

Unclassified

English - Or. English

4 December 2020

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE**

Cancels & replaces the same document of 2 December 2020

Global Forum on Competition

USING MARKET STUDIES TO TACKLE EMERGING COMPETITION ISSUES

Summaries of contributions

-- Session IV --

10 December 2020

This document reproduces summaries of contributions submitted for Session IV at the 19th Global Forum on Competition on 7-10 December 2020.

More documentation related to this discussion can be found at oe.cd/mktcomp.

JT03469457

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Using market studies to tackle emerging competition issues

-- Summaries of contributions --

Abstract

This document contains summaries of the various written contributions received for the discussion on "Using market studies to tackle emerging competition issues" held during the 19th meeting of the Global Forum on Competition (7-10 December 2020, Session IV). When the authors did not submit their own summary, the OECD Competition Division Secretariat summarised the contribution. Summaries by the OECD Secretariat are indicated by an *.

Albania

Albanian Competition Authority (ACA) has enforcement powers to identify any violation or distortions of the competition law and also may conduct a market study or open a general investigation in a sector of the economy to get the know-how on markets that weren't previously under investigation.

Legal assessment, identification of market players and market shares, market regulators, barriers to entry or exit, and so on are included in the report of market study/general investigation. The methodology that ACA uses on market studies is based on the best practices from the International Competition organizations like: OECD, European Commission, International Competition Network, etc. A market study/general investigation may end up with the Competition Commission Decision either to open, in-depth investigation, or giving recommendations for the market regulators or giving obligations to undertakings to improve the market without using enforcement actions.

During 2018-2019 the Higher Education (HE) sector was assessed as one of the sectors with a very important role in the overall socio-economic sustainable development with its effects on the entire society, and lead the Competition Commission through decision no. 573, dated 26.11.2018 "On opening of General Investigation procedure in the HEI", as amended, to open a general investigation to assess the level of competition of the services offered in the HE market and to collect know-how from a market that ACA didn't have any case before.

Requests for Information were sent in both public and private Higher Education Institutions (13 public HEIs and 26 private HEIs) and institutions that regulate the market: Ministry of Education, Sport and Youth, and the Agency for Quality Assurance in Higher Education.

It resulted that in Albania, the HE market structure is *monopolistic competition* because of the high number of HEIs offering similar study programs but differentiated from the quality services perspective. Some of main findings were related to legal assessment, lack of transparency of the information and huge gaps between private HEIs vs. public HEIs study fees.

The case ended with the Competition Commission Decision no.706 dated "On the closure of the general investigation in the HE market; giving some recommendations for Ministry of Education, Sport and Youth, National Institute for Statistics (INSTAT), public HEIs and private HEIs, as well as giving some obligations to private HEIs recommendation given to the market regulator institutions and obligation to the HEIs".

Austria

The Federal Competition Authority (BWB) uses market studies to identify both existing and emerging competition issues. BWB's legal statute allows it to give opinions on general issues of economic policy, to investigate a specific business sector if circumstances suggest that competition may be restricted or distorted in such business sector. It may also conduct competition monitoring, particularly to assess competition intensity of individual business sectors or markets. All three may involve the usage of market studies to a certain extent.

An advantage of market studies in comparison to other advocacy tools is that they can provide helpful evidence for a regulatory political debate. The BWB as an independent, bipartisan authority can give the view through the competition lens. However, market studies are quite resource and time intensive and require both comprehensive and reliable data made available to the competition authority. Data availability certainly is a key challenge in conducting market studies. Also, close dialogue with all stakeholders is needed to understand all aspects of a specific market.

The BWB conducted several market studies in the past and is also doing so currently in several markets. A sector that has recently been subject to a market study is the taxi- as well as the ride-hailing services sector. The latter includes services provided by online platforms such as Uber or Bolt. In this sector investigation, the BWB analysed the rather strongly regulated market for passenger carriage regarding competition law and economics. The market study illustrates how the underlying economic problems related to trust goods cause issues to competition on certain markets and how digitalization may contribute to reduce regulative burden. The contribution elaborates on this most recent market study in greater detail highlighting the underlying motivation as well as problems encountered.

The main results of the BWB's market study find that the adaption to the regulatory framework will most likely have a negative impact on total consumer surplus. Further, it may lead to relatively high barriers to market entry, which may again have adverse effects on the competitive environment.

Brazil

Market studies are important to CADE as policy instruments because they provide an in-depth, comprehensive analysis of a given market; support the authority with the assessment of mergers and acquisitions, and anticompetitive conduct; and, mainly, because of their implications for competition advocacy.

CADE's Department of Economic Studies (DEE) regularly carries out different market studies that are published in different formats according to their purpose, namely: the *Cadernos do CADE*, which are reviews of CADE's decisions, Technical Opinions, and Working Papers. Most of these studies are prepared by the technical staff of the Department of Economic Studies and, in some cases, by external consultants who are hired to carry out this type of study under the supervision of the department.

Market studies are appropriate to address emerging issues related to competition defense when they can be completed in a timely manner. Moreover, the availability of information and data about the markets, and the possibility of interacting with market players in a positive way are important aspects to be considered when deciding whether or not to conduct a study of this sort.

Some strategies which might help with this kind of research at CADE include improving the monitoring of possible emerging issues that may impact the competitive environment; carrying out studies with greater depth and timeliness; and producing studies in association with other governmental bodies such as regulatory agencies.

Finally, CADE presents two market studies carried out recently. The first one is called *Competition effects of the sharing economy in Brazil: Has Uber's entry affected the cab-hailing app market from 2014 to 2016?* and was carried out to support the debate about the effects of the entry of passenger-transportation apps in the market on traditional taxi services, and the necessity to regulate this activity. CADE participated intensively in the debates on this topic.

The second market study, prepared and published by the DEE in 2019, investigated the conditions for slot allocation at Brazilian airports and the possible effects of reallocating Avianca's slots under different scenarios. It assessed the impact a large airline ending its operations would have in the market, explored scenarios for the reallocation of airport slots, and addressed the need to change regulations on this topic.

