Unclassified **DAF/COMP/LACF(2017)6**

Organisation de Coopération et de Développement Économiques
Organisation for Economic Co-operation and Development **15-Mar-2017**

English - Or. English

DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
COMPETITION COMMITTEE

Unclassified
DAF/COMP/LACF(2017)6

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

Session III: Addressing Competition Challenges in Financial Markets

-- Background paper by the OECD Secretariat --

4-5 April 2017, Managua, Nicaragua

This document was prepared by the OECD Secretariat to serve as a background note for Session III of the 15th meeting of the OECD-IDB Latin American and Caribbean Competition Forum on 4-5 April 2017 in Nicaragua.

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the Organisation or of the governments of its member countries.

Contact: Ms. Lynn Robertson, Global Relations Co-ordinator, OECD Competition Division [Tel: +33 1 45 24 18 77, Email: Lynn.ROBERTSON@oecd.org]

JT03410687

Complete document available on OLIS in its original format

English - Or. English

LATIN AMERICAN AND CARIBBEAN COMPETITION FORUM

15th Latin American and Caribbean Competition Forum
4-5 APRIL 2017, Managua, Nicaragua

Session III: Addressing Competition Challenges in Financial Markets

BACKGROUND PAPER BY THE SECRETARIAT*

Abstract

Advocating for competition in financial markets can be more challenging than in other markets since other policy goals can take precedence over efficiency considerations. Competition authorities therefore have to cooperate effectively with financial regulators and powerful central banks if they are to use market studies or their other tools to advocate for policy solutions that take into account efficiency concerns in addition to other government objectives such as market stability and consumer protection. Financial markets can also be different (and difficult) because the framework for merger review in financial markets often differs from other markets, meaning that the competition authorities' role can be limited or less decisive. Furthermore, while competition authorities typically retain their role in enforcement against anticompetitive conduct in financial markets, they nevertheless need to cooperate effectively with financial regulators and central banks in order to take advantages of the opportunities that exist in these investigations. This issues paper looks at the ways in which agencies in Latin America and the Caribbean can ensure they cooperate effectively.

Effective cooperation is particularly important when conducting market studies, both because of the expertise that the financial regulator and central bank can bring to the study, and because the way in which the market is regulated may be a relevant feature of the market that is found to have an impact on competition. In addition, effective cooperation that increases the quality of the market study can help to build the credibility of the study, which in turn increases the likelihood of recommendations being acted on. We therefore look at the experiences that competition authorities in Latin America and the Caribbean have had in conducting market studies in the financial sector.

* This paper was written by Chris Pike and Rosana Aragon Plaza, Competition Experts at the OECD Competition Division.

TABLE OF CONTENTS

Tables

Boxes

1. Introduction

1. Competition agencies face a range of sector specific challenges in financial markets. Perhaps the most important of these challenges is that policy considerations, such as market stability and consumer protection, are often as important for governments as efficiency, if not more so. This means effective co-operation with sector regulators and central banks is required when advocating for policy solutions that take into account efficiency concerns in addition to these other objectives.

2. In addition, competition agencies also need to familiarise themselves with the way the sector functions, for example, the regulatory framework within which firms compete. Many agencies in the Latin American and Caribbean region have decided to learn more about the sector through market studies. Indeed many of these studies have ended with recommendations for closer or more effective co-operation between the competition authority and the relevant financial authorities (see for example Costa Rica, Honduras and Mexico).[1]

3. This issues paper begins by describing the different regulatory roles within the financial sector; the tensions and complementarities that can exist between the role of a competition agency and regulators, in particular central banks. In section 3 we discuss the ways in which agencies can ensure they co-operate effectively. In section 4, it looks at similarities and differences in the approach, methodologies and findings of financial market studies that have been conducted across Latin American and Caribbean.

2. Co-operation between competition authorities, central banks and financial regulators

4. At a high level, the policy goals that most governments have for financial service markets will be broadly the same: that those services should be stable, efficient, and accessible, in order that they help drive economic growth. Policymakers might therefore hope that these overarching goals are those towards which their different agencies are working. However, typically these different agencies are formally given and held accountable to, more narrowly defined objectives. In this section, we briefly identify the market failures that create a rationale for regulation of financial markets, the different regulatory roles that can be found, and the tensions and complementarities between the agencies responsible for those different regulatory roles.

2.1 Market failures in financial markets

5. If financial markets were left to their own devices, we would expect to see a number of market failures unfold. Vives (2010), for example, identifies that "Banking and financial markets display the full array of classical market failures: (a) externalities arise from co-ordination problems and contagion, (b) asymmetric.

6. Most important of these is perhaps the problem of asymmetric information, which creates a lack of transparency in a bank's risk profile. Without this information, the market cannot adequately deter banks from taking excessive risk. For example if a saver/investor cannot observe whether its investment is being used by a bank to finance high risk or low risk projects, then, regardless of the risk appetite of the investors, the most successful banks will be those that offer the highest returns, regardless of the risk involved. Alternatively, think of a competitive procurement in which there is no way for buyers to

1 The CDPC recommended closer cooperation between the banking sector regulator, the National Banking and Insurance Commission and the CDPC. In its 2014 report on the financial sector, COFECE recommended the establishment of a cooperation mechanism between the regulators and COFECE geared towards generating information related to economic activity by regulated market actors, which COFECE could then access in order to carry out its ongoing monitoring of the sector's competition conditions.

understand the quality of the service delivered. In such a case, the most successful bidders will be those that offer the lowest prices, and the lowest quality. Indeed the winning bidder might be the firm that offers an entirely unsustainable price and then seeks to renegotiate (or get bailed-out) once it becomes clear that it cannot provide the service at the quoted price.

7. However, in addition to information problems, externalities also arise, particularly in two areas. Firstly, actions by depositors impose externalities on other depositors. For example, withdrawing a deposit can, if others do likewise, increase the risk of other depositors losing their money. This co-ordination problem creates a risk of rapidly escalating bank runs, even when the bank is in a healthy position. Such runs are not uncommon in other two-sided markets with network externalities.[2] For instance social networks, P2P, and B2P platforms can also enter similar spirals in which a trigger event rapidly destroys the viability of a stable platform via network effects.

8. Secondly, actions by banks impose significant externalities on the wider system (consumers, businesses and other banks). In particular, if a bank makes risky loans that increase the risk that it suffers largescale defaults, then consumer and business depositors may lose their deposits (and hence have to reduce their spending or investment in other markets). In addition, it may also increase the risk of the bank defaulting on loans or commitments to other banks, thereby potentially causing contagion. For example, defaulting on a loan to another bank may increase the risk on the deposits of the customers of that bank (consumers and businesses), and may also lead other banks to respond by increasing the interest rates at which they lend, thereby reducing investment. The risk of contagion means that, unlike most markets, in some circumstances a firm losing market share and ultimately exiting the market may not benefit other firms by creating an opportunity for expanding market share (or entry) but may instead reduce the profitability of other rival firms (as for example was the case when Lehman Brothers collapsed in September 2008. In correcting for these underlying market failures, policymakers have typically set out regulatory solutions which often help address the initial market failure, but which can also exacerbate excessive risk taking. For example, central banks acting as lenders-of-last-resort, the mandating of deposit insurance, and the bailing out of those institutions that are judged “too-big-to-fail” may protect consumers’ deposits, and reduce systemic risk; however, they may also further incentivise excessive risk-taking (moral hazard) and distort competition.

