant position

'Abuse of dominant position' refers to anticompetitive business practices in which a dominant firm may engage in order to maintain or increase its position in the market.

These business practices by incumbent firms, not without controversy, may be considered as "abusive or improper exploitation" of monopolistic control of a market, aimed at restricting competition. Generally, the business practices which have been contested are the following:

- price discrimination;
- predatory pricing;
- price squeezing by integrated firms;
- refusal to deal/sell;
- tied selling or product bundling; and
- pre-emption of facilities.

Price discrimination

Price discrimination refers to the practice of applying different conditions, normally different prices, to equivalent transactions. A simple example is the practice of charging of different prices to different customers, or categories of customers, for the same product where the differences in prices do not reflect the quantity, quality or any other characteristics of the items supplied.

Predatory Pricing

Predatory pricing occurs when a dominant firm temporarily charges particularly low prices in an attempt to eliminate existing competitors, or create a barrier to entry into the market for potential new competitors. The predator will incur temporary losses during its low pricing policy with the intention of raising prices in the future to recoup losses and gain further profits. Such behavior may offer consumers advantages in the short run but will be disadvantageous if the seller is able to maintain the price at a monopoly level.

Predatory pricing necessarily involves the ability to raise prices once rivals have been disciplined or have exited the market. Consequently, a key consideration in determining that low prices are in fact predatory and may lead to a substantial lessening of competition is whether the market is viewed by potential competitors as having high barriers to entry. Such barriers might include high financial costs for entry, with difficult technology and little ability to sell off the assets if the new entry fails. Without such barriers, any post-predation price increase by the dominant firm might attract entry so that the dominant firm would not be able to raise prices and recoup the costs of predation.

Refusal to deal/supply

Absent a statute or other special circumstances, a business in a free market has an unlimited right to refuse to do business with any buyer for any reason or for no reason at all.

However, in many a case, one will see that the competition statutes of many countries prohibit such practice whereby a supplier refuses to supply goods to a dealer without reasonable justifications. In other more special instances, it might be the case that one dominant business which is in possession of 'essential facilities' in an industry or a market is prohibited by the competition law to refuse/restrict access to those facilities by competitors, if this is seen as an effort to maintain its dominant position.[7]

The problem arises when one firm is active in both upstream and downstream activities (it is vertically integrated) and refuses to grant other firms, who wish to provide either upstream or downstream services only, access to the "facility". The refusal to supply may be anti-competitive if it prevents third party firms from entering the market and consequently has the effect of lessening competition. A dominant firm, which controls access to an essential facility, may be abusing its dominant position if it refuses access to the facility without reasonable justification or grants access only on discriminatory terms such that its competitors in the related market are disadvantaged.

Mergers & Acquisitions

Technically, a merger happens when two firms agree to go forward as a single new company rather than remain separately owned and operated. Acquisitions, on the other hand, involve one firm purchasing another - there is no exchange of stock or consolidation as a new company. However, both mergers and acquisitions are usually referred to as 'mergers' (such as in 'merger review' or 'merger policy') for the sake of simplicity.

Mergers can be characterized according to three categories:

- horizontal mergers, which take place between firms that are actual or potential competitors occupying similar positions in the chain of production;
- vertical mergers, which take place between firms at different levels in the chain of production (such as between manufacturers and retailers); and
- other mergers, such as those which take place between companies that sell the same products in different markets (market-extension mergers), or companies selling different but related products in the same market (product-extension mergers), or conglomerates with different types of businesses.

Many mergers will have little or no negative impact on competition. Some mergers may be pro-competitive, for example, by enhancing production efficiencies resulting from economies of scale or scope. Mergers may also create new synergies, lead to innovation by combining talents of different firms, and provide additional resources to develop new products and services.

Concerns about mergers, acquisitions and other corporate combinations are generally based on the same concerns about other anti-competitive behavior discussed earlier. The main concern is that a larger merged firm may increase its market power. To the extent a merged firm becomes more dominant in a market, there is a greater potential to abuse the accumulation and exercise of market power to the detriment of competitors and consumers. In practice, merger reviews and the exercises of related powers by competition agencies are usually based on an evaluation of the impacts of a specific merger on competition in the relevant markets.

7 An essential facility may be defined as a facility or infrastructure, without access to which competitors cannot provide services to their customers. An essential facility may exist either at the manufacturing (upstream) or distribution (downstream) level. Examples of essential facilities include technical information, transport infrastructure (e.g., rail, port or airport) and pipelines/wire for the supply of water, gas, electricity or telecommunications services, or in the context of a digital economy, a digital platform or an operating system.

Recommendations

Market studies differ from specific investigations of competition cases in that no hard evidence is required. The study team, however, might want to highlight and analyze certain trends (such as a merger trend that may result in higher market concentration level, or the emergence of powerful and highly-integrated firms), signs (such as exceedingly high prices/profits as compared to similar markets elsewhere, or other conduct-specific signs as mentioned above) and patterns (such as seemingly synchronized price increases/decreases) in the market that may raise competition concerns.

Another approach is to focus on those market characteristics or conditions (such as market structure, availability of information, and existence of barriers to entry, etc) that together may induce anticompetitive behavior (such as cartelization).

Experiences of the Competition & Consumer Commission of Singapore (CCCS) from the Formula Milk Market Study

It is worth noting that the products selected did not remain the same over the nine-year period studied. CCCS observed rebranding, changes in formulation, and changes in packaging sizes regularly for each product, especially for the premium brands. As such, using any single specific product would not have yielded data of sufficient duration to study any trends meaningfully.

… The challenges highlighted above mean that when analyzing the data, long term trends are more instructive in providing a complete picture, as opposed to focusing on specific changes month to month (or perhaps even year to year). Similarly, it may not be meaningful to compare levels across manufacturers, brands or products. Consequently, CCCS's analysis focused on common features in the *trends* across manufacturers and products.

Source: ***Methodologies for Conducting Market Studies – Note by Singapore***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.10 (of 12) available for view at <https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)24/en/pdf>

7.6. IPRs, Innovation & Efficiency

IPRs protection is a policy tool meant to foster innovation; which benefits consumers through the development of new and improved goods and services, and spurs sustaining economic growth. It bestows on innovators the right to legitimately exclude, for a limited amount of time, other parties from the benefits arising from new knowledge, and more specifically, from the commercial use of innovative products and processes based on that new knowledge. In other words, innovators or IPR holders are rewarded with a temporary monopoly by law to recoup the costs incurred in the research and innovation process and earn rightful and reasonable profits, so that they have incentives to invest in further research and innovation.