Colombia

This contribution addresses the key questions raised by the Secretariat in the call for contributions to the present Roundtable. Particularly, we develop on the methodology to conduct market studies and the challenges and strengths of the activity. The aim then is to provide Colombia's view on the value of market studies to tackle emerging competition issues through the presentation of our recent experience.

Costa Rica

The Costa Rican legislation empowers the Superintendency of Telecommunications (SUTEL), as the sectoral competition authority in telecommunications, to carry out studies to better understand the operation of markets in which it exercises its jurisdiction in order to detect distortions or barriers to competition and free concurrence and to promote their removal.

The SUTEL Market Study Guide states that, upon defining the market study to be performed, the Competition Authority may summon interested economic agents to help design the recommendations and evaluate the expected costs and benefits of their implementation. Recommendations issued by SUTEL through market studies do not have binding effects. However, any public entities deviating from these recommendations must inform SUTEL about the reasons for not implementing them within a maximum of 30 calendar days. The report must be signed by the highest authority with powers to implement recommendations of the public entity issuing it.

To select and prioritize market studies, SUTEL may consider any information gathered in the course of its work promoting competition or enforcing the law, through complaints from companies, consumers, trade associations and other stakeholder groups, or through formal requests from designated bodies.

The first market study undertaken by SUTEL involves telecommunications operators with limited possibilities of accessing and marketing services in some residential condominium projects. The main objective of the “Market Study on Access to Shared Infrastructure in Residential Condominiums” was to determine whether or not there were barriers to entry for telecommunications service providers and operators in the internal telecommunications networks of horizontal and vertical condominiums, apartment buildings and closed residential complexes in the central planning region.

The methodology used by SUTEL for this study was based on the compilation of quantitative and qualitative information in order to ascertain the validity of the concerns that gave rise to the study, understand the causes of the problem, and identify potential solutions. The following sources of information were used in the study: end-user survey, condominium poll and consultation with telecommunications service operators.

Once the information was analyzed, the following access barriers were detected: nature of construction, aesthetic nature, bad deployment practices, saturation of infrastructure and exclusivity agreements. Also, the study evidenced that developers of construction projects, administrators and owners of condominiums lacked knowledge regarding competition and its benefits for consumers. Consumers themselves were also found to be unaware of their rights to freely choose and change service providers.

Based on the previous conclusions, and after an open public consultation process, certain recommendations were issued with the aim of reducing barriers to competition. At this time, SUTEL is working on implementing and communicating these recommendations to stakeholders identified in the study.

Croatia

This contribution describes relevant considerations for using market studies as appropriate instruments to address actual competition issues or problems which do not necessarily require enforcement. Those main considerations usually include: available resources, importance of particular market for competition, suspicion about cartel or some prohibited behaviour on certain market, flaws in the functioning of some markets and new emerging fast-moving markets. This first part of the contribution emphasises several benefits of market studies to competition: valuable sources of information about functioning of markets which can serve as an instrument of correcting behaviour of undertakings on the market. In addition, market studies are important competition advocacy tool, they are pointing to particular potential competition concerns with interest of consumer in focus, they can provoke legislative action based on the results of the market studies and market studies can trigger initiation of formal competition law proceedings.

In continuation, the contribution also addresses market studies as a starting point for enforcement action by using case examples from practice of Croatian Competition Agency (prohibited vertical agreements and commitment decision also dealing with vertical agreements).

Final part of contribution addresses couple of current and ongoing competition issues which market studies can help to properly analyse, primarily in relation to digital markets such as: digital platforms and how to properly analyse them if the market analysis show that traditional instruments are not adequate, how to approach them as gatekeepers, how to treat on line advertising and algorithms, limits to the access to data.

Denmark

The majority of the competition issues that the Danish Competition and Consumer Authority (DCCA) faces and handles in market studies and through non-enforcement tools are well-known. That said, the DCCA also faces a number of emerging competition issues, e.g. issues caused by narrow oligopolies in financial markets and issues caused by the use of new, digital technology and digital platforms.

As part of tackling the emerging competition issues caused by digital technologies the Danish government has funded and the DCCA has established a separate division dedicated to these issues (the so-called Digital Platforms Division). Besides the new Digital Platforms Division, the DCCA uses a number of non-enforcement tools to tackle competition issues – both emerging and well-known issues e.g. major in-depth market studies and shorter analytical articles.

The main trade-off when deciding which tools to use concern the tools' expected impact on the competition issue versus the expected amount of resources used on, e.g. a major market study.

The DCCA considers a market study to be the most appropriate tool when (1) the competition problems in a market are not expected to be caused by violation of the competition law, (2) the competition issues are expected to be of a structural or regulatory nature, (3) the DCCA expects to be able to put forward recommendations that will have an impact on the market and (4) the DCCA needs more knowledge about the specific market.

The key limitation of the market study tool is that it does not give the DCCA the power to oblige the relevant authorities to act on recommendation from a market study. The DCCA considers the key strength of the market study tool (major in-depth market studies) is that it promotes better-functioning markets even when competition problems are not caused by violation of competition law.

Finland

There are currently four larger themes that emerge from a number of distinct projects within the FCCA. These are: the effects of changes in the market regulation, digitalization, competition policy tools, and the roles of public and private actors in the markets. The market studies can (i) play an important role in initiating further enforcement investigation by the FCCA, (ii) support initiatives for legislative reforms, and (iii) provide background for the FCCA for its statements. Additionally, the FCCA can initiate a discourse on topics that are not so much in the focus of public debate or priority of the current policy agenda. Generally, there are multiple different factors that affect the decision to launch a research project within the FCCA. The Finnish Competition and Consumer Authority (the FCCA) has conducted research projects which have resembled market studies for years. However, a strategic shift in the FCCA's approach to market studies was recently initiated. The FCCA has started to build up a capacity to utilize also large datasets and empirical quantitative methods.

India

The submission argues that market studies are an important constituent of the toolbox at the Competition Commission of India's disposal for discharging its mandate of protecting and promoting competition in markets in India. With the element of stakeholder engagement prominently embedded in them, these studies allow the Commission to gauge market developments, track evolving competition dynamics and understand specific business practices along with their implications for competition in different sectors from multiple perspectives, outside the scope and context of casework.