9. In thinking about the relationship between competition agencies, central banks and financial regulators, it is perhaps worth noting that the market failures in financial markets are typically very different in nature to those that create a rationale for utility regulation. While these may often also pose systemic risk (e.g. electricity black outs, water droughts), the risks follow from the existence of a natural monopoly to which access is required. In addition, where the utility was previously a state-run monopoly there are often concerns over the power of the incumbent’s position, though there is typically an expectation that such regulations will come to an end as the market becomes competitive. In each case, more competition is unambiguously a good thing, and it is the lack of competition that drives the need for regulation. In contrast, in financial services there is generally no natural monopoly problem, nor any expectation that the need for regulation will cease. The concerns set out above do not reflect a lack of competition but instead can, as discussed, be exacerbated by the wrong sort of competition. In fact, given

2 Banking was of course identified as a two-sided market in Armstrong (2002). Armstrong described the way in which Banks act as intermediaries between savers and borrowers. “Without effective banking regulation, bank failure is a possibility, and so potential savers will be interested in how secure their funds would be, and hence how well the bank is doing on the lending side of the market. However, effective deposit regulation will largely eliminate this risk, and the consequent externality that otherwise exists between the two sides of the market.” Deposit insurance therefore attempts to separate the two sides of the market from one another, though this insurance is generally only in place for small deposits. For example, in the 1995 Brazilian banking crisis the Government created FGC, a private deposit insurance mechanism.

the concerns over contagion and the damaging effects of exit, the regulation of healthcare markets is perhaps a more relevant comparison.[3] This might help explain some of the difference in the power-relationship between a competition authority and the regulatory agencies involved in financial services, as opposed to say water or electricity.

2.2 The different regulatory roles in the financial markets

10. As a result of these market failures, there are a number of different regulatory roles within financial markets. These may be occupied by different types of agencies in different jurisdictions. Broadly, we can identify four roles.

11. **Micro-prudential regulation,** which focuses on the safety of individual financial institutions, and looks to minimise the adverse effect that they can have on the stability of the financial system.[4] For example, harm resulting from disruption to the continuity of provision of financial services. This regulation typically includes requirements that these institutions have the minimum level of capital needed to ensure the resilience of an individual institution at any given point in time;[5] certification of those working in certain roles; rules on what types of assets can be held by whom; and measures of the value and riskiness of assets.

12. **Macro-prudential regulation,** which identifies, monitors, and addresses systemic risks to the financial system as a whole, rather than at the level of the individual firm. For example, by looking for and defusing the unhealthy build-up of credit cycles, assessing interactions within the financial system and between the financial system and the broader economy. This regulation might include setting caps on loan-to-value ratios for mortgages, countercyclical capital buffers, and time-varying leverage ratios.

13. **Consumer protection regulation,** which ensures that financial firms treat customers fairly. For example by specifying minimum standards for products and authorising or licensing those firms that are qualified to sell in certain markets. There may also be a role in helping to improve the ability of consumers to engage in financial markets, for example through financial education programmes and exploring ways in which consumers' behavioural biases might be exploited.

14. **Competitive regulation**, which prevents market abuse. For example, this includes breaking up cartels, investigating cases in which dominant firms abuse their market power in order to exclude others, and reviewing potentially anticompetitive mergers.

15. In each of these four cases, the relevant agency may also have a role in advocating and explaining the risks and opportunities that are created by decisions taken by both legislators and those in other regulatory roles.

Questions:

- Who is responsible for these roles in your country?
- Are there other regulatory roles?

---

3 The closure of emergency hospital capacity, can impose costs on rival hospitals where these services are not paid for on a unit-cost basis as in many healthcare systems (as a result of the incentives such payment schemes create for over-treatment in the presence of asymmetric information), or where hospitals share staff. Healthcare regulators typically are unwilling to allow failing emergency hospitals to go into bankruptcy and close given the externalities for communities that rely upon them. These may therefore be considered to be too-big-to-fail.

4 Micro-prudential regulation generally examines the responses of an individual bank to exogenous risks. It does not incorporate endogenous risk, and it neglects the systemic implications of common behaviour.

5 IMF (2004).

2.3 Why might co-operation be difficult? Tensions to manage

16. Effective co-operation might prove to be difficult to achieve because of intrinsic policy tensions in the regulatory framework that are difficult to manage. Alternatively, it may also be difficult due to cultural or organisational tensions.

2.3.1 Policy Tensions

> *"Until relatively recently, central banks and regulators were complacent over collusion agreements among banks, and preferred to deal with concentrated sector." (Vives)*[6]

17. Tension between competition and stability policy objectives can arise firstly because efficient exit is fundamental to effective competition, and exit, or the prospect of it, is by its nature a moment of instability in a financial market context. Exit therefore has to be managed through a special administration regime that is triggered when insolvency risk breaches a certain requirement.[7] This is intended to identify cases where an unacceptable risk of failure arises well before failure actually occurs, and to begin at that point the process of managed exit or de-authorisation. As competitive intensity increases, and the risk to an individual bank increases, the solvency requirement may need to be strengthened in order to ensure that system stability is not endangered.[8] This means prudential regulation may therefore need to increase when competition increases. If prudential regulators have an exogenous view on the 'ideal' solvency requirement then it is natural that they would see increased competition as something that inconveniently drives them away from that ideal level.

18. However, this tension need not exist if there is a mutual understanding that there is no exogenous optimal level of regulation, that is to say the optimal level of regulation depends on how efficient the market is. From that perspective, increased competition and efficiency do not drag a prudential regulator further away from optimal regulation (for example by making them set a higher than 'ideal' capital requirement). Instead, the 'optimal' level of prudential regulation changes as competition and efficiency increase.

19. A second tension can arise because competition increases the incentive for banks to take risks and thereby raises the probability of failure. This again might point towards tighter prudential regulatory requirements as a response to inconvenient increases in competition. As noted above in, this is not specific to financial services. This competitive incentive exists wherever a key dimension of product quality (in this case risk to savings) is unobservable, leading competitive firms to deteriorate it while competing on those dimensions that are observable (high interest rates to savers, low interest rates to borrowers). Indeed a firm may improve these observable dimensions by actively deteriorating the unobservable characteristics of the product. For example, by increasing the acceptable risk on its lending, a bank increases the risk to savers, but can offer lower interest rates to risky borrowers and higher interest rates to savers. In other markets, regulations would typically cap the observable dimension where it is known to be correlated with the dimension that is unobservable to the buyer (which is often safety). E.g. car speed, explosive content of fireworks. In this case, for example caps on loan-to-value mortgage rates. Here, 'more effective

6 Vives, (2016).

7 A special administration regime is a modified insolvency regime that provides an administrator with special objectives, such as the continuity of critical services, that take priority over the objectives in a normal administration. Absent such a regime, if a financial firm were to become insolvent, an administrator or liquidator working under the standard objectives, which include achieving a better result for creditors than a winding-up, would not necessarily have cause (apart from under that objective) to keep critical or systemically important payment and securities settlement services running. See UK consultation on "Rules on ensuring the effective functioning of a financial market infrastructure special administration regime."

8 See Vives (2014).

competition' would not mean more competition, if that competition is not occurring on value, but instead on only a partial view of value.[9] 'More effective competition' would instead mean buyers (e.g savers, investors) having better information on the value of the product (in order that they can form well-informed preferences about the product). As a result, there is again no real tension between *effective* competition and stability, only between stability and a simplistic view of competition.

20. There has long been a perception that the tension between stability and this rather narrow interpretation of competition mean that policymakers need to relax one of the two objectives. As a result, bank mergers were often exempted from competition review, and cartels have been exempted from antitrust scrutiny. Recognition of this false choice has however led to policymakers increasingly pushing to make the most of the complementarities of the two objectives. For example, the Bank of England recently noted "Effective competition not only benefits customers, but also improves over time the resilience of the financial system."[10]

21. While the potential for competition to destabilise financial systems has received a lot of attention, these are not the only potential policy tensions.

22. Competition might be expected to increase if there were lighter touch regulation of entrants, innovators, or non-banks (the shadow banking sector). However, prudential regulators might be reluctant to agree for fear of creating precedent and reducing standards across the board. However, the increasing use of regulatory sandboxes illustrates ways in which regulators are working to remove this tension.[11]

23. Too-big-to-fail policies provide implicit backing for certain firms which reduces their costs and distorts the market in their favour (thus increasing their size and hence the need to protect them). As a result, competition authorities with responsibilities for preventing competitive distortions from state aid can find themselves in conflict with prudential regulators concerned over the systemic effects of allowing the failure of such institutions. It would again appear however that, by moving towards bail-ins with clearly agreed risks for investors rather than bail-outs, regulators are again finding solutions that protect competition at the same time as achieving their wider stability objective.