However, as a piece of individual property, IPRs are fully subject to general competition principles, when they are exercised or put into commercial use in the market. Competition law, thus, while having no impact on the very existence of IPRs, operates to contain the exercise of the property rights within the proper bounds and limits which are inherent in the exclusivity conferred by the ownership of intellectual rights. In other words, when the exercise of IPRs gives rise to some competition concerns, competition law will have a role to play.

For example, a number of cases where certain conditions/restrictions contained in IPR-licensing agreements, or the nature of cooperative agreements concluded between IPR holders, could raise competition concerns include:

Agreements	Main features	Possible competition concerns
Territorial restraint	Territorial restraint is an agreement between a licensor and a licensee that the licensor will assign in a certain territory to the licensee – thereby bestowing exclusive marketing rights to that licensee.	Territorial restraints will be unlawful only when they are used as a sham to cover a market allocation or price fixing agreement. They can facilitate the implementation of disguised cartel arrangements to allocate market. For instance, competing firms holding a significant amount of the total patents specific to a particular class of products could agree on issuing exclusive licenses to a jointly owned corporation, which would then divide up the market among the associated firms through territorial restraint agreements.
Exclusive dealing	Besides exclusive rights in a given territory, as in the case of territorial restraints; a licensing agreement can also entail commitments by the licensee to deal exclusively with the licensor, i.e. the licensees will refrain from licensing, selling, distributing, or manufacturing products which employ technologies supplied by competitors of the licensors.	Competition aspects of the limitations on a licensee's ability to deal in competing technologies could be analyzed on the basis of (i) the duration of the exclusivity; (ii) the rationale for the restriction; and (iii) the degree of foreclosure caused by the restriction to rival licensors. The anticompetitive foreclosure risk may be significant when the firms entering into exclusive dealing arrangements already hold a large share of the relevant product market. It also depends to a large degree on the availability of alternative manufacturing capacity for existing or new licensors.
Tie-in	This restriction will typically condition the ability of a licensee to license one or more items of intellectual property on the licensee's purchase of another item of intellectual property or a good or a service.	Tie-in is generally deemed unlawful if (i) it involves two separate products or services that are tied together; and (ii) the seller has market power in the tying product and has the ability to extend this market power in the tied product, due to favourable market conditions (high entry barriers, etc.); (iii) the arrangement has an adverse effect on competition in the relevant market for the tied product; and (iv) efficiency justifications for the arrangement do not outweigh the anticompetitive effects. Tying agreements may facilitate horizontal collusion among licensors if the licensors use them as a device to detect cheating on a cartel arrangement.
Grant-back	A grant-back requirement is an agreement, which a licensee agrees to extend to the licensor of intellectual property the right to use the licensee's improvement to the licensed technology.	The competition consequences of a grant-back may differ based on a number of factors: (1) whether the grant-back includes technology that goes beyond the originally licensed intellectual property; (2) whether the grant-back is in the form of an assignment, exclusive license, non- exclusive license or an option; (3) the duration of the licensee's grant-back obligation; (4) the parties' market power; (5) whether the parties are competitors; (6) the effect of the grant-back on the parties' incentive to innovate; and (7) whether the grant-back promotes dissemination of improvements developed by the licensee, etc. Grant-backs may also raise competition concerns as they facilitate undue enhancement or maintenance of a dominant position.

Agreements	Main features	Possible competition concerns
Patent pooling or cross-licensing	In this type of agreements, two or more holders of different items of intellectual property agree to license one another or the third parties. Patent pools are often associated with complex technologies that require complementary patents in order to provide efficient technical solutions.	Collective price or output restraints in pooling arrangements, such as the joint marketing of pooled IPRs with collective price setting or co-ordinated output restrictions, may be anticompetitive if they do not contribute to an efficiency-enhancing integration of economic activities among the participants. In the absence of offsetting efficiencies, IPRs cross-licensing agreement would diminish competition among entities that would have been actual or potential competitors in a relevant market in the absence of the cross-licensing.

Recommendations

In addition to checking the nature of licensing agreements or cooperative agreements amongst IPR holders as mentioned in the table above, the study team should also keep an eye out for other signs which might indicate that the exercise of IPRs might raise competition concerns, for example low rate of innovation in a sector despite high R&D costs, delay/lack of entry by potential competitors, or exponentially high prices/profits as compared to similar markets elsewhere. To cite an example, the observed delays in the entry of generic medicines to the market and the apparent decline in innovation as measured by the number of new medicines coming to the market) have been the reasons for the European Commission to conduct its pharmaceutical sector inquiry in 2008[8].

7.7. Impacts of Government Policies or Certain Institutions on Competition

Competition is a cross-cutting issue. As a result, in market studies, it is important for the study team to also be ascertained of the impacts of government policies (such as trade or industrial policy) and/or certain institutions (such as State-owned enterprises, sector regulators, the government as a purchaser of goods and services from the market, etc) on competition.

State-owned enterprises

Despite extensive privatization in the past two decades, state-owned enterprises (SOEs) are still significant in the economies of many countries, including in the ASEAN region. Experiences have shown that, in competitive or potentially competitive markets, several competitive distortions can arise because of advantages that SOEs have due to their government ownership. Governments may create uneven playing fields in markets where SOEs compete with private firms, as they have a vested interest in ensuring that state-owned firms succeed. Abusing their roles as regulators, governments may restrict competition through granting SOEs various benefits not offered to private firms. While in some areas this preferential treatment will be direct and obvious, there may also be indirect preferential treatment through other means. The issue of whether competition in a market is distorted by the existence of a state-owned enterprise therefore requires examination.

8 For more details, see https://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part1.pdf

Recommendations

The study team should try to identify whether any SOEs operate in the market(s) being assessed. If yes, whether these enterprises receive any benefit or preferential treatment not available to other firms which appear to have the effect of limiting competition in the relevant market(s).