Markets may be fraught with impediments to competition that may not always lend themselves to antitrust scrutiny within the statutory framework. Market studies are considered particularly useful in ascertaining the fundamental causes that underlie such issues and accordingly help identify the appropriate instrumentality for addressing them. The Commission's emphasis on market studies has seen a marked increase in the last few years, with a number of market studies having been initiated in different sectors. Some amongst them are (a) the study into surge pricing in the app-based cab market in India (b) the market study on the telecom sector in India (c) the market study on the pharmaceutical sector in India (d) the market study on e-commerce in India.

The submission enunciates the role of market studies in the Commission's work agenda, using the e-commerce study as a case in point. As detailed in the submission, the study led to identification of a set of competition issues, largely comprising practices of online intermediary platforms, which in certain specific circumstances could violate the provisions of the Competition Act, 2002. It was felt that irrespective of the market position of the intermediary platform and without a determination of violation of the competition law, improving transparency over certain areas of the platforms' functioning could bridge information asymmetry, which in turn could positively influence competition not only on the platform but also between platforms. In the final report of the market study, a list of areas was enumerated for self-regulation by the e-commerce marketplace platforms. Going ahead, based on its experience and the impact of the self-regulation advisory, the Commission will examine whether such recommendations based on market study findings can be converted into Code of Conduct requiring compliance from the industry.

The submission concludes that market studies will continue to play an important role in identifying and diagnosing emerging competition issues by exploring the different drivers and clarifying what options there are to tackle them from a competition policy, competition enforcement, regulatory, or other policy perspective.

Indonesia

The use of Market Study Method may describe the real conditions in the market such as market structures, prices, concentration levels, and number of business actors. Such method may also show a comprehensive and two-way (reciprocal) Structure-Conduct-Performance (SCP) relationship. The duration of the use of this method is indefinite so as to enable a preparation of a market study of certain sectors that takes a relatively long time.

The results of market study may serve as a source of initiative case in an effort to enforce competition law and as a basis for the giving of policy recommendations to the government and market study may also serve as a reference in assessing mergers and acquisitions in certain sectors.

However, in conducting a market study, specific data are often needed, meanwhile the availability of such data is not always adequate. This certainly can affect the conclusions generated from the said market study.

Take for example the difficulty faced by ICC in preparing a market study regarding the digital economy sector due to the limited data available, such as, data of user transactions. The available data in this sector are still general in nature, namely merely in the form of data of users who access without being equipped with a description of the number of transactions conducted, meanwhile business actors in that sector are not cooperative, either and they often refuse to provide data. This data may actually be analyzed by conducting calculations based on the existing traffic analyses, however the limited Human Resources at ICC makes it impossible to do considering that the daily access to the existing transactions could amount to millions.

In order to cope with the above impediments, ICC uses a proxy approach, wherein market structures are assessed based on the estimated transaction values in each company based on the basis of the platform/site category. The transaction values are then estimated using the number of website visits converted to a conversion rate.

The other solution taken by ICC in surmounting such data limitation is by establishing close cooperation with ministries/agencies as well as stakeholders who have supporting data in various sectors. In addition to the above, ICC also engages external parties in the preparation of market study, including in providing data, namely experts or researchers from the relevant sectors.

Conclusions

Market study constitutes a method that has been effectively proven in analyzing a sector in a comprehensive fashion, but the results of market study sometimes may differ from one another in accordance with the availability of data and the quality of analysis. Therefore, it is essential for the authorities to have guidelines or references in conducting market studies so that the market studies conducted have the same standards.

The results of market studies conducted by the authorities may be utilized to serve as data archives or references in analyzing certain industrial sectors in the subsequent years. The results may also be used as references in case handling for various sectoral cases.

Japan

The Japan Fair Trade Commission (hereinafter referred to as the “JFTC”) has been tackling competition challenges which are generated from digitalization of each market. One of the tools to address these challenges is a fact-finding survey. The JFTC conducts fact-finding surveys to grasp the actual status of markets, which is essential to appropriately implement the Antimonopoly Act and the competition policy.

This contribution paper mainly introduces a recent fact-finding survey regarding code payment services in the fin-tech sector, which revealed some competitive concerns in the sector and presented some recommendations regarding accessibility to the fund transfer system and governance of the operator of the system.

Kenya

The Competition Authority of Kenya ('the Authority') is mandated by the Competition Act No. 12 of 2010 ('the Act') to promote and protect effective competition in the markets. It has also a mandate to prevent unfair and misleading market conducts in Kenya. The Authority achieves its mandate through regulation of market conduct and market structure. The emergence of digital platforms has brought tremendous consumer benefits, although it has regulatory challenges too from a competition perspective. The Authority views the emergence of digital platforms as an emerging issue requiring development of a new regulatory approach informed by all the stakeholders, including the consumers. Indeed, digital credit has significantly impacted financial inclusion and altered how credit is accessed in Kenya. Currently, more than 60 lenders have pushed the overall access to formal financial services to 83% in 2019, up from 75% in 2016; with 88% of the adult population having access to a mobile money accounts. The Unstructured Supplementary Service Data (USSD) is one of the ways for provision of and access to mobile financial services. To understand competition in dynamic digital platforms, the Authority carried out a market inquiry in 2016 into the pricing and conditions of the USSD platform access offered by Mobile Network Operators (MNOs) in Kenya.

The objective of the market inquiry was to determine whether accessing financial services through the USSD channel constrained competition in financial services and related markets. The study established that the dominant MNO prices for USSD services were unfairly high and even more excessive in prior years compared to other MNOs with similar service provision in the region; differential pricing applied to different parties was seemingly discriminatory, and the effect of the higher prices was deemed as unfair as exploitative. MNO prices were deemed to undermine competition since they were likely to harm the ability of downstream firms, such as mobile money services providers and banks, to offer a competitive service; as margins were squeezed as a result. The Authority engaged the dominant firm and compelled it to commit, in lieu of investigations, to lower its USSD costs and apply them uniformly to all players. In addition, the MNO was compelled to publish and maintain updated schedule on its website of its standard offered prices for USSD services to inform customers' costs of its products.