Box 1. Too Big To Fail[12]

The notion that some financial institutions are "too big to fail", insofar as their collapse would have a disproportionately detrimental effect on the whole financial sector and the wider economy, undermines both financial stability and competition in financial markets.

A perception that a financial institution is too big to fail carries with it an implicit guarantee that the State will intervene to prevent collapse. That, in turn, can lead to excessive risk-taking by such firms. In general, insolvent banks should be allowed to fail. Nevertheless, in some markets there is an expectation that certain key banks will not be permitted to collapse. "Too big to fail" banks are institutions that are so large that market participants assume that the government would take whatever steps might be necessary to preserve their solvency in a crisis. As a government policy, "too big to fail" insulates the depositor from the need to be aware of the financial condition of their bank. In the absence of other interventions, this can encourage risk taking, so that the bank takes on more risk than is prudent.

9 Similarly, more competition in a malfunctioning market for credit ratings would not improve the effectiveness of the competition in that market.

10 Bank of England (2015).

11 A regulatory sandbox is an environment for businesses to test products with less risk of being 'punished' by the regulator. See Herbert Smith FreeHills (2016).

12 OECD (2011).

This poses a threat the market stability. Moreover, institutions that are too big to fail pose a threat to competition in financial markets. Banks seen by consumers as too big to fail can give rise to competitive distortions since they may have an artificial advantage in raising funds, especially in markets where deposit insurance is inadequate. Such institutions are in effect subsidised, being able to borrow at lower rates than their smaller competitors, thus further distorting normal market competition.

The issue of "too big to fail" is primarily one for financial regulation, but it also raises indirect competition issues. NCAs have a crucial role in trying to influence the framework of merger control regulations to avoid a repetition of the current sort of crisis. The approach should be co-ordinated with regulators. A key issue is how to prevent the emergence of institutions that are too big to fail. Where an institution of this magnitude already exists, behavioural remedies in the form of prudential regulation controlling the incentives of the firm should be put in place. In this regard, once again, prudential regulation and competition policy can be complementary.

24. Another tension can arise between competition policy and consumer protection policy. These are typically complementary; competition policy protects consumers against the risk of anti-competitive behaviour, while consumer protection policy goes further and protects consumers against behaviour by firms that is not anti-competitive but nevertheless exploitative in nature. For example consumer protection policy typically addresses miss-selling of financial products. However, the policies are not always complementary. For example, the provision of high interest loans to vulnerable consumers is a market where a consumer protection perspective acknowledges that the behavioural biases of consumers are such that their choices may sometimes need to be restricted for their own good. Similar examples of such restrictions include maximum alcohol content regulations. Where consumer protection policy leads a regulator to impose price caps on high interest loans it therefore knowingly takes the risk that this restriction on competition may collapse a segment of the market and thus increase inefficiency.

25. Notably the tensions do not only involve competition authorities. There can also be cases in which tensions arise between the systemic approach of a macro-prudential regulator and the institution-specific measures set by a micro-prudential regulator (though in many cases these functions are often carried out by the same regulator, meaning that such tensions are not always acknowledged or addressed). For example, if capital requirements affect the supply of credit, a macro-prudential regulator would internalise the trade-off between capital and credit, whereas a micro-prudential regulator looking at individual institutions would not. A macro-prudential regulator would therefore consider there to be a greater social cost to raising capital in a recession and might therefore be more reluctant to require financial institutions to do so.[13]

Questions:

- What is your experience of these tensions?
- Are there antitrust exemptions for financial services in your competition regime?
- Who reviews mergers in financial markets and is an impact on competition part of that review? Are there others not covered here?
- Has there been a change in the view of these tensions?

13 Panetta and Alessandri (2016).

2.3.2 Cultural/organisational tensions

26. Even absent policy tensions, the approaches of the different agencies would typically bring with them different perspectives, cultures, and skillsets.

27. Competition authorities, for example, may tend to favor intervention only if competition is restricted. When they do intervene, they typically prefer definite, one-off structural interventions. Financial Regulators and Central Banks in contrast often need to intervene continuously in order to regulate behavior to ensure minimum acceptable performance. This can lead to regulation being seen as a substitute rather than a supplement to market forces.

28. Competition authorities also tend to favor ex-post enforcement over an ex ante prescriptive approach. Their skillset is in analyzing the way that competition works in any given market and, lacking continuous exposure to particular industries they face little or no risk of regulatory capture. In contrast, Financial Regulators and Central Banks have specific technical sector knowledge and skills, for example on the history of the market, the technology and the practicalities of operating in the market. Acquiring this expertise however can involve a higher risk of regulatory capture.

Questions:

- What experience of these tensions?
- Are there others not covered here?

2.4 What can co-operation help deliver? - Complementarities to take advantage of

2.4.1 Policy complementarities

29. While the role of effective co-operation in smoothing out potential tensions is an important one, it should also be emphasized that it can also create synergies between agencies.

30. For example, micro-prudential regulators and competition authorities each worry about financial institutions that become too-big-to-fail (see box 1). Since they are too important to be allowed to fail, these institutions enjoy a *de facto* license to act imprudently and take excessive risks in the knowledge they will be bailed out in the event that they go bankrupt (moral hazard). In addition, they enjoy lower costs due to this implicit state support; this distorts competition and risks foreclosing smaller more efficient rivals, even if these institutions do not exercise their considerable market power by acting to exclude others. The agencies may therefore have a mutual interest in either preventing the emergence of these institutions (e.g. through merger review), or in setting down rules that address the systemic risks they pose in way that addresses the concerns with simple bail-out policies. We can for example see that in Europe: DG Comp has, using its state aid powers, been central to the setting up of bail-in rules that make investors partially responsible for funding failing institutions that are too-big-to-fail. This goes some way to resolving the moral hazard and competitive distortion concerns of the agencies.[14]

[14] Notably this also requires co-operation with consumer protection agencies, as has become evident in the case of Italian banks that allegedly miss-sold bonds without an explanation of the risks involved in holding subordinated or senior bonds as opposed to simple savings accounts.

31. There may be similar complementarities between prudential regulation and competition policy in the benefits of structural separation of commercial and investment banking functions. Prudential regulators may favor such a s separation where it helps prevent contagion and protect consumers with deposits (as well as taxpayers). While Competition Authorities may favor the same approach where it reduces the artificial cost advantage that these banks enjoy when competing in investment markets with implicit state backing for anything that might affect their commercial banking arms and hence effectively for all of their activities.

Box 2. Structural separation[15]

The funding structure of banks is important to their resilience. Banks can finance themselves with both depository funding and wholesale funding. During the recent crisis, banks that relied principally on wholesale funding have tended to be affected much more severely than banks that relied on depository funding. In the medium term, in order to reconcile stabilisation and competition issues, financial institutions need to have more, higher quality capital. The involvement of a commercial or retail bank in capital market activities exposes that institution to two forms of risk: credit risk and portfolio risk. As it is not possible to control both types of risk at the same time, a separation between commercial banking and capital market activities may therefore be needed. Prudential regulation should be designed to reflect this need.

32. More generally, protecting and enhancing competition between lenders reduces the cost of borrowing across the market, and so reduces the risk of borrowers defaulting. This reduces the overall risk level in banks' lending portfolios, all else being equal.[16] However, as noted above, in the absence of visibility on the risk level in its portfolio, competition would incentivize greater risk taking. Increasing transparency on risk is therefore key to ensuring that competition complements prudential regulation.

Questions:

- What experience of these tensions?
- Are there others not covered here?

2.4.2 Operational complementarities

33. Competition authorities typically have key roles in merger review, antitrust investigations, and in advocating for competitive markets. In each of these areas effective co-operation with financial regulators and the central bank can be helpful in allowing the Competition Authority to achieve its goals, as well as those of the regulator and the central bank.