Some of these benefits are quite obvious and would contribute to strengthening the financial/capital base of SOEs, such as direct subsidies that some SOEs might receive from the government, land-use rights, credits provided via State-controlled financial institutions at below-market interest rate, etc. Other less obvious but no smaller advantages include favourable tax regimes or exemptions from certain type of taxes, which help to lower SOEs' costs; explicit or implicit loan guarantees for SOEs, which reduce their cost of borrowing and enhance their competitiveness vis-à-vis their privately-owned rivals; or exemption from bankruptcy rules, because governments often invest heavily in SOEs and thus naturally do want these firms to go out of business; as well as exceptions and preferential treatments under other regulatory regimes. Many SOEs are also generally absolved from paying dividends or indeed any expected return to shareholders, the most major one being the government.

However, here it should be noted that any advantages conferred on the SOEs must have a perceptible effect on the level of competition for concern to be warranted.

Public procurement

The primary objective of an effective procurement policy is the promotion of efficiency, i.e. the selection of suppliers who offer the lowest price or, more generally, the achievement of the best "value for money". Public procurement means the government purchasing goods and services for State use, which accordingly aims to secure the best value for public money. Public procurement generally accounts for a large share of public expenditure in any domestic economy. Due to the magnitude of the spending involved, public procurement can have a market impact beyond the mere quantities of goods and services purchased: through its procurement policies, the government can affect the structure of the market and the incentives of firms to compete more or less fiercely in the long run.

Recommendations

It is generally expected that companies genuinely compete, i.e. they make their offers honestly and independently when participating in public tenders. The private collusion aspects are already dealt with under the previous section on Anticompetitive Conducts; and the study team should be well-aware of various bid-rigging behaviors to be able to identify them if any. For this part, the focus is on the role of the government as a major purchaser of goods and services in certain markets and its procurement policy, which might have adverse effect on the level on competition therein.

The questions that could be asked by the study team therefore include:

(i) Whether the government (or any government agency) is a significant purchaser in the market(s) being assessed?

(ii) If so, whether the government procurement policy has safeguards/measures to ensure competitive bidding, fairness and transparency?

(iii) If the procurement policy lacks fairness and transparency, how significant are the impacts on competition in the market(s) being assessed?

(iv) What remedies/actions should be undertaken in promote competition?

Regulated sectors

Following the introduction of market reforms, sector regulators were put in place to control anticipated market failures, and part of their mandate included ensuring that there was fair competition in their respective sectors.

Sector regulation may be needed when the market structure makes it difficult or impossible for competitive markets to develop, such as with natural monopolies, or where the sector's operations may affect public welfare. Other reasons for sector regulation include providing a mechanism for maintaining necessary technical standards to ensure quality or safety, ensuring access to essential facilities, and to provide processes to encourage efficiency and cost-related pricing.

Despite these sound reasons and the original intentions, several rules and regulations enacted by governments have been found to hinder, rather than promote competition in markets. Sectoral regulations could hinder competition by:

- Unduly limiting the number or range of firms that could do business in a certain market/sector, for example by:
    - significantly raising the cost of entry into the market,
    - granting exclusive rights for a specific company to supply a product or service,
    - requiring that a license, permit or authorization needs to be obtained for operation,
    - limiting the ability of some types of firms to participate in public procurement, or
    - creating a geographic barrier that restricts the supply of goods or services, the supply of labour or the flow of capital into certain markets;
- Unduly limiting the ability of firms to compete, for example by:
    - Limiting the freedom of businesses to advertise or market their products,
    - Setting 'unduly high'/discriminatory-by-nature quality standards or technical regulations,
    - Treating incumbents/SOEs differently than new entrants/private firms, or
    - Controlling or substantially influencing the prices at which goods and services could be supplied;
- Reducing firms' incentive to compete, for example by:
    - Allowing businesses to exchange information or collaborate in specific activities, which could facilitate collusion/cartelization, or
    - Exempting a particular industry or a group of companies from the purview of national competition laws.

Recommendations

The study team could start by looking for the signs listed above, which might suggest that certain sector regulations have been hindering competition in the relevant markets. In case certain regulations are found to be hindering competition appreciably, then two further questions need to addressed:

(i) whether these harms to competition could be outweighed by any public benefits that might result from the restrictions imposed by the sector regulator? (i.e. a cost-benefit analysis)

(ii) whether this is the only way to achieve the policy objectives of the regulator or there is another less anti-competitive alternative?

Trade policy and industrial policy

Policies of governments on trade and on industry can have a large impact on the level of competition. Imports normally would provide domestic consumers with more choice, and even help to bring down prices. The competitive threats from imported goods and services would force domestic firms to innovate and compete, so as not to lose market shares on their own home grounds. Well-targeted industrial policy would contribute to increasing the competitiveness of domestic industries, and might even lead to the emergence of national champions which could compete effectively in the global markets. On the other hand, protectionist/restrictive trade policies and lopsided industrial policies might limit competition and reduce the incentive to compete of domestic firms in general or at least certain groups of companies.

Recommendations
As with the previous section, the study team should examine whether there are any trade or industrial policies that appreciably restrict competition in the market being assessed, and if yes, whether these policies appear to have adequate justification, taking into account their effects on competition.

7.8. Impacts on Consumers

The complementarities between competition and consumer protection is no longer a new and debatable issue in any discussion pertaining to competition law, but rather a settled one.

Competition presses producers to offer the most attractive price and quality options. In competitive markets, producers must gain new sales, new clientele by satisfying consumer needs by increasing the range of choices available, since if consumers dislike the offerings of one seller, they might turn to others. This is because the availability of substitutable goods at acceptable prices in competitive markets enables consumers to shift purchase, which pushes each seller to try to satisfy consumer preferences.

Further than increasing the choices available to consumers, in competitive markets, long-term competitive strategies make it imperative for producers to provide correct and useful information about their products, to fulfill promises concerning price, quality, and other terms of sale, and thus to improve their image toward the consumers. Thus, in its mandate of ensuring the markets function competitively, competition law becomes an effectively tool to promote consumer welfare, which is also the objective of consumer protection policy.

Consumer protection policy works to ensure that consumers can make well-informed decisions about their choices and that sellers will fulfill their promises about the products they offer. In other words, consumer protection policy prevents producers from engaging in abusive, fraudulent, deceptive or unfair practices while seeking to increase their sales.

Due to their complementary nature, these two statutes are increasingly entrusted to one single agency, which would be responsible for their enforcement. Accordingly, nowadays market studies by competition (and consumer protection) agencies would look into both competition issues and consumer abuses in a given market.