The outcome of the Authority's intervention provides a clear testimony that market inquiries can be used as a robust tool to not only identify such distortion of fair competition and achieve policy objective of accessing financial services, but also informs future regulatory decisions of the Authority premised on the findings of such market inquiries.

Korea

The Korea Fair Trade Commission (“KFTC”) has conducted market studies on a total of 33 industries from 2008 to 2020, and the findings and recommendations have been mostly used to identify and improve regulations that restrain competition.

In the case of the liquor industry, based on the market studies in 2010 and 2016 respectively, the KFTC improved anti-competitive regulations by easing the requirements for license of beer manufacturing facilities and designation of tax-paying bottle cap manufacturers. The KFTC also increased the ceiling on the manufacturing facility size for small-scale beer businesses. As a result, small- and medium-sized businesses could enter the beer market where large companies dominated, and competitiveness of the liquor industry has been enhanced through encouragement of business activities. In addition, as alcoholic beverages such as craft beer diversify, consumers have come to have broader choices.

In the case of the air passenger transport industry, based on the market analysis in 2018, the KFTC improved regulations such as license to operate air transport service which unreasonably hindered the entry of new carriers. This helped three companies newly acquire the license. For the moment, due to a drop in demand for air passenger transport amid COVID-19, it is difficult to evaluate the competition promoting effects of the regulatory improvement. However, in the long term, it is expected that various effects such as decrease in airfares, diversification of services, and improvement of quality will occur if the demand for air passenger transport increases after the COVID-19 pandemic is over.

In the case of the school uniform industry, through market studies in 2015, the KFTC suggested introducing short- and long-term plans for the “school-managed uniform purchasing system” in consultation with the Ministry of Education. As a result, the recurring conduct of disrupting competition among school uniform businesses has been prevented and competition has been promoted.

Latvia

Alongside investigation activities a significant role is allocated to a range of promotion events of competition culture and market monitoring to prevent the possibility of infringements in future. In deciding which tool is most appropriate to address competition issues in each situation it is useful keep in mind the goal what needs to be achieved and to consider scope and the magnitude of the problem as well as other factors like consumption of resources. Market studies are the most appropriate tool when there is a lot of unknown facts and in-depth and comprehensive research is needed to understand the market in question. And, a useful tool when the Competition Council of Latvia (the CC) receive many similar complaints about the same problem or many different complaints in the same market.

In the past 5 years the CC has carried out several market studies which have identified competition issues in numerous markets associated with market structure and regulatory nature, such as:

- Distortions of competitive neutrality in vehicle inspection market and organization of cultural events;
- Restrictions in public procurements in the field of online ticket sales and the procurement of vehicle registration number plates;
- Anticompetitive regulation in the medicines market and insurance market;
- Growing market concentration in pharmacies market, reimbursed medicines market and daily consumer goods market;
- Oligopolistic market structures with a risk for tacit collusion in telecommunication sector;
- Combination of structural and regulatory issues in waste-management market.

The key strength of market study is that it provides information about competition issues and solutions to industry. After the CC have carried out market study, report of this study is published to the general public so that all stakeholders can learn the conclusions of the market study and take part in changing competition environment whether it is Ministry in charge or market participants themselves. If signs of violation of the Competition Law are detected during market study, the CC can initiate a case and investigate. Also, if market study reveals that the successful development of competition in the industry is hampered by laws and regulations, the CC shall develop and submit to the responsible institutions of the industry proposals for the necessary amendments to the laws and regulations in order to improve the competition situation. Market studies are a strong platform through which various competitive challenges in industries can be addressed, but qualitative and evidence-based market study may require significant consumption of employee resources and time. Such a small institution as the CC must actively think about the allocation of resources in relation to priority cases and often the amount of resources is not enough to be able to carry out significant market studies and to be devoted to enforcement activities at the same time. It should be borne in mind that recommendations coming from market study are non-binding and that the parties involved are not always interested and have no obligation to address potential competition concerns. The CC does not have the right to force changes needed in the market that are identified in market studies if there are no anticompetitive conduct by undertaking. This significantly limits the effectiveness of market studies as a tool to tackle emerging competition issues. Therefore, the CC also take the likelihood of successful result and amount of recourses needed into account when deciding if market study is the most fitting tool to tackle competitions issues. There are some success stories where market studies have solved competition problems or prevented possible competition issues from emerging. But unfortunately, it must be acknowledged that there have been situations where parties involved do not take into account the CC recommendations.

Mexico

Summary (COFECE)

Amongst the powers granted to COFECE, there are two tools which involve in-depth market analysis: (i) market studies, a flexible advocacy tool by which the Commission assesses the degree of competition in a market, and when competition problems are identified, issues non-binding recommendations to address them; and (ii) market investigations, an enforcement tool, established in Article 94 of the competition law, which allows COFECE to determine the existence of barriers to competition and establish structural and behavioural remedies if needed; and to determine the existence essential facilities and regulate their access.

Market investigations, a "hybrid" competition and regulatory tool, allow COFECE to conduct a thorough market assessment employing its investigation tools, and to impose appropriate remedies when identifying competition problems stemming from the market's structure and other characteristics not directly related to anticompetitive conducts. Thus far, the Commission has opened seven market investigations in diverse markets that have generated experiences about its use and effectiveness, allowing it to identify in it several advantages to effectively intervene in digital markets. These special characteristics and the potential advantages in digital markets, have made the international community turn in the direction of Mexico's Article 94 as a reference in the current global debate within the competition community about such market analysis mechanisms – like the "*New competition tool*" of the European Commission.

Summary (IFT)

In this contribution, the Federal Telecommunications Institute (IFT) describes the legal framework applicable to market studies in Mexico in the telecommunications and broadcasting (T&B) sectors; it identifies some of the challenges it faces as a competition authority and regulator, due to the dynamism of these sectors; and it shares the experience gained from conducting recent market studies

The Mexican legal framework empowers the IFT to carry out markets studies, which can help to identify possible risk to competition and may result in the launch of investigations. Given that technological and services evolution and convergence affect the structure and operation of markets in the T&B sectors, with competition implications, the IFT considers market studies increasingly relevant due to their flexibility and scope, their usefulness as an advocacy tool and their comprehensive approach.