34. In areas where the Competition Authority is designated in legislation as able to make its own independent decision, as for example is typically the case in enforcement and merger review, co-operation from the central bank and financial regulators can help the Competition Authority to gain an understanding of the market context. For example, it can learn, and validate the views it receives from firms on:

- the rules and regulations of the specific markets;
- the preferences, biases, and sensitivity of buyers to changes in prices;

---

15 OECD (2011) No. 19.

16 Boyd and De Nicolo (2005).

- the technical features and risks of complex products;
- any market specific features to be aware of, for example the significance of barriers to entry, or the way in which interest rates are set (e.g. the interbank rate);
- the different business models and strategies adopted by different firms;
- the parameters on which firm compete;
- the rationale for certain decisions made by firms;
- confounding factors that may complicate or need to be recognised when drawing conclusions from event studies;
- anticipated entry, or exit, or deterioration in the competitive threat posed by a firm;
- emerging technological trends;
- innovative products that are beginning to penetrate the market;
- the movement of products in unregulated markets to become increasingly close substitutes;
- the movement of previously separate regulated markets that are converging;
- the effectiveness of different remedies;
- the possible impact of recommended remedies or interventions on other policy goals (and hence perhaps the likelihood of such recommendations being accepted by government), thereby allowing such interventions to be refined.

35. Co-operation can also enable the competition authority to access data, surveys and other non-public information that the central bank or financial regulator may collect on regulated firms. As well as being useful within an investigation, where data is in any case being collected on an ongoing basis, this might make behavioural remedies a slightly more attractive option. However, the challenges of holding firms to commitments to behave in ways that conflict with their incentives would nevertheless remain.

36. In other areas, the Competition Authority may look to provide advice on the impact on competition of matters that are outside their control. This is advocacy. Unusually in some countries, these matters can sometimes include merger review in financial markets. Most Competition Authorities take up this advocacy role in recognition of the fact that addressing the anti-competitive activity of firms through merger review and competition law enforcement is not enough to ensure that markets work effectively.

37. Advocacy efforts might be targeted at any of the market participants. These naturally include buyers and sellers, but can also include government itself, as well as financial regulators and central banks. Competition Authorities may use education and deterrence programs to encourage sellers to take pre-emptive steps to ensure they comply with competition law. Similarly, they may encourage buyers including consumers, public procurers, and SMEs to engage and choose their product or service carefully in order to ensure that markets deliver value. Again this can involve educational programs or through work with government, consumer protection agencies, or civil society organisations (e.g. consumer associations).

38. Advocating to government may involve advising on the likely impact of proposed or existing legislation or policies on competition, and hence the potential efficiency cost. While government will naturally weigh this cost against other factors the expertise of the competition authority will typically be required in order to assess and quantify these costs so as to allow the government to take an informed decision.

39. When advocating to government, co-operation with central banks and financial regulators will be useful in presenting consistent and coherent expert advice on ways to achieve the range of policy goals that a government will have. This type of joint front can be more resilient under pressure from lobbying groups.

40. Depending on the legislative framework, there may also be a case for advocating for financial regulators and central banks to reflect the impact on competition and efficiency in their regulatory decision-making. For example, decisions made in the course of their prudential functions, steps they take to reduce systemic risk, or regulations to protect consumers. This can be particularly challenging and hence co-operation doubly important in financial service markets given the history, the role, and the reputation of the central bank. This can give it a powerful voice in government, and enable it to reject advice from the Competition Authority when it chooses to, in a way that is not possible for example for many other regulators.

Questions:

- What experience of these tensions?
- Are there others not covered here?

3. Creating effective co-operation

41. Agencies can use informal and/or organised techniques to improve the effectiveness of their co-operation. In either case, the underlying legislation can help to facilitate effective co-operation or it can hinder it. We first consider the impact of legislation on effective co-operation.

3.1 Legislation and co-operation between agencies

42. Legislation sets the backdrop against which efforts to co-operate effectively must take place. It can therefore make effective co-operation easier to achieve and hence more likely to occur, or more difficult and hence less likely even where the agencies are willing. Opportunities to change legislation are inevitably rare, however when they do arise agencies may wish to advise legislators of the types of rules that help or hinder effective co-operation in financial service markets. We look first at the ways in which legislation can facilitate effective co-operation and advocacy on regulation. We then look at ways in which it can facilitate effective co-operation on mergers and enforcement.

3.1.1 Legislating for effective co-operation and advocacy on regulation

43. Establishing clearly the full jurisdiction of each agency removes the scope for advice to be dismissed as out-of-scope or otherwise inappropriate. For example, instead of leaving the matter vague, legislation can specify the standing of the competition agency in issuing opinions on regulations from regulators and central banks (and vice-versa).

Box 3. Examples of legislative clarity on the role of Competition Authorities in regulation

In **Colombia**, mandatory prior consultation with Competition Authority is required for new regulations. However, the financial regulator can make the case that their regulations should be exempted from this quasi-competition impact assessment.[17]

In **Mexico**, there is no mandatory prior consultation with the Competition Authority required for new regulations, however prior to the formation of COFECE, the CFC was given authority to issue non-binding opinions on draft laws, regulations or standards, public policies or administrative acts. This was then strengthened to enable CFC to make binding recommendations on regulations. It carries out ongoing monitoring of regulatory initiatives (as well as legislative initiatives in congress).[18]

In **Chile**, there is no mandatory prior consultation with Competition Authority required, however the CA is nevertheless able to recommend changes where there is a provision that may cause anticompetitive effects. For example, in February 2015, "the FNE filed a request to the TDLC, in the use of its power to recommend the President to amend a law or regulation whether there is a legal provision which may cause anticompetitive effects, particularly regarding the Chilean Stock Market Act in which the FNE detected two loopholes. 1) The FNE requested the TDLC to recommend the amendment of the Stock Market Act in order to introduce an effective connection amongst stock markets with a binding, automatic and instantaneous match of shares operations. 2) The FNE proposed to amend the Stock Market Act in order to forbid mutualisation (meaning that stockbrokers are required to hold shares in a given stock market in order to operate in it) and to establish different guarantees from stockbrokers." [19]

44. Alternatively, rather than establishing the primacy of an agency in all cases of a certain type, the legislation may set out the role of a special court to hear and resolve on a case-by-case basis the potentially conflicting views of the agencies. This ensures a coherent outcome is ultimately identified, however this may be a time-consuming and uncertain process, which may also discourage agencies from efforts to co-operate at an earlier stage.

45. In some regulatory processes, it may be possible to break down the steps of the process, and allocate roles on the basis of an agencies expertise in each step of the process. For example, giving the competition agency a statutory role in specific aspects of financial regulation that are within its competency, such as determining relevant market definition or whether a firm has substantial market power. This can improve consistency, as well as fostering interaction between agencies.

Box 4. A role for a Competition Authority within a regulatory process

In the **US**, the Federal Communications Commission (FCC) is required to consult with Department of Justice on the specific question of whether a regional telecom company's local market is open to competition. This is required for the FCC to allow them to enter into the long-distance market. The FCC is not required to follow this advice but must put substantial weight upon its advice.

[17] OECD (2016).

[18] OECD (2012).

[19] Philippi (2016).

46. Where there is scope for conflicting views between the central bank and the competition agency it may be valuable to define in legislation not only the primary objective of the central bank but also any secondary objectives that legislators would want it to pursue when these do not conflict with its primary objective. This creates an expectation of co-operation, a pro-competition perspective inside the bank, and an accountability mechanism by which the performance of that duty can be assessed. In particular, if the secondary objective is aligned with the primary objective of the competition authority (see below) this can help facilitate effective co-operation by ensuring that both agencies are proactively considering the impact on competition.

Box 5. Secondary Objectives

In the **UK**, the Bank of England's Prudential Regulation Authority (PRA) is responsible for the safety and soundness of the banks and insurers that it authorises, and insurance policyholder protection. However, since March 2014 it has also been set a secondary competition objective requiring it to act, where possible, in a way that facilitates effective competition when making policies to advance its primary objectives of safety and soundness, and policyholder protection.