Furthermore, other than just examining the impacts of market structure, firm conducts and government regulations, etc on competition, the study team might want to go a step further to examine their impacts on consumers. In several cases, business practices and government relations that restrict consumers' ability to choose freely, unduly increase their switching costs, or limit the availability of information that consumers need to make informed and appropriate choice may have harmful effects on competition. For example, when companies know that consumers are blocked from some of the choices they would have preferred, companies may be less responsive to competitive pressures that would have led them to lower prices, increase quality or increase variety of goods and services available. At the same time, consumer welfare is affected because consumers might not be satisfied with the limited choices they have or the choices they are forced to make.

Recommendations

Some questions that could be asked so as to check the impacts on consumers include:

(1) Whether there are some business practices or regulations in the market being assessed that limit the consumers' ability to choose freely?

(For example, an exclusive dealing contract between a manufacturer and several retailers in the market, or an exclusive agreement between the owner of a building and a service provider to be the sole service provider to all tenants in that building, or a government regulation that make it illegal for consumers to purchase certain products from a neighboring state or country at potentially lower prices.)

(2) Whether there are some business practices or regulations in the market being assessed that significantly increase the costs to switch suppliers of a service or product by consumers?

(For example, fixed-terms contracts that lock the consumers in to using certain goods and services for a specified duration, or the lack of government regulation mandating the possibility of new entrants to get access to the network of incumbent firms on equitable and fair terms.)

(3) Whether there are some business practices or regulations in the market being assessed that limit the availability or accessibility of information that consumers need to make informed and appropriate choice?

(For example, certain companies might intentionally withhold important information from consumers, or a government regulation to ban advertising of a certain product.)

(4) In all these cases, whether there are adequate justifications to the business practices or the government regulations, including the nature of the products or the market, that could justify the impacts on consumers?

8

INFORMATION COLLECTION & ANALYSIS

8.1. Information Collection

Conducting market studies requires large varieties of information, which could be collected in the form of facts or figures, anecdotes or empirical data, normative and legal texts or narratives, etc. Most often, information required for a market study would include:

- Descriptive information about products, inputs, technologies, suppliers, intermediate buyers, end consumers, etc;
- General statistical information about production capacity, consumption capacity, outputs, turnovers, capacity utilization, prices, value of exports and imports, value of public procurement orders, etc;
- Firm-level information including their annual reports, balance sheets and income statements, business plans and marketing strategies, etc;
- Opinions of sector experts and regulators;
- Testimonials of existing competitors, potential competitors and consumers;
- Laws and regulations concerning the sectors/markets being assessed; and
- Any other information deemed relevant for analysis by the study team, including comparable information from other countries.

In some instances, the required information might already be available, though not exactly in readily usable forms, and at times needs purchasing. Possible sources include:

- Past competition cases;
- Government agencies (e.g. statistical offices, line ministries and sector regulators);
- Chambers of commerce, and industry associations;
- The media;
- Academic institutions and think-tanks; and
- Commercial data-gathering organizations, market-research companies, and survey companies.

BIAC's Perspectives on Data-Gathering

Market studies require the collection of a considerable amount of data. Most of the time such data is in the hands of undertakings that operate in the market which is being examined. Such data could be pre-existing documentary evidence such as corporate strategy documents, planning documents, new documents prepared for the purpose of the study, descriptive evidence of the functioning of the market, as well as expert evidence including industry and economic expert analysis and testimony. To gain access to that data, a competition authority might send questionnaire or information requests to the market participants, request meetings, hold workshops, or interview experts.

Source: ***Methodologies for Conducting Market Studies – Note by BIAC***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.4 (of 7), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)28/en/pdf

Where information is not available from such secondary sources, the study team might go about collecting primary information, using the following information collection methods:

- Stakeholder interviews (including individual interviews, focus group discussions, workshops and consultations, etc);
- Consumer surveys;
- Voluntary or mandatory[9] information requests issued by competition agencies, addressed to individual market participants;
- Public calls for submissions on identified topics;
- Internet product searches[10] and mystery shopping[11];and
- On-site inspections[12].

Recommendations

Lack of information/data is often cited as the biggest challenge vis-à-vis the conducting of market studies, especially in younger jurisdictions. However, most often, it is not that data/ information is lacking, they are simply not available in readily available format from secondary sources. The task of the study team, therefore, is to collect primary information as per the requirements of the market study.

Many competition authorities use a combination of different voluntary information collection methods for collecting primary information/data such as stakeholder interviews, workshops and (consumer) surveys. The Dutch ACM (Authority for Consumers and Markets)[13] and the UK CMA (Competition & Markets Authority)[14], for example, stated that they rely heavily on interviews and

9 Only where the competition agencies have the necessary legal powers.

10 Members of the study team or staff of the competition agencies to look for relevant products on the Internet using regular search engines, often to see whether there is lack of information or any other type of market failures.

11 An information collection method whereby external contractors, or staff of the competition agencies, pose as customers making purchase enquiries to see how they are dealt with by the businesses.

12 Only where the competition agencies have the necessary legal powers.

13 See *Methodologies for Conducting Market Studies – Note by the Netherlands,* a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)14/en/pdf

14 See *Methodologies for Conducting Market Studies – Note by the United Kingdom,* a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)18/en/pdf

surveys to get the data/information needed for the market studies and investigations that they conducted. The Canadian Competition Bureau[15] and the US FTC (Federal Trade Commission) and DOJ (Department of Justice)[16], on the other hand, collect a lot of information/data through workshops. The last course of action is of course to issue voluntary or mandatory information requests to market participants.

The advantage of surveys and workshops as a primary information collection method is that they allow the study team/competition authority to minimize biases, which is an inherent problem with stakeholder interviews, though they are certainly more resource-intensive. The other problem with surveys and workshops is that they would often generate a huge volume of information/data, which means that the study team would later have a bigger load of screening, compiling, and analyzing to do.

The US DOJ's May 2012 report on competition and agriculture, for example, is based on a series of five (05) public workshops that the Department conducted in 2010 in collaboration with the US Department of Agriculture. These workshops attracted as many as 1,700 attendees and 18,000 public comments. Participants raised a wide range of concerns, including, but not limited to, threatened harm from anticompetitive mergers, high market concentration, monopsony power, market transparency and captive supply, and market manipulation.