In Mexico, market studies in these sectors are recent, mainly because of the previous lack of availability of information on relevant market indicators. However, as a regulator, the IFT currently collects information that can be used to elaborate market studies, in order to diagnose and gain knowledge of markets, to obtain insights into its regulatory processes, and to use them for competition advocacy purposes.

This contribution includes the description and main findings of the following market studies carried out by the IFT:

- Diagnostic Study in Free-To-Air Radio Service in Mexico
- Diagnostic Study in Free-To-Air TV Service in Mexico
- Analysis of Public Procurement in the Telecommunications Sector in Mexico
- Supply and Demand of OTT Services for Audiovisual Content in Mexico
- Competition Analysis in the Convergent Services Environment
- Regulatory Policy Options Resulting from the Growth of Audiovisual Content Services Provided through the Internet
- Bundling and Discount of Fixed Telecommunications Services
- Audiovisual Content Market and Vertical Relationships in the Telecommunications Industry

Peru

In order to strengthen its role of carrying out market studies and competition advocacies, and following the best international practices, Indecopi published its Market Studies Guidelines (2016), explaining what are market studies, what is their importance and what are the possible outcomes they can lead to: predominantly, recommendations to both public authorities and private agents to adopt measures that facilitate the development of competitive markets for the benefit of consumers.

Also in recent years, Indecopi has carried out various studies and advocacies in markets such as: notary services, driving tests in Lima Region for the issuance of driving licenses, bidding for roadway corridors by the Municipality of Lima, health insurance provided by private health care institutions, tourist transport services for the access to the Inca Citadel of Machu Picchu, manufacture and distribution of license plates and public procurement.

As a result of market studies and competition advocacies carried out in recent years, Indecopi has identified a set of risks for competition that affected the investigated markets, issuing recommendations that were –in most cases– embraced by the addressed public agencies, introducing procompetitive measures in the affected markets, including those of roadway corridors, health insurance provided by private health care institutions and tourist transport services to the Inca Citadel of Machu Picchu.

Finally, during the Covid-19 pandemic, the demand for health services has increased as a result of the rise of coronavirus cases, which has led to several monitoring actions in the health services markets. In addition, Indecopi is currently studying the risks that could occur as a result of recent changes in consumer behavior and the increase in the importance of digital platforms and e-commerce for customer transactions. For instance, risks generated by the use of digital platforms, possible anticompetitive practices facilitated by the use of algorithms and the handling of user data and possible barriers to entry arising from the accumulation of a large amount of user data, among others.

Portugal

The Portuguese Competition Authority (AdC), under the Portuguese Competition Act, may undertake market studies (and sector inquiries) on all sectors of the Portuguese economy. Market studies are usually initiated *ex officio*, but they may also follow a request from the Government.

Many of today's emerging competition issues have a common thread. They are linked to rapidly evolving digital, often multi-sided markets where innovation is a significant dimension of competition, and to business models that may be complex and heavily reliant on data and network effects. There often exists a significant degree of asymmetry of information between competition authorities and firms operating in these markets. Moreover, competition authorities may have little or no enforcement experience regarding these issues.

The motivations of competition authorities for undertaking market studies may be varied. An important goal is competition advocacy, where competition authorities try to shape how markets work by advocating for measures promoting measures that promote competition between firms and reduce barriers to entry and expansion.

Market studies are most often used to analyse potential structural and regulatory competition concerns in specific markets. Market studies also signal to market players a commitment of the AdC to tackle competition issues in a market, and informs on how the AdC views competition in the markets at stake. Signalling commitment and raising awareness about possible competition issues in a market may also encourage consumers, firms and other stakeholders to engage with the AdC, and bring important information regarding how competition is unravelling in the market. Since the AdC is part of multinational competition networks, market studies are a means through which it can contribute and be part of a wider international discussion on competition policy. This role may be particularly important in the context of today's competition issues, as they often have a global scale and apply to global firms.

In addition to competition advocacy, competition authorities may undertake market studies in order to gain experience and knowledge about specific markets, so as to improve their competition enforcement activity.

In the context of the emergence of new markets, business models and business strategies, competition authorities have been investing resources on building up knowledge and capabilities to better handle the competition issues that arise in these markets. Market studies are an important tool to gain experience and knowledge about these markets, and close the information gap that may exist between competition authorities and firms. Market studies may also provide competition authorities a better understanding about whether the tools at their disposal are adequate to meet the challenges posed by emerging competition issues, as well as to discuss potential solutions to the shortcomings identified.

In the context of the digitalisation of the Portuguese economy, the AdC has undertaken market studies regarding “*Competition and Innovation in financial services*”¹ and “*Digital Ecosystems, Big Data and Algorithms*”². These market studies aimed at assessing barriers to entry and innovation, as well as risks for competition.

¹ *Technological Innovation and Competition in the Financial Sector in Portugal*. The English version of the issues paper can be found [here](#).

² *Digital Ecosystems, Big Data and Algorithms*. The English version of the issues paper can be found [here](#).

Romania

Market studies can be used by competition authorities for advocacy purposes, to pursue enforcement actions, to assess effects of decisions and, more generally, to gather information about the market.

While the digital economy offers abundant opportunities to customers and retailers alike, it is also fast moving, brings about disruptive innovation and raises a number of competition concerns. This is why, as detailed also in previous contributions on competition policy in a digital environment, the Romanian Competition Council has used market studies to examine emerging issues related to the recent advancements of the digital revolution, such as online platforms, sharing economy or the Big Data technology. The need to gather information about these issues stems from the need to exercise great care in balancing the protection of the markets from anticompetitive behavior against causing harm from interfering in complex businesses that are both fast moving and not fully understood.

The most recent study focuses on the effects of Big Data technologies on competition and has brought to RCC unique insight into the use of such technologies on the Romanian market, their benefits and caveats, the competitive concerns raised and also the challenges a competition authority would face when analyzing cases involving Big Data.

Russian Federation

Market studies play an important role in determining the trends of various changes in a certain product market.