The Bank explains that the secondary nature of the objective means that "When the PRA is considering options for new regulation it will assess the scope to facilitate effective competition, choosing prudential regulation options that do so as far as is reasonably practicable. The secondary competition objective does not require the PRA to act in a manner that is incompatible with its primary objectives. In many cases, the PRA's primary and secondary objectives will be fully aligned: for example, reducing 'too big to fail' distortions appear to have made both the financial system safer and competition more effective. Nevertheless, cases might exist where, within the range of prudential regulation options available to the PRA, there may be some which would deliver greater benefits to competition and others which would deliver greater benefits to safety and soundness or policyholder protection. The existence of the secondary competition objective means that the PRA should consider — but is not necessarily required to adopt — those options which would deliver greater benefits to competition for a given objective of safety and soundness or policyholder protection." [20]

It provides two examples of the way in which the objective has had an impact on its thinking: "Since it came into effect, the Prudential Regulation Authority's secondary competition objective has helped inform the design of several important parts of the framework for prudential regulation. For example, the implementation of the new Pillar 2 capital regime for banks allows supervisors to exercise judgment when assessing credit concentration risk for small firms where the methodology could overstate risks. The secondary competition objective has also informed the implementation of a Financial Policy Committee Recommendation to the Prudential Regulation Authority on limiting the extent of high loan to income residential mortgages, which was designed to take into account the different business models of independent private banks and their ability to compete in the mortgage market. Looking ahead, the Prudential Regulation Authority will continue to ensure that the secondary competition objective informs the design of new policies."[21]

3.1.2 Legislating for effective co-operation on mergers and enforcement

Mergers

47. In mergers in financial markets, it is not uncommon for jurisdictions of different agencies to overlap. In these cases, legislation can clarify on which areas of its jurisdiction an agency has primacy over others, in which areas its approval alongside that of others is required, and where its advice or opinion is non-binding but where prior consultation is mandatory.

---

[20] Bank of England, 2016.

[21] Bank of England, 2016.

Box 6. Legislative clarity on the role of Competition Authorities in merger review

In **Colombia**, mergers among financial institutions under the jurisdiction of the Superintendence of Finance (SFC) are remitted to that agency. [22] Prior notification requirements applicable to mergers state that that SFC must decide upon mergers that exclusively involve entities subject to its control. Before reaching a decision, the SFC is required to request the SIC's opinion concerning the transaction's competitive effects, and the SIC may suggest conditions designed to ensure the effective preservation of competition. The SIC's opinion is non-binding, but the SFC must explain its reasons if it chooses to reject the SIC's advice. The law does not establish the time period within which the SIC must respond to the Superintendence of Finance. In 2014, the SIC's average time for rendering opinions to the Superintendence of Finance on proposed mergers was 15.5 days.

In **Costa Rica**, article 56 of the 2008 Regulatory Law of the Insurance Market established that the financial sector's four regulatory authorities are responsible for authorising mergers between market players under their supervision.[23] Furthermore, the law does not specify that these authorities must ensure that the mergers requiring their approval do not harm competition. Instead it says that once a merger authorisation request is received by any of these regulators, they must consult with COPROCOM on the effects that this might have on competition, and COPROCOM may issue an opinion within the following fifteen days. In those cases where regulators decide to deviate from the competition agency's opinion, even though such opinions are not binding upon them, regulators have to justify their decisions. The law therefore gives primacy to the financial sector regulators and empowers them to approve mergers with possible anticompetitive effects within the markets under their supervision.

In contrast, with regard to the investigations and penalisation procedures of anticompetitive practices (both absolute and relative) carried out by market players under the supervision of the financial regulators, it was established that COPROCOM would continue to be responsible for those procedures as in all other markets under its scope. In these cases, however, COPROCOM has to request the corresponding regulator's non-binding opinion on the matter to be issued within the following fifteen days. Moreover, it was stated that in cases where the relevant regulator explicitly advises the need to avoid a sanctioning action because of the risk it poses to the financial system's stability, COPROCOM has to justify why its resolution deviates from the regulator's opinion. Finally, article 56 established that regulators must complain before COPROCOM for any practices contrary to those classified in Law 7472, in which case the regulators may participate in the corresponding procedure as interested party.[24]

48. Alternatively, rather than establishing the primacy of an agency in all cases of a certain type, the legislation may mandate the requesting and provision of an opinion from the competition authority.

---

22 OECD, 2016.

23 The regulators of the financial system referred to in this provision are: Regulatory Authority of Financial Entities (SUGEF), created in 1995 and whose function is to audit the operations and activities of financial entities; the Regulatory Authority of Stocks (SUGEVAL), created in 1998 and whose function is to regulate the stock market; the Pensions Regulatory Authority (SUPEN), created in 1996 and whose function is to regulate the national pensions system; and the Insurance Regulatory Authority (SUGESE) created in 2008 and which is responsible for the regulation of the insurance industry.

24 OECD (2014).

Box 7. Mandated requests for an opinion

In the **US**, there are four regulators that have authority to approve or deny bank mergers: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision. In 1963, the Supreme Court upheld the Department of Justice's authority to challenge a bank merger under the antitrust laws. Prior to that time, it was believed that the antitrust laws largely did not cover bank mergers. To resolve industry and Congressional concern over potential harm to the safety and soundness of the banking system from inconsistent outcomes, the Bank Merger Act and the Bank Holding Company Act were amended in 1966 to include a provision for concurrent independent competitive effects review by the DOJ and the bank regulatory agency. Under the Bank Merger Act of 1966, the regulator must request and the DOJ must provide a competitive factors advisory report to the relevant banking agency, which the agency must take into consideration in its decision.[25]

Enforcement

49. Clarity on jurisdiction over enforcement is rarely a problem,[26] however co-operation on enforcement action is fundamental if agencies are to exchange confidential information and thoroughly investigate the allegations before them. Without legislative support to do so, no agency is likely to risk sharing information. In contrast, where agencies are able to do so, they may obtain important data and information, faster and in a more accessible format, without having to impose additional burden on those providing the data (e.g. firms or consumers). In addition, legislation to allow the exchange of information also signals that legislators have a clear expectation that agencies will use this ability and co-operate. In the language of behavioural economics, it can change the default for each agency towards a more co-operative and open position.

Box 8. Co-ordination and exchange of information on Cartel investigations

In **Brazil**, CADE has been co-ordinating two cartel investigations with the Brazilian Central Bank. In the first investigation, it identified a cartel in the offshore foreign exchange market with effects in Brazil, and recently signed cease and deist orders with Barclays PLC, Citicorp, Deutsche Bank S/A Banco Alemão, HSBC Bank PLC and JP Morgan Chase & CO.

At the same time, it opened an administrative proceeding to investigate an alleged cartel in the national onshore exchange rate market, involving the Brazilian currency. The anticompetitive conduct is alleged to have happened mainly in the FX spot and futures market (derivatives), and is related essentially to spot, forward and futures operations conducted and settled in Real. It is alleged to have taken place in Bloomberg's chat rooms between at least 2008 and 2012. For example alleged conduct includes: attempts to co-ordinate exchange operations and exchange risk positions; to define prices and/or level of prices to exchange and differential spreads; attempts to affect the PTAX reference index of the Brazilian Central Bank; and to share commercially sensitive information, such as risk positions, prospective activities of negotiation and/or clients information.

The investigation includes 10 financial institutions based in Brazil and 19 of its employees and/or former employees. There is strong evidence of anticompetitive conduct regarding at least five banks: Banco BBM S/A; Banco BNP Paribas Brasil S/A; Banco BTG Pactual S/A; Banco Citibank S/A; and HSBC Bank Brasil S/A Banco Múltiplo. In addition, there is also evidence that the following banks are involved in the practice to a lesser extent: Banco ABN AMRO Real S/A; Banco Fibra S/A; Banco Itaú BBA S/A; Banco Santander (Brasil) S/A; and Banco Société Générale Brasil S/A.