Various Information Collection Methods by the UK Competition & Markets Authority in its Energy Market Investigation

Over the course of the investigation, the CMA received over 100 submissions from energy suppliers, generators, government bodies, consumer groups, academics and other interested parties. Meetings were held with the ten (10) largest energy suppliers to help identify data and information held by each supplier and the wider industry which could assist the investigation. Following this, market and financial questionnaires were sent to these parties. Subsequently, site visits were carried out to the premises of the six large energy firms, including a small supplier, a generator and an electric power transmission network. Case study interviews were conducted with small to medium sizes suppliers to discuss barriers to entry and expansion.

Written evidence and data was gathered from a large number of third parties including government departments/regulators, other energy suppliers, generators, gas and electricity distribution companies, power exchanges, brokers and traders, consumer bodies and price comparison websites. The CMA also commissioned a survey of domestic customers of energy suppliers in Great Britain.

Source: ***Methodologies for Conducting Market Studies – Note by the United Kingdom***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.10 (of 13), available for view at <https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)18/en/pdf>

15 See *Methodologies for Conducting Market Studies* – Note by Canada, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)2/en/pdf

16 See *Methodologies for Conducting Market Studies* – Note by the United States, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)19/en/pdf

8.2. Analysis

In a market study process, the study team would find themselves using primarily two types of analysis: qualitative analysis and quantitative analysis. These two types of analysis are never used in isolation, and would often complement each other.

Qualitative Analysis

Qualitative analysis combines reasons, evidence and appropriate assumptions to arrive at conclusions about the issue(s) being analysed.

This method has the advantage of being widely understood, requiring less data, and being potentially quick and practical.

Typical examples of qualitative analysis in a market study include the assessment of barriers to entry, or analysis of the impacts that government regulations and other institutions might have on competition.

Quantitative Analysis

Quantitative analysis involves careful and rigorous use of numbers to estimate/calculate specific values, which would eventually contribute to a judgment or decision being taken based on these values.

This method usually requires more technical skills than qualitative analysis and certainly requires more data.

Typical examples of quantitative analysis in a market study include the calculation of market shares, concentration indices, price and profitability analysis, etc.

While it is not within the scope of this Guide to explain the concepts and usages of complex economic models and techniques, the competition agencies and/or the study team should be aware that such quantitative analysis might be required in some cases, usually where the availability of data permits. In such cases, the competition agencies and/or the study team should be prepared to enlist the assistance of economists, statisticians and/or other specialists.

Information Analysis – Perspectives of the United States

Qualitative information is often useful to provide context and general background for firms' business practices. This is useful in market studies exploring industries that are not well understood as it provides context for quantitative data. In addition, qualitative data often can shed light on the motivations and intent of firms. … Qualitative data often provides analytical flexibility. … Quantitative information can often serve as a basis for detailed analysis of firm behavior.

The (US) Antitrust Agencies do not use a particular set of analytical tools in their market studies, but rather perform analyses as appropriate to meet the needs of each particular study. As a result, the Antitrust Agencies have used a variety of analytical approaches. Nevertheless, they frequently employ a case study approach, focusing on understanding the business practices of the specific firms under study. … Some market studies rely heavily on the holistic assessment of qualitative and quantitative information to create a descriptive report of industry practices.

Source: ***Methodologies for Conducting Market Studies – Note by the United States***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)19/en/pdf

8.3. A Note on Information Requests and Confidential Information

Even where the competition agencies might have the power to compel information from market participants, it is still recommended to start first with voluntary requests. Voluntary requests would help to separate between market studies and enforcement actions, while also securing cooperation from stakeholders.

Competition agencies should also try to be clear, focused AND reasonable about the timeframe, forms and formats, and level of details by which they would like the information to be submitted. This is to avoid possible delaying tactics by the businesses, while also avoiding placing unreasonable and unnecessary burdens on all relevant parties.

BIAC Perspectives on Data and Information Requests

It has to be said that sometimes business has the perception that authorities believe, erroneously, that undertakings can get information internally just by 'clicking a button'. That is rarely the reality and many times internal collection of documents is extremely burdensome, either because the information is not routinely kept, or because it is scattered in different locations, or because it is not kept in the format requested by the authority.

In order to reduce such burden (but also to assist the authority with a more efficient targeted request), in our view, prior to launching a market study, the authority should consider how they plan to engage with business. For example – and that happens in many cases – a discussion with certain stakeholders could assist to determine the focus, content and scope of information requests or questionnaires. Stakeholders might be given the opportunity to highlight that maybe data is not available in the format sought by the authority or that it would be take too much time to provide it. Stakeholders might suggest other data that might be useful instead. The dialogue may also lead to more targeted information requests and data which is readily available.

Source: ***Methodologies for Conducting Market Studies – Note by BIAC***, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.5 (of 7), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)28/en/pdf

A good practice by the US FTC is to request that recipients provide their responses to information requests/orders in two parts: a document containing narrative responses and an electronic spreadsheet containing quantitative data in a structured format. The spreadsheet generates responses in uniform format to facilitate comparison across responding firms. The spreadsheet also reduces the effort required to comply by requesting short answers. For example, in its *Patent Assertion Entity* study, “wherever practical, the FTC asked for short responses that can be provided as spreadsheet entries, such as dates, dollar amounts, and ‘yes’ or ‘no’ responses.”

Last but not least, competition agencies should make sure to have appropriate policies and procedures in place to safeguard commercially sensitive and/or confidential information received during the market study process. The protection of confidential information should also be clearly communicated to the businesses in the agencies’ information requests.

RECOMMENDATIONS & OUTCOMES

Market studies are not only about reviewing the state of competition across an economy or within a specific sector/market and identifying problems. Unless where the market is found to be working well, the study team would ultimately have to come up with a range of recommendations to rectify the problems found. For example, where regulatory barriers to entry are found to be benefiting incumbents in a sector to the detriments of consumers, the recommendation would be to enact policy changes. If the problem lies with a highly concentrated market structure, the study team might propose divestitures or structural separation. Or if the competition problem is caused by market failures such as information asymmetry, then the natural solution is to provide consumers with information and recommend behavioral changes.