Analysis of the state of competition in the product market is a mandatory step in establishing the dominant position of an economic entity and identifying other cases of preventing the restriction or elimination of competition.

In the opinion of the FAS Russia, market analysis is one of the main tools at the disposal of the antimonopoly body capable of reliably assessing the state of the competitive environment in the product market and seeing the objective situation on the studied product market, which allows it to make competent and balanced decisions aimed at maintaining and/or increased competition and effective protection of entrepreneurship in the Russian Federation.

In order to implement the Federal Law of 26.07.2006 No.135-FZ "On Protection of Competition" by order of the FAS Russia dated 28.04.2010 No. 220, the Procedure for analyzing the state of competition in the commodity market was approved.

FAS Russia in its activities, including when considering cases of violation of antimonopoly legislation, exercising control over economic concentration, is guided by this Procedure.

Serbia

Market studies are generally considered a useful tool which competition authorities can use to obtain a greater understanding of the functioning of a certain market or its segment. Depending on the particular legal framework and its practical enforcement, market studies conducted by competition authorities around the world may range from simple fact finding exercises over studies of analyses of competition to multi-year sector inquiries. They can be stand-alone research projects or form part of a particular case analysis. While the presumption is that competition authorities perform them in-house, they can also be outsourced (in part or entirely).

In the Republic of Serbia, the national competition authority – Commission for Protection of Competition (the **CPC**), which has been in existence since 2006, has the competence to conduct market studies. According to the Law on Protection of Competition, the CPC has the delegated power to monitor and analyse the conditions of competition in individual markets and individual sectors, as well as to conduct sector inquiries. In practical terms, in order to be able to exercise all its legal competencies, the CPC has established a special division in 2010, dedicated to the performance of economic analyses- Division for Economic Analyses. The decision on the choice of market to be scrutinised is never an easy one and is made by balancing different criteria, such as the importance of a particular market for the overall economy, its impact on other markets and consumer benefits, together with the urgency of the issue in question.

Most recently, in July 2020, the CPC has completed a sector inquiry into the rail freight transport market in the Republic of Serbia, in cooperation with the World Bank. The particular sector was chosen for the market study due to the fact that modern, efficient and competitive railway is considered of utmost relevance for the future integration of the Serbian rail market into the European Union internal market for rail. The issues related to this market came to be considered emerging due to an important regulatory change in the Serbian rail market, which was aimed at its liberalization and introduced in 2015, as well as due to the recent CPC enforcement experience on this market, which resulted in its further opening.

In the course of the sector inquiry, no elements were found that indicated distortion of competition by individual market participants and/or by their coordinated action. Therefore, no enforcement action has followed. However, the study has identified three main reasons for the underdevelopment of the Serbian rail freight market, and resulted in clustered recommendations to be implemented (jointly) by the relevant authorities in charge of the market in question and the pertinent state-owned enterprises. The inquiry represents a good example of cross-institutional cooperation, and we believe that the findings of the inquiry, together with its recommendations, will contribute to further development of a sustainable market-oriented railway in Serbia.

Despite the general benefits of sector inquiries, however, their use is not without limitations, for which reason competition authorities must develop a good practice of balancing various interests while maintaining a sufficient degree of flexibility.

Singapore

With increasing digitalization of industries and the growth of tech-focused products and services, the Competition and Consumer Commission of Singapore (“**CCCS**”) is staying vigilant to ensure that its competition and consumer protection frameworks continue to be robust and that CCCS has the necessary tools to detect and deter harmful conduct in such markets. To respond appropriately, CCCS has been conducting market studies to identify areas of concern where greater attention may be required, or where businesses need greater guidance on compliance with competition and consumer protection laws in light of new developments arising from the adoption of, or developments in, technology.

This paper highlights the recent market studies and outcomes from such studies undertaken in light of the increasing digitalization of industries, including those jointly conducted with other local agencies such as the Infocomm Media Development Authority (“**IMDA**”), the Intellectual Property Office of Singapore (“**IPOS**”), and the Personal Data Protection Commission (“**PDPC**”). The findings and recommendations have been positively received and have motivated coordinated action amongst different government agencies.

Whilst the findings of the market study may reflect the business strategies and competition dynamics, and consumer behaviour at the time of the relevant study, technology-related markets are fast evolving and more changes can be expected in the future. CCCS will continue to monitor new developments through market studies to ensure that its framework and toolkit remains future-ready and appropriately contextualised to address any new areas of concern.

Slovenia

The Slovenian Competition Protection Agency (CPA) has the implementation of market studies or certain types of agreements defined in the Prevention of the Restriction of Competition Act³ (the Act). The CPA conducts research primarily with the aim of examining individual markets in which it has detected certain distortions that could indicate a malfunctioning market and consequently the possibility of restricting competition. The CPA may use the information obtained from the market research in proceedings under the provisions of the Act, since the purpose of the market study is not merely to obtain information on the functioning of a sector, but to seek the reasons for perceived distortions in its operation. If the causes of market failures lie (also) in inadequate legislation, the CPA may send the competent authorities an opinion on the measures necessary to eliminate or prevent the restriction of competition.

The CPA has carried out some sectoral surveys that have had or were expected to have an impact on the change of legislation. One of these was the completion a survey in 2017 related to unfair trade practices in the food supply chain under the Agriculture Act according to which the CPA has additional powers to monitor relations in the food supply chain. The results of the survey showed certain practices which did not reflect a fair business relationship between suppliers and buyers (retailers) of food products. The Ministry of Agriculture, Forestry and Food used the results of the CPA survey as one of the basics for amending the Agriculture Act in this section. Another survey carried out by the CPA in 2018 was the motor fuel market survey. The fuel market in Slovenia is somewhat specific. The survey showed that deregulation of the prices of basic motor fuels (petrol 95 and diesel) could lead to difficulties in competition in this market, mainly through a coordinated operation of two suppliers, jointly controlling around 80 % of the market (duopoly). The Government of the Republic of Slovenia deregulated the prices of motor fuels regardless of the CPA's concerns, which demonstrates that the CPA cannot influence decision makers, but can only make recommendations on legal changes.