---

25 ICN (2004).

26 However, clarity may sometimes take the form of a clear exemption or immunity. For example in the US, the insurance business is exempt from the antitrust rules under the McCarran-Ferguson Act. In addition, the Supreme Court has found implied immunity from antitrust rules where the Securities and Exchange Commission has approved price fixing of commission rates.

50. Alternatively, legislation can seek to align objectives and facilitate effective co-operation by giving the regulator primary objectives and enforcement powers that are concurrent with those of the competition authority. By explicitly aligning the objectives of parts of the two agencies, this can help to aligning the objectives and culture of the wider agency. For example, it requires that financial regulators develop a capability in competition law and economics, and hence creates common interests that can form a bridge between other parts of the agencies. Certainly, this concurrency also creates scope for overlap, however it does necessitate the types of informal co-operation that we discuss below and which are more generally valuable for effective co-operation.

Box 9. Concurrent powers as a way to align objectives

In the UK, the Financial Conduct Authority's strategic objective is to ensure that financial markets function well. It also has three operational objectives: (a) to secure an appropriate degree of protection for consumers; (b) to protect and enhance the integrity of the UK financial system; and (c) to promote effective competition in the interests of consumers.

In 2015, it was given the ability to enforce against infringements of competition law, additional powers to conduct market studies and powers to refer markets to the Competition and Markets Authority (CMA) for in-depth investigation with regard to financial services. The CMA can also exercise these powers and these powers are therefore referred to as concurrent powers.

Concurrent powers harness the sectoral expertise of the FCA in taking on the task of competition enforcement. Given the statutory obligation for the FCA to promote effective competition in financial markets there is also a functional overlap between antitrust enforcement and competition-focused regulation. They also create a regulatory framework that can quickly and flexibly adjust to changes in the scope for competition and hence the need for regulation (which can be reduced where competition is working effectively).

The Concurrency Regulations, enacted by statutory instrument, establish a formal but primarily consensual procedure to determine which regulatory agency will exercise jurisdiction.[27] The UK Competition Network, the membership of which comprises the CMA and the regulators with concurrent powers, provides a forum for multilateral discussions and co-ordination, while informal bilateral interactions also occur frequently. The FCA and the CMA have also agreed Memoranda of Understanding on the use of concurrent powers under both competition,[28] and consumer protection legislation.[29]

Questions:

- How does the existing legislation in your country help / hinder effective co-operation?
- Are there any plans/proposals to modify this?

27 CMA (2014).

28 CMA & FCA (2015).

29 CMA & FCA (2016).

3.2 Techniques to co-operate and advocate effectively

51. In this section we look at ways to co-operate while taking the legislative arrangements as a given. This is the day-to-day challenge for competition agencies since opportunities to effect legislation are inevitably rare.

52. Broadly, co-operation can be either of an organised or informal nature, and these are usually entirely complementary approaches. Organised co-operation generally requires planning and sign off by the leadership of the two agencies. In contrast, informal co-operation may arise at many different levels of seniority within the agencies as an attempt to find 'work-arounds' for the minor inefficiencies that are inevitably created by institutional barriers.

3.2.1 Informal co-operation

53. Informal co-operation can include networking by staff to build relationships that provide informal contacts within other agencies (and this can of course be facilitated or encouraged by the agencies). It can include the appointment of contact persons, perhaps with specific knowledge of their counterpart's field (financial services or competition). These can help to quickly respond or direct requests for co-operation to the part of the organisation that is best placed to respond.

54. Once contact is made, informal co-operation can take the form of regular or ad-hoc meetings, the setting up of joint working groups or inter-agency task forces. In these informal fora staff can exchange the types of advice and non-confidential information that helps agencies achieve the goals identified above in section 2.4.2.

55. Another way to obtain the same insight is through training, sharing, or recruiting staff. Offering competition training to financial regulators (or financial training to competition staff), can enable those staff to provide competition advice from within the regulator. Indeed such advice might even have greater weight coming from somebody with a full understanding of the other objectives of the regulator.

Box 10. Training courses

In **Brazil**, CADE runs an applied course on competition policy. Originally focused on its internship programme PINCADE, it opened the course up to public lawyers, civil servants, and sector regulators. The course is intended to help educate staff in other branches of government on competition in order to avoid anti-competitive impacts on markets from government actions or inactions.

56. An alternative is secondment or exchange of staff between the organisations. While this can entail a short term cost for the agency that loses a member of staff, it can provide the counterpart with valuable insight during that time, whilst bringing similar valuable insights back to the agency at the end of the arrangement. Similarly recruiting staff with experience in financial services can bring the same types of benefit. Such recruitment might be at an operational level or it might involve recruitment onto an oversight board.

Box 11. Staff exchange

In **Panama**, ACODECO has supplemented its institutional efforts to co-operate more effectively with mechanisms that are more informal. For example, some staff from ACODECO migrated to agencies responsible for sector regulation and vice versa, creating additional contact points across the agencies.

3.2.2 Organised co-operation

57. Co-operation can be organised either by agreeing how to minimise interactions an avoid stepping on one another's toes, or by agreeing and codifying how to interact.

Minimising interaction

58. Minimising interaction typically involves one agency absenting itself, while another takes primacy over a specified jurisdiction. This can limit the scope to take advantages of the complementarities between efficiency, stability or consumer protection discussed above. However, co-ordinating to minimise interactions can nevertheless be valuable if it removes what might otherwise be a confusing or unhelpful interaction. In such cases, it can help to provide clarity and improve policy coherence.

Box 12. Choosing not to assert jurisdiction

In **Brazil**, CADE and the Central Bank agreed that, pending legislation, the Central Bank would have exclusive competency for reviewing mergers that involve a risk to the overall stability of the financial system. The Central Bank was to identify which bank mergers would involve such a risk. At the same time, the competition authorities (CADE, SEAE and the SDE) were to retain exclusive competency for handling conduct cases in the banking sector.

Managing interactions

59. In contrast, interactions often need to be managed rather than removed. In these cases, where the competition agency, the regulator and central bank each have a specific role within a process, agencies may decide to provide a single set of joint guidelines that set out the process from the users perspective. These can be particularly helpful in case of concurrent (application of the same law), parallel (on the basis of different laws) or shared competencies. Underlying these joint guidelines are typically memoranda of understanding between the agencies that are party to the joint guidelines, which govern the way that the agencies will interact to ensure they follow the joint guidelines.

Box 13. Joint guidance

In **Brazil**, CADE and the Central Bank have issued joint guidelines on mergers, covering both those that involve a risk to the overall stability of the financial system, and those that do not, and the process for determining which is which. They also entered into a co-operation agreement that provides for the exchange of confidential information.

Similarly, in the **US**, the Department of Justice, the Federal Reserve Board, and the Office of the Comptroller of the Currency jointly published in 1994 the Bank Merger Competitive Review, which outlines the bank merger antitrust review process.

60. The regulator may however, prefer for operational reasons to retain control of all aspects of its regulatory process. Indeed legislation may require it to do so. In these cases, the agencies again need to manage their interactions. For example, the way in which they provide their advice and technical expertise by making submissions, responding to consultations, attending hearings, and publishing opinions or expert reports. Indeed memoranda of understanding might set out an agreement or expectation that they do so, along with the way in which that advice is to be treated. For example, it might set out a referral process and specify that, where an agency departs from the advice, it will publish an explanation of its reasoning.

Box 14. Agreeing to require a favourable opinion

In **Honduras**, the National Banking and Insurance Commission (CNBS), an autonomous body attached to the Central Bank of Honduras, is responsible for authorising mergers in the banking sector. However, the CNBS has signed a mutual co-operation agreement with the CDPC and has adopted a policy of requiring a prior favourable opinion from the CDPC before conducting its own review.