Possible types of recommendations for a market study could include:

- **Policy change**: Recommendations to the government for enacting/adopting changes to existing, draft or proposed policies, laws and regulations;
- **Competition advocacy**: Activities to raise competition awareness amongst policymakers and sector regulators;
- **Structural changes**: Prescribing structural remedies and/or proposing to the government to adopt changes in the structure of regulated/government monopoly sectors;
- **Voluntary action**: Advocating firms to change their conduct and/or strategic behavior in order to protect the consumer interests or correct market failure;
- **Consumer information**: Providing information to consumers or raising their awareness, to protect their interests or correct market failures;
- **Enforcement**: Opening investigation into possible anticompetitive conducts and/or consumer abuses (or alternatively recommended to the consumer protection agencies); and
- **Follow-up market studies** or market studies in related markets/sectors.

In view of the recommendations from the study team, competition agencies would then have to decide what kind of outcomes they want to have. Some form of cost-benefit analysis or impact assessment should be undertaken for each option to build the case for these recommendations and counter any arguments of those currently benefiting from the status-quo.

Proactive stakeholder engagement is key for securing an effective uptake of recommendations from market studies, which is of course the desired outcome any competition agency would want to achieve. Stakeholder consultation will help the study team/competition agency to validate its findings and analysis, as well as to collect the views of stakeholders on the effectiveness, practicality and unintended effects of proposed measures. Except for the cases where the competition agencies have the legal powers to impose certain remedies and issue orders directly as a result of market studies, the market studies' recommendations need to be consulted with stakeholders and appropriately adjusted to secure their cooperation and adoption.

Some Good Practices to Ensure Effective Uptake of Market Study Recommendations
(1) **Sharing draft**/interim market study report(s) to allow stakeholders to provide feedback and make contributions to its content;
(2) Allowing for **sufficient time for consultation** with stakeholders with regards to the findings and recommendations of the market study (this is particularly important vis-à-vis policy-makers);
(3) **Communicating transparently and timely** with stakeholders how their feedback and contributions, in particular with regards to the recommendations/proposed measures, have been taken into account;
(4) Using a **combination** of public consultation; testing with focus groups or panels of industry representatives and experts; and one-on-one meetings with designated stakeholders; to 'market-test' proposed measures, especially those most affected by the recommendations; and
(5) Considering **joint market studies with other authorities**, which would help with pooling resources, collecting information/data, improving inter-agency relationship and achieving more convincing guidance in solving market problems.

A good practice used by the Canadian Competition Bureau is to run any market study proposal (i.e. proposal for studying a particular sector/market – See **Section 6** on Selection of Sectors/Markets) through an advocacy triage process. This means that no market study would be conducted if it is not considered to have a good chance of successfully implementing its recommendations. The actions to secure outcomes, thus, start even before a market study process is commenced.

Advocacy Triage Process by Canada's Competition Bureau

Triage criteria for competition advocacy projects, including market studies, are set out in the Bureau's *Competition and Comze Framework* and include answering the following questions:

- *Does a forum to present the Bureau's findings exist, and is there a high level of public interest*? A project is more likely to be successful where regulators or decision-makers have voiced concerns about a particular sector or issue, and are considering assessing or changing their rules. Absent this interest, there is a risk that the Bureau's advice may not be implemented if regulators are comfortable with the "status quo". The Bureau's findings are also likely to carry more weight with regulators or decision-makers where there is a high level of public interest in the issues being studied.
- *Will the Bureau bring forward unique arguments, unlikely to be presented by others*? Policy and regulatory matters are often debated by those with commercial or other private interests. While the Bureau has significant expertise to assess the effect that regulatory or structural changes may have on competition, in some cases involving sophisticated parties, these matters can be capably raised by existing participants in policy processes. In such cases, it may be a more effective use of resources for the Bureau to prioritize matters where competition analyses and arguments are unlikely to be brought forward by other capable parties.
- *Will the Bureau be able to gauge the impact of its advocacy efforts*? To ensure that the Bureau's advocacy efforts are effective, it is important that benefits flowing from projects be measureable and visible. The Bureau will typically prefer market studies that are likely to result in measurable outcomes that affect competition, rather than those where the outcomes either: (a) focus only on technical rules that have a small effect on competition; or (b) are not directly linked to competition.

- *Will the Bureau's efforts have clear, tangible benefits for Canadians, and how widely and deeply will the impact be felt*? In assessing the depth and breadth of these benefits, the Bureau may consider, among other factors, the volume of commerce affected by the competition issue, as well as the geographic scope, duration, and extent to which an issue is widespread either in an industry or in the Canadian economy.

Source: *Methodologies for Conducting Market Studies – Note by Canada*, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, P.5 (of17), available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)2/en/pdf

Decisions about training and learning are very context- and purpose-specific, and are best taken by the trainers themselves. Therefore, in this section, we do not seek to impose standardized formats or ready-made materials for the trainings to be undertaken on 'how to conduct market studies'; and instead only recommend a possible lesson plan and some delivery formats/activities that could be used/designed for the process.

Prospective trainers could use the content of this Guide to design their own presentation slides or develop the contents of their talks and/or lectures, in **reference** to the specific **Sections**. Group exercises and hypothetical cases/questions should be added to ensure that the trainees could obtain working knowledge of the process and the issues, rather than just rote/passive learning. All the other pedagogical principles[17] and steps[18] apply.

Training Topics	Duration	Section Reference	Expected Outcomes or Acquired Competencies	Suggested Delivery Formats or Activities
Day 1	**09.00-17.00**			
Introduction	09.00-10.00		• Set objectives and expectations • Introduce the training agenda	Interactive discussion
Terminologies and useful sources of reference	10.00-11.00	• 1.3 • 7.1 • Annex 1	• Understand the concepts of sectors, markets, market studies; • Differentiate market studies by and/or for competition agencies from other types such as industry research, or sector diagnostic assessment; • Introduce relevant sources of reference (ICN, OECD, etc)	General talk or Lecture using slides Show examples of different documents, research studies Go through various websites and reference materials

17 Some pedagogical principles which could be helpful include:
- Creating learning contexts that are as authentic and interactive as possible;
- Encouraging collaborations;
- Promoting problem-solving, creative and critical thinking;
- Building on previous knowledge and experience to engage trainees' interests; and
- Using assessment for learning to accelerate progresses.

18 Some applicable steps include: selecting trainers and trainees, setting up classrooms/training venues, preparing materials and equipments, and conducting evaluation of the training.