The CPA notes that the advantages of market studies are mainly the possibility of a quality insight into the functioning of the market and an extension for possible action or introduction of procedures, but it can also give quality recommendations to decision-makers in the preparation of legislation. Market studies also represent important advocacy activities regarding competition protection. The disadvantages of market research may, however, be of a financial nature and, as a general rule, impose a heavy time burden, especially in the case of a lack of sufficient staff, which is the rule in small authorities.

In conclusion, CPA presents an example of good practice of cooperation with the University of Ljubljana in the use of its open source portal for electronic data and information collection named "1KA", which has led to a significant reduction in the work in the cases of a large number of recipients and respondents.

³ Official Gazette of the Republic of Slovenia, Nos. 36/08, 40/09, 26/11, 87/11, 57/12, 39/13 – cf.US, 63/13 – ZS-K, 33/14, 76/15 and 23/17.

Spain

A market study is an in depth economic and regulatory analysis of the functioning and the dynamics of competition of a market, which identifies the existing restrictions that may hinder or prevent effective competition.

Their purpose is threefold: 1) to increase the CNMC's market knowledge (build expertise), 2) to disseminate knowledge and increase competition culture, and 3) to guide the competent administrations on how to deal with competition concerns. To that end, market studies include a number of recommendations to public administrations and stakeholders operating within the market.

As part of the advisory function of the CNMC, market studies and their recommendations are not binding; therefore, the decision on whether to follow or implement our recommendations fully relies on market operators and public administrations. Likewise, the CNMC is not able to impose remedies in the markets, unlike other jurisdictions.

According to the CNMC's Action Plan, the main priorities in terms of market studies in the last years have revolved around the following three axes: (i) to study markets with a special impact on the well-being of citizens (especially the most vulnerable), (ii) to analyse markets with a significant impact on market competitiveness, and (iii) market studies on new sectors arising from digitisation or those sectors where new digital technologies have disrupted traditional business models.

During the last years, the main emerging issues faced by the CNMC as regards market studies were in the digital sphere. The Advocacy Department started its thorough analysis on the digital phenomenon in 2015, with the launching of a thorough public consultation on the sharing economy. The main objective was to gather information and to better understand the dimension of the digital phenomenon. This public consultation prompted different advocacy activities to promote competition in the field of tourist accommodation, transport, and FinTech, including market studies. In addition, the CNMC is currently preparing a market study on online advertising, where many of the emerging issues that are being debated at the international level are present.

As regards the use of market studies as an advocacy tool, the CNMC has gathered a significant amount of experience regarding its use over the years, gaining a thorough understanding of this tool. While market studies allow the Authorities to understand in depth the functioning of the markets, which could serve as a basis for new actions, they are resource and time consuming. Consequently, depending on the objective the Authority aims to achieve, a market study could be the most appropriate advocacy tool to use, or other alternative (or complementary) advocacy tools should be used.

Turkey

Turkish Competition Authority (TCA) regularly conducts market studies/sectoral inquiries in order to better understand the competition dynamics of the markets that it deems important. As of 2020, TCA has concluded 14 market studies “Fair Organization – 2019”, “Hazelnut – 2018”, “Television Broadcasting - 2017”, “Cement - 2016”, “Cinema Services - 2016”, “Electricity (Wholesale and Retail) Sector - 2015”, “Motor Vehicles - 2014”, “Pharmaceutical - 2013”, “Natural Gas - 2012”, “Fast Moving Consumer Goods - 2012”, “Meat - 2011”, “Driving Schools - 2010”, “Bank Cards - 2009”, and “Road Fuel - 2008” markets⁴. Currently, TCA is conducting five market studies in these topics/sectors: “Digitalization and Competition Policy”, “Electricity”, “Fast Moving Consumer Goods”, “Agriculture” and “E-Platforms”.

TCA Board regularly conducts market researches in markets that it sees problems to identify the competitive problems in sectors and offers solutions to improve the structure to a more competitive one. However, the problems that the Competition Board identifies are not always the same to open an inquiry. For example in “Fast Moving Consumer Goods - FMCG” inquiry was initiated in 2017 because the market structure of FMCG sector had substantially changed after the 2012 FMCG Market Inquiry and “Agriculture” sector inquiry was initiated mostly due to the fact that the Competition Board received numerous complaints which suggested that final sales prices of agricultural products are caused by the anti-competitive agreements in the sector.

The most important stage in tackling these problems in the first place is the identification of the problem. Secondly, the launching a sector inquiry is a participatory and transparent process wherein the Authority would be able to let all stakeholders take part in the identification and solution of the problems, with sector inquiry emerging as the best tool to meet all these demands. In addition, the legal powers and authorizations for the utilization of the chosen tool as well as the current workload of the Competition Authority may be counted among the factors considered.

The first strength of a sector inquiry is that it is more proactive compared to legal regulation. Second, standard competition law inquiries focus on generally the conduct of undertakings concerned whereas a market study is designed in a wider manner to cover the whole market/all characteristics, which allows analyzing different factors such as structural problems, potential competition, entry barriers, innovation and consumer behavior as a whole. Third, the outcome of a sector inquiry is a reference for the legislator and/or other authorities related to the market. Lastly, contrary to standard competition law inquiries, the measures taken as a result of a market study are designed in a wider manner to cover the whole market.

However, they also have the some drawbacks such as whether sector inquiries can be used as an intervention tool, they cannot result in the application of sanctions, lead to legal uncertainties for the undertakings, may potentially lead to conflict of authority since they may go outside the jurisdiction of competition agencies and some of the stakeholders may not actively/sufficiently participate to the inquiry, as it is not an investigation and the teams conducting the inquiry are chosen among the personnel who carry out the enforcement activities and this sometimes leads to some difficulties especially when inquiries are performed simultaneously with enforcement actions, which do have deadlines.

⁴ All of the market studies conducted by the TCA can be found at this link: <http://rekabet.gov.tr/tr/Sayfa/Yayinlar/sector-raporlari?sayfa=1>

United States

Market studies, which can include empirical studies, hearings, and workshops, provide the U.S. Federal Trade Commission (“FTC”) and the Department of Justice Antitrust Division (“DOJ”) (collectively, the “Agencies”) with invaluable tools for their policy and enforcement efforts. Policy research bolsters and complements our enforcement activities.