In the **US**, there are four regulators that have authority to approve or deny bank mergers: the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision. In 1963, the Supreme Court upheld the Department of Justice's authority to challenge a bank merger under the antitrust laws. Prior to that time, it was believed that the antitrust laws largely did not cover bank mergers. To resolve industry and Congressional concern over potential harm to the safety and soundness of the banking system from inconsistent outcomes, the Bank Merger Act and the Bank Holding Company Act were amended in 1966 to include a provision for concurrent independent competitive effects review by the DOJ and the bank regulatory agency. Under the Bank Merger Act of 1966, the regulator must request and the DOJ must provide a competitive factors advisory report to the relevant banking agency, which the agency must take into consideration in its decision.[30]

61. In rare cases, it may even be possible for joint proceedings to be held. For example, where a firm's conduct is alleged to have breached both financial regulations and competition law there may be value in holding joint hearings, and sending out joint requests for information. However, the practicality of such co-operation would clearly depend on the timing of the different investigations.

Box 15. Joint proceedings

In **Brazil**, SEAE, SDE and the Central Bank agreed a formal co-operation agreement in 2006 under which they conducted a detailed market study of the credit card market in Brazil which was completed in 2009 (see section 4.3). They followed this up by working together to develop a series of rules that the Central Bank issued that governed bank services charges.

62. At the most basic level, co-operative agreements allow agencies to exchange confidential information, update one another on complaints received, investigations launched, and the progress of ongoing investigations within a regulated sector. This can all help to build relationships and trust across the two organisations. It may also help serve as the first step in developing a more ambitiously co-operative relationship.

30 ICN (2004).

Box 16. Exchange of information and referrals

In **El Salvador**, the Superintendency has entered into co-operation agreements with the financial system superintendency and the Central Bank. The agreements provide for the exchange of confidential information, for technical assistance and for co-operation in various forms in the execution of the agencies' missions.[31]

In **Costa Rica**, COPROCOM started investigations into local pension operators upon the request of SUGEF, one of the regulators of the financial system. It found that eight local pension operators used the 2004 investment and pension fund crisis to engage in a price fixing cartel. COPROCOM imposed, upon six companies, a fine of 10% of their asset value; and a 10% fine of gross revenues for one of the remaining companies investigated.

63. Finally where either agency has found itself involved in litigation, for example where the legality of regulation is in issue, its counterpart may co-operate via the structures set down by the court, for example by filing an amicus curiae brief.

64. However the agencies decide to co-operate, a co-operative relationship should be recognised as a dynamic one, and hence one that is growing, is stable, or is deteriorating. Senior management across the organisations therefore need to monitor the status of the relationship and take timely action when required to address a deterioration, or to provide the leadership required to help develop the relationship. This might require high-level meetings to identify and address sticking points, and the performance management of those staff that directly participate in the co-operation, for example by identifying the importance of interagency co-operation in performance objectives.

65. In addition to the various techniques that can help make co-operation effective, in each case learning-by-doing will be important for making the relationship work. Therefore, in any given project in a financial market, the competition authority may look to identify at an early stage the opportunities to update or obtain input from the financial regulator and central bank. Whether it is a cartel investigation, an abuse of dominance case, a merger review, a market study or a regulatory process, this opens a channel of communication between the case team and these agencies and offers an opportunity to explore how to make the most of the complementarities that can exist.

66. However, in market studies it is particularly important to co-operate given the holistic nature of the investigation. This means it is necessary for the investigation to have a deep understanding of the way that the market is regulated in order for the competition authority to be able to complete its task. For example, the way in which the market is regulated may be a relevant feature of the market that is found to have an impact on competition. In addition, effective co-operation that uses the expertise of the financial regulator and central bank to increase the quality of the market study can help to build the credibility of the study, which in turn increases the likelihood that recommendations that are produced will be acted on. We therefore turn to look at financial market studies in Latin America and the Caribbean in section 4.

Questions:

- How effectively is your co-operation? Eg where Competition Authorities give opinions are these listened to, reflected in changes by financial regulators, central banks, central government? or not?
- What lessons have you learned?
- How does it differ for merger/cartels/abuse/advocacy/market studies?

31 OECD (2012).

4. Financial market studies

67. Financial market studies has been one area in which many competition authorities in Latin America and the Caribbean have been active, and have therefore frequently encountered and interacted with central banks and financial regulators.

68. For the purposes of this study, a number of financial market studies carried out in Latin American and Caribbean jurisdictions have been selected as a sample. These studies have tended to focus on financial services for final consumers. For example, payment cards in Argentina, Brazil, Mexico and Honduras; and consumer credit and retail banking in Costa Rica, Colombia, Jamaica, Chile, Panama and Mexico. However, El Salvador, Mexico and Panama have each carried out studies of access to credit for micro, small and medium enterprises. These studies include:

Table 1. Financial market studies

Country	Studies
Argentina	CNDC (2016), Payment Cards and Electronic Payment Systems
Brazil	BCB (2005), Retail Payment System BCB, SDE and SEAE (2010), Payment Cards
Chile	FNE (2010), Retail Banking
Colombia	SIC (2013), Consumer Credit
Costa Rica	Costa Rica Central Bank (2005), Banking Coprocom (2007), Banking Costa Rica Central Bank (2009), Financial System Costa Rican Ombudsman and Conare University (2015), Banking
El Salvador	SIC (2011), Payment Cards
Honduras	CDPC (2008), Payment Cards CPDC (2016), Payment Cards
Jamaica	Jamaica Fair Trading Commission (2010), Commercial Banking
Mexico	CFC (2007), Retail Banking Sector Bank of Mexico (2013), Credit Cards COFECE (2014), Financial Sector Bank of Mexico (2015), SME Credit
Panama	Acodeco (2011), Microcredit Acodeco (2013), Stockbroking

69. Although different jurisdictions undertook the abovementioned market studies, there are a number of common themes, as well as numerous differences amongst these market studies. In this section we identify some of the most salient ways in which these studies coincide and differ.

Questions:

- Which other market studies have been conducted in financial markets in recent years? are any currently being carried out or are planned?

4.1 Objectives

70. Most of the market studies analysed were intended to improve competition in their respective markets. They sought to do so by assessing the existing competition environment in the relevant sector, identifying opportunity areas and then formulating the necessary recommendations.

71. However, in some cases, for example the financial sector studies carried out by Panama's competition authority (Acodeco), the studies are of a more descriptive nature, and do not embark on in-depth analyses of competition conditions. For instance, Acodeco's 2013 stockbroking study contains a description of the market, its regulatory framework and its prominent role in the country's development. The study makes a positive assessment of the Panama stockbroking market as a whole (which it notes has significantly grown in the years prior to the study, contributing to the growth of the country's economy). It also portrays the sector's transparency and variety of products in a positive light, noting that they allow for an easy comparison of different options by consumers, and only recommending one minor additional transparency measure. Similarly, Acodeco's 2011 microcredit study also consists of a general description of the country's economic context, followed by an account of the legislation setting out the role of the Autoridad de la micro, pequeña y mediana empresa (AMPYME), an authority tasked with facilitating the creation of SMEs, by, among other means, providing access to credit. The study elaborates on the importance of microcredit for the Panamanian economy and development, but it does not carry out a competition analysis as such.

72. Another example is the 2005 assessment of competition in the banking market carried out by the Costa Rica Central Bank. This finds evidence of monopoly behaviour in the sector but, being a working document, does not include any specific recommendations. Instead, it was intended to initiate a discussion on the costs and benefits of potential policies that are intended to increase competition in the sector.

Questions:

- If your agency has conducted a study of a financial market in recent years, what were the objectives? Were these objectives achieved?
- What would you do differently if you were currently setting objectives for a study of a financial market?

4.2 Competition concerns

73. The scope, main issues of concern and findings of each of the financial market assessments discussed are as diverse as the economic, political and social realities of the different jurisdictions in which they were carried out. With this caveat in mind, it is possible to identify at a general level certain topics and concerns that were common to several of the market studies. Below are some examples of these commonalities.