Training Topics	Duration	Section Reference	Expected Outcomes or Acquired Competencies	Suggested Delivery Formats or Activities
Purposes, usage and different types of market studies	11.00-12.00	• 2.1 • 2.2 • Annex 2	• Understand the purposes, and usage of market studies • Differentiate amongst different types of market studies • Introduce examples of each type of market studies conducted by AMS	General talk or Lecture using slides Show examples of different types of market studies conducted by ASEAN Member States (AMS)
Lunch				
The overall market study process	14.00-16.00	• 3 • 4.1 • 4.3 • 4.4	• Understand the various steps in a market study process • Understand specific activities entailed in each step	Lecture using slides General discussion on possible logistic requirements and resource implications
The market study team	16.00-17.00	• 3 – Step 2 • 4.1	• Understand the rationale and implications of conducting market studies in-house or outsourced • Understand required team composition, roles and responsibilities	General talk or Lecture using slides Role-play 'study team members' - Group discussion & presentations on team organization and coordination
Day 2	**09.00-17.00**			
Recap	09.00-09.30		• Recognize the previous day's learning • Identify and handle any queries	Interactive discussion
Selection of sectors/markets - Scoping	09.30-12.00	• 6 • 4.2 • 7.1 • 5.2	• Understand how sectors/ markets get selected and how to narrow down the focus of market studies • Examine and balance amongst a wide range of factors to come to reasoned decisions • Clarify and justify why certain sectors/markets should be selected over others, and the scoping decision	Lecture using slides Hypothetical exercise on market(s) selection& scoping - Group discussion & presentations
Central concepts to analyze competition	14.00-17.00	• 7.1 • 7.2 • 7.3 • 7.4	• Understand and apply central concepts such as relevant markets, different types of market structure/ competition • List different types of barriers to entry and determine existence of significant market power	Lecture using slides Group discussion & presentations on examples of 'different types of market structure' & 'barriers to entry'

Training Topics	Duration	Section Reference	Expected Outcomes or Acquired Competencies	Suggested Delivery Formats or Activities
Day 3	**09.00-17.00**			
Recap	09.00-09.30		• Recognize the previous day's learning • Identify and handle any queries	Interactive discussion
Central concepts to analyze competition (Cont'd)	09.30-16.00	• 7.5 • 7.6 • 7.7 • 7.8	• Recognize various types of anticompetitive conducts • Identify possible competition problems related to the exercise of IPRs • Understand the impacts of government policies or certain institutions on competition • Understand the impacts on consumers	Lecture using slides Group discussion and presentations on examples of 'government regulations' and 'business con ducts' with adverse impacts on competition & consumers
Recommendations and Outcomes	16.00-17.00	• 9 • 5.2	• Understand the significance of developing and securing effective outcomes • List different types of recommendations	General talk or Lecture using slides Group discussion and presentations on hypothetical outcome scenarios for market studies
Day 4	**09.00-17.00**			
Recap	09.00-09.30		• Recognize the previous day's learning • Identify and handle any queries	Interactive discussion
Stakeholder management	09.30-12.00	• 5.1 • 5.2 • 5.3	• Understand the importance of stakeholder management • Identify stakeholders, group and place them on a map • Draw up a stakeholder management strategy	General talk or Lecture using slides Group discussion and presentations – Drawing up the stakeholder management strategy for a hypothetical market study
Information Collection & Analysis	14.00-17.00	• 8.1 • 8.2 • 8.3 • 5.2	• Determine information needs of market studies • Identify types of information needed and possible sources • Plan primary information collection • Understand the significance and complementary nature of two types of analyses	General talk or Lecture using slides Group discussion and presentations on different information collection methods, their logistical requirements and resource implications
Day 5	**09.00-17.00**			

Training Topics	Duration	Section Reference	Expected Outcomes or Acquired Competencies	Suggested Delivery Formats or Activities
Recap	09.00-10.00		• Recognize the last four days' learning • Identify and handle any queries	Interactive discussion
Case Study	10.00-16.00		• Introduce a hypothetical market study	Group discussion & presentations on: - Scoping & Setting hypotheses - Determining information requirements & planning information collection - Planning stakeholder management - Developing recommendations and testing outcomes
Wrap-up			• Key takeaways/most important points	Roundtable discussion

An alternative option is to separate between trainings on process-related issues and substantive issues. As a result, we could have:

Topics	Key Contents	Section Reference
Managing Market Study Projects (01-Day Training)	- An 8-Step Market Study Process - Planning and Project Management - Stakeholder Engagement - Information Collection	3, 4.1, 4.3, 4.4, 5, 8.1, 8.3
Understanding and Analyzing Competition (02-Days Training)	- Market Definition - Different Types of Market Structure/ Competition - Market Power - Barriers to Entry - Anticompetitive Conducts - IPRs, Innovation & Efficiency - Impacts of Government Policies or Certain Institutions on Competition - Impacts on Consumers - Remedies	7.1-7.8, 9

Annex 1 – A Suggested Template for Market Study (Type III)

Section Titles	Contents
Executive Summary	The Executive Summary would present all the key findings and recommendations of the market study upfront, in a brief and concise manner, so as to capture the attention of busy readers/stakeholders (such as policymakers).
I. Introduction	This section should succinctly describe the rationale for undertaking the market study; its objectives, scope and expected outcomes; as well as the methodologies employed, together with any relevant limitations or assumptions.
II. Market/Sector Overview	This section should describe the entire supply chain concerning the market/ sector being study, including any relevant upstream/downstream/ adjacent markets; products and prices; key participants; market structure; major trends; the existence of any barriers to entry and exit; etc.
III. Regulatory Framework	All major laws and regulations concerning the market/sector(s), its products (quality, pricing, distribution, etc), and its key participants (manufacturers, suppliers, distributors, consumers, etc) which have significance for competition therein should be summarized and discussed here. Examples include: sectoral laws and regulations, technical/ professional standards and regulations, procurement policy, price laws and regulations, export/ import policies, IPR policies, consumer protection law, etc.
IV. Market Players	This section should present the profiles of all major market players, how they act (unilaterally) and interact with each other, their practices and influence on the competitive process in the market/sector, and particularly if some SOE(s) are active in therein. Major market players may include, though not limited to, the following:
	IV.1. Manufacturers
	IV.2. Importers
	IV.3. Distributors
	IV.4. Retailers
	IV.5. Consumers
V. Key Competition Issues	This section would present all key (structural and behavioural) issues in the market/sector, which might restrict competition therein. These are also the key findings of the market study.