Hearings and workshops serve as the public arm of market studies; they provide the Agencies with a forum to gather information about market conditions and evolving issues. The Agencies use workshops to test theories, learn from non-government attorneys, discuss current studies by academics, and hear comments from the public about the identified issues. With our market studies, the Agencies gather information and documents outside the enforcement context; the data we collect can play a key role in identifying and analyzing emerging competition trends and issues. As part of its market studies portfolio, the FTC engages in retrospective studies of consummated mergers. Workshops, market studies, and merger retrospectives provide the Agencies with a deeper understanding of industries and business practices, and how emerging issues and innovation may affect competition. These tools lay the foundation for policy recommendations.

Determining whether a study is appropriate depends on the needs of the Agencies. Market studies may be appropriate when competition issues seem to be changing in evolving sectors or when innovation is dramatically changing the competition landscape. Market studies also may be useful when competition enforcement needs to be informed by research to learn from past wins and losses. Which tools to use depends upon what the Agencies need to learn. Finally, market studies can provide the unique value of educating federal, state, and international competition authorities.

*BIAC**

Business at OECD's contribution on “Using Market Studies to Tackle Emerging Competition Issues” focuses on four key themes. First, we outline the advantages and benefits of market studies as a competition policy tool. Second, we analyse their ability to tackle emerging competition issues. Third, we critically assess the need for a power to impose remedies as part of the market studies tool. Finally, we round off with observations on scope and process for successful, robust and fair market studies.

This paper builds on previous *Business at OECD* contributions on the role of market studies as a tool to promote competition (2016) and the workshop and roundtable on selection and prioritisation of sectors and market studies methodologies (2017), culminating in the *OECD Market Studies Guide for Competition Authorities* in 2018.

Our contribution sets out that *Business at OECD* broadly welcomes market studies as a competition tool designed to shed light and improve understanding of economic sectors. The salient benefit of market studies is their ability to adopt a broader, more holistic approach to assessing market conditions. Market studies, however, are also invariably burdensome and so must be reserved for appropriate cases and incorporate safeguards.

Whilst it is true that market studies (unlike traditional enforcement tools) avoid the narrow focus on past behavior, our contribution notes that there is nothing inherently “predictive” in their nature and that market studies typically have tended to focus on markets with known and observable existing systemic challenges. *Business at OECD* thus does not consider market studies to be the tool that is a silver bullet, or panacea, for resolving emerging and future issues in markets. Properly conducted, they can inform policy and be a useful complementary tool – one that helps to identify and diagnose issues – but a careful case-by-case assessment of the specific circumstances will be required when considering the appropriate tool.

Business at OECD further regards market studies with powers directly to impose remedies as unwarranted. *Business at OECD* respectfully submits that the preferred route is for market studies to analyze, diagnose and inform, but for changes to be achieved through other means. This could include individual voluntary commitments, self-regulation by industry, such as codes of conduct, advocacy towards government departments who may be in a position to remove government led impediments and, if necessary, legislation (with the benefit of parliamentary debate and review). If remedy powers are to be made available, the case for robust governance and adequate checks and balances becomes imperative.

Finally, *Business at OECD* submits observations on scope and process for successful, robust and fair market studies. We highlight the importance of open and transparent processes; careful selection of cases and targeted scope from the outset; good governance, with appropriate checks and balances; and the need to acknowledge limitations and challenges of market studies.

* *Business at OECD* lead drafter: Luis Gomez, Partner, Baker & McKenzie LLP.

CARICOM

Market and economic studies have become a significant part of the work of the CARICOM Competition Commission (Commission) since its establishment.¹ However, the conduct of market studies is more important than ever during this novel coronavirus (COVID-19) pandemic.

The CARICOM Single Market and Economy (CSME) has been affected by COVID-19. Economic activity in most CSME Member States remains sluggish due to the impact on their tourism industries by national policies aimed at protecting the public health by the imposition of border closures, in country restrictions, and the postponement of cultural events such as carnival, jazz festivals, concerts and major contact sporting events. The decreased number of airline flights because of COVID-19 has also had a significant impact on the revenues of regional airlines, resulting in the furlough of staff and reliance on revenue incomes from charter flights and air cargo services. One regional airline is also now undergoing a financial restructuring, given its insolvency and need for financing.²

The weakened operational and financial position of the regional airlines raises three areas of concern for the Commission, which motivates its recently launched study into the airline industry. The first issue relates to airlines operating in the region steering customers towards airline credits for flights cancelled due to the pandemic instead of offering them refunds. The second issue relates to concerns over possible excessive post-pandemic airfares as the airlines servicing the region might seek to recoup losses they incur from flight cancellations during the virus outbreak. The third area of concern is the existing legislative and regulatory framework for scheduled air passenger transport in the region. The study will focus on competition and consumer protection issues and make recommendations to government, sector regulators and or stakeholders operating within the sector that, if implemented, could encourage greater competition and more efficient economic outcomes.

The Commission will be analysing the scheduled air passenger transportation sector in the CSME from the perspective of competition, and consumer advocacy consistent with Articles 173 and 186 of the Revised Treaty of Chaguaramas. The study will combine a review of the regulatory framework with the analysis of market structure, behaviour and incentives of operators, and the economic conditions that exist in the sector. The Commission is working closely with national competition and consumer protection officials in the CSME to execute the market study in a comprehensive manner.

The next phase of the study has commenced with data gathering. The Commission has developed survey instruments for airline customers, airlines, travel agents, and airport authorities. The survey of these stakeholders began in September 2020. The survey instrument for airline customers will be administered strictly online to potential respondents. The Commission expects to complete the study by the end of the fourth quarter 2020.

¹ Over the years the Commission has conducted studies on the mobile, banking, and alcoholic beverages sectors. These studies have also been conducted with specific attention paid to the demand or supply side of the markets in question.

² <https://www.nationnews.com/nationnews/news/246865/court-grants-petition-reorganisation-liat>.