Section Titles	Contents
VI. International Experiences	This section presents how other countries (competition agencies or sectoral regulators, etc) have dealt with similar issues in the past, their success and failure, and any lessons learnt.
VII. Recommendations	This section presents all the recommendations emanating from the market study.
Annexes	The Annexes could include, though not limited to, any questionnaires used during the market study process, survey results, and any particular case studies of relevance.

Annex 2 – Relevant International Guides/Tools

Market Studies Good Practice Handbook by the International Competition Network (ICN) (2016)

This Handbook is a comprehensive compilation of good practices in conducting market studies by members of the International Competition Network, prepared by its Advocacy Working Group to facilitate exchange of experiences and promote learning on this topic. It was first presented at the 11th ICN Annual Conference in 2012, then updated and launch again at the 15th ICN Annual Conference in 2016.

The Handbook comprises of 8 sections. The 1st section introduces the project, the definition of market studies and the overall market study process. The following sections deal with major steps/activities in conducting a market study: Identifying and Selecting a Market to Study – Scoping and Planning a Market Study – Planning Stakeholder Engagement – Launching a Market Study – Collecting and Analyzing Information – Developing and Securing Outcomes – Evaluation of Market Studies. Each Section culminates with a summary of good practices.

The Handbook could be found for reference at:
https://www.internationalcompetitionnetwork.org/portfolio/market-studies-good-practice-handbook/.

Market Studies Guide for Competition Authorities by the Organization for Economic Cooperation and Development (OECD) (2018)

This Guide summarizes the work conducted by the OECD Competition Committee and its Secretariat on the subject on market studies. It is meant to be used by competition authorities, and competition policy-makers more broadly, when designing a framework for market studies, and when executing market studies. It acknowledges that the specific approach and framework for market studies currently varies significantly across jurisdictions, but maintains that there are substantial insights that can be shared from the experiences of competition authorities.

The Guidebook comprises of 6 sections and an Annex on Further Resources. The 1st section introduces the objectives of market studies and the legal frameworks concerning market studies in various jurisdictions. The 2nd section outlines the general market study process. The next four sections go into details about Selecting and Prioritizing Sectors, Methodologies for conducting market studies, Remedies and Outcomes, and Ex-post Evaluation.

The Guide could be found for reference at http://www.oecd.org/daf/competition/OECD-Market-Studies-Guide-for-Competition-Authorities-2018.pdf.

Competition Assessment Framework: An operational guide for identifying barriers to competition in developing countries by the Department for International Development (DFID), UK (2008)

This Competition Assessment Framework, developed by DFID's Investment Climate Team, is a practical guide to help policy makers in developing countries identify and focus on the key barriers to competition.

These barriers can take many forms – technical, financial, and legal, as well as those related to political economy issues – and may arise from public sector actions as well as private sector ones. They have a range of policy and administrative implications. The Framework may be of interest to others such as NGOs and donors interested in the state of competition in a country.

The Framework comprises of 9 main sections and number of appendices. The 9 main sections are the 9 steps to follow in assessing competition: (i) How to select sectors for assessment; (ii) How to analyze competition; (iii) Indentify the relevant markets and the competitors; (iv) Examine the market structure; (v) Look for barriers to entry; (vi) Ascertain if government policies or institutions limit competition; (vii) Consider vested interests; (viii) Look for signs of anticompetitive conduct by firms; and (ix) Draw conclusions.

The Framework could be found for reference at
https://www.oecd.org/daf/competition/reducingregulatoryrestrictionsoncompetition/46192459.pdf.

Annex 3 - Market studies conducted by AMS

Competition agencies in ASEAN have been conducting a number of studies on various sectors and markets as well. Some of them are available online at the following links:

Indonesia
http://eng.kppu.go.id/?fbclid=IwAR2qCxH2vCPG4HEejC_vUvX1eMUnAkDfB565NKZUuhiHnjz-gGEKEpzpeqg

Malaysia
https://www.mycc.gov.my/market-review

Singapore
https://www.cccs.gov.sg/resources/publications/market-studies

Vietnam
http://www.vca.gov.vn/Bublications.aspx?CateID=198&page=2

Footnotes

1. Section 11 - 'Power to conduct market review' of the Competition Act 2010 of Malaysia.
2. ICN 2016 Market Studies Good Practice Handbook.
3. ICN 2016 Market Studies Good Practice Handbook.
4. One commonly-used test is the Hypothetical Monopolist or SSNIP (Small but Significant Non-Transitory Increase in Price) Test, which examines whether a hypothetical monopolist would profitably and permanently increase prices by 5-10% in a given candidate market.
5. Porter, Michael E., Competitive Strategy: Techniques for Analyzing Industries and Competitors, 1980 and new introduction in 1998, The Free Press, New York, NY.
6. OECD (2017), *Competition Assessment Toolkit: Volume 2. Guidance,* www.oecd.org/competition/toolkit.
7. An essential facility may be defined as a facility or infrastructure, without access to which competitors cannot provide services to their customers. An essential facility may exist either at the manufacturing (upstream) or distribution (downstream) level. Examples of essential facilities include technical information, transport infrastructure (e.g., rail, port or airport) and pipelines/wire for the supply of water, gas, electricity or telecommunications services, or in the context of a digital economy, a digital platform or an operating system.
8. For more details, see https://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part1.pdf.
9. Only where the competition agencies have the necessary legal powers.
10. Members of the study team or staff of the competition agencies to look for relevant products on the Internet using regular search engines, often to see whether there is lack of information or any other type of market failures.
11. An information collection method whereby external contractors, or staff of the competition agencies, pose as customers making purchase enquiries to see how they are dealt with by the businesses.
12. Only where the competition agencies have the necessary legal powers.
13. See *Methodologies for Conducting Market Studies – Note by the Netherlands,* a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)14/en/pdf.
14. See *Methodologies for Conducting Market Studies – Note by the United Kingdom,* a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)18/en/pdf.
15. See *Methodologies for Conducting Market Studies* – Note by Canada, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)2/en/pdf.
16. See *Methodologies for Conducting Market Studies* – Note by the United States, a written contribution submitted for Item 2 of the 125th meeting of the OECD Working Party No. 3 on Cooperation and Enforcement on 20 June 2017, available for view at https://one.oecd.org/document/DAF/COMP/WP3/WD(2017)19/en/pdf.

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