74. In terms of scope, there appears to be a recurring concern for the financial market sectors that most directly involve consumers, such as payment cards (in Argentina, Brazil, Mexico or Honduras) or consumer credit and retail banking (in Colombia, Jamaica, Chile or Mexico). Access to credit by micro, small and medium enterprises has been a shared focus for El Salvador, Mexico and Panama.

4.2.1 Payment cards

75. With regard to the payment cards market, the findings of different studies have been broadly similar across jurisdictions. For example, jurisdictions have often expressed concern over competitive conditions in acquisition activities as a result of high concentration levels and market power held by the main market players. The CNDC determined the existence of a strong dominant position in the acquisition business, whereas the Central Bank of Brazil referred to the lack of contestability in this activity.

76. Both the Brazilian and Argentinean reports recommend measures geared towards facilitating the entrance of new players into the acquisition market (the merchant's bank). Both studies advocated for ensuring interoperability among network service providers and for putting an end to exclusivity agreements between credit card firms and acquirers, in order to open the acquisition markets (the CNDC extended this recommendation to processing activities as well). COFECE, as part of its 2014 financial sector study, also recommended assessing the effectiveness of eliminating restrictions in the markets for card issuing and acquiring services (regulations on interbank facilitation organisations). Moreover, the reports recommended that integrated acquirers providing processing services offer these services on a non-discriminatory basis to potential non-integrated entrants in the acquisition market. The Bank of Mexico's report made this same recommendation. However, none of the studies specified concrete measures to achieve these goals (such as the imposition of some degree of structural separation).

77. Lack of transparency with regard to fees was also highlighted by the studies by the CNDC and the Central Bank of Brazil. The Bank of Mexico also recommended an increase in the transparency of the information offered to consumers, which, together with a removal of switching barriers by regulators and an improvement in financial education, would encourage consumer switching (which the report had identified as the key to improving competition in the sector). Indeed, The Bank of Mexico suggested that consumer switching was a key factor for competition in the market, arguing that the fact that card issuers did not promote client mobility prevented competition from generating the benefits it should. The report proposed intensifying financial education efforts and, on the supply side, promoting the provision of services that benefit financially responsible clients. In its 2014 report, COFECE noted that only 5% credit card customers had switched issuing institutions between 2011 and 2012, and recommended reviewing the rules on credit portability with regard to their ability to support consumer switching and reducing non-monetary cancellation costs.

4.2.2 Commercial banking

78. Consumer switching was a recurring topic in the context of banking market studies. Several analyses of these markets found that the lack of information on the part of consumers and the low rates of customer switching posed significant hindrances to competition.

79. The study on the Chilean banking sector highlighted, among other issues, the high switching costs for consumers, who were provided with insufficient information, and issued recommendations focused on reducing switching costs, which would facilitate client mobility and encourage more competitive behaviour on the part of firms. These recommendations included the establishment of a protocol for the closing of current accounts, which should allow for the immediate transfer of assets and standing orders to a new account; the implementation of standardised credit cost comparison; and the provision of periodic reports of charges to clients in a standardised format.

80. The assessment of the Jamaican commercial banking sector found that price differences meant there were opportunities for informed consumers (both households and businesses) that were willing and able to switch banks or reorganize their accounts to take advantage of lower-priced services. However, it found that consumers were not adequately informed about banking services, and so, absent improvements

in this regard, consumers would be unlikely to mitigate attempts by any bank, or group of banks, to reduce competition. The recommendations of the study were focused on empowering consumer choice, in order to enhance competition. The report recommended the creation of a one-stop-shop providing consumers with comparable information on the fees and charges of all commercial banks. Instead of a periodic report of charges, as recommended by the Chilean report, the Jamaican Fair Trade Commission advocated for the provision of information on fees prior to the approval of transactions by consumers. For example, it recommended that banks should provide an online calculator of the total cost of loans, and ATMs should alert consumers of the relevant fee prior to completing chargeable transactions. Charges should be clearly explained (with labels such as “miscellaneous charge” or “service charge” being considered insufficient for this purpose). Moreover, the report recommended that banks themselves inform consumers of ways to avoid or minimise fees and charges.

81. Similarly, several of the recommendations included in COFECE’s 2014 study focused on consumer switching; transparency vis-à-vis consumers was also identified as a matter of concern, since in many cases consumers would find it difficult to compare the services offered by different providers. COFECE noted that, in the consumer and housing credit market, debt-holder mobility is reduced, and in this regard recommended support for the development, and when necessary, the regulation of, online platforms where consumers can share their financing needs and relevant data and financial intermediaries can access them in order to propose financing offers to consumers. Difficulties in choosing financial products due to lack of easy access to information or difficulties in comparison were identified for different financial products, such as car loans, retirement insurance, or annual profitability outcomes for savings and investments at institutions other than mainstream retail banks. Similar to the Jamaican report, COFECE’s study advocated for an institutionalised solution, based on expanding services at the existing National Commission for The Protection of Financial Services Consumers to facilitate comparison on financial services for consumers. To address the lack of client mobility between payroll loan providers, COFECE recommended a regulatory solution that allowed for effective payroll loan portability.

82. The reports issued by the Jamaican Fair Trade Commission, the FNE and COFECE each advocated for providing banks with information on consumers’ creditworthiness. However, whereas the Chilean and Mexican reports focused on the advantages that consumers could derive from this (such as benefitting from the reputational capital acquired with their former bank when switching to a new one), the Jamaican report notes that this could help banks assess their exposure to risk. In order to implement its recommendation, the FNE recommended that consumers be provided with their credit history. COFECE proposed securing database provision to any credit reporting agency of information on payment made to government entities. Finally the Jamaican Fair Trade Commission advocated for the establishment of a credit bureau aimed at facilitating the exchange of credit-related customer information between banks, without the client’s intervention.

83. It is worth noting that concentration levels varied amongst jurisdictions. COFECE noted the existence of a “high concentration” of suppliers of financial products and services (in 2011, five financial institutions concentrated around 72% of the banking system’s assets, a situation that has not changed much since 2007). The Colombian report noted that the market for consumer credit had medium concentration levels, with the exception of urban, densely populated areas (Bogotá, Antioquía and Valle del Cauca), which had high concentration levels. The FNE noted that the Chilean banking industry is not highly concentrated in comparison with other countries. However, the Jamaican report noted that the commercial banking sector in Jamaica is “persistently highly concentrated”, but found it unlikely that any one commercial bank could exercise market power without resorting to collusion.

4.2.3 Access to credit for micro, small and medium enterprises

84. The same themes of a lack of transparency, switching costs, and resulting customer inertia are also evident in studies of access to credit. The Bank of Mexico for example issued recommendations aimed at reducing search and switching costs in its analysis of the market for SME credits. These recommendations focused firstly on mitigating information asymmetries between the supply and demand sides of the market (which would increase competition between banks with extended networks while increasing the competitiveness of niche and regional banks as opposed to extended-network banks). Secondly, the recommendations proposed promoting the participation of a development bank, Nacional Financiera (NAFIN) in order to increase competition for clients amongst institutions. Finally, the recommendations also attempted to reduce search and switching costs, by means of an online portal facilitating comparison of different services and by following through with regulation determining that, when switching credit providers, the new bank should assume cancellation costs for the former credit.

85. In its 2014 study, COFECE similarly advocated for electronic solutions aimed at reducing search and switching costs for SME clients (as well as consumers more generally). It recommended supporting the development and, when necessary, the regulation of electronic platforms where SMEs can present their capital and financing needs, and where financial institutions can have access to this data in order to make project financing and co-investment offers to SMEs.

86. In 2016, El Salvador announced it had undertaken a study on financial services for micro and small enterprises.[32] Although the details of the study have not yet transpired, the Superintendencia de Competencia noted that the study would be focusing on analysing the possible existence of obstacles hindering access to financial services by micro and small enterprises.

Questions:

- If there has been a study of a financial market in recent years in your country, what problems did it find?

4.3 Authorities involved

87. Competition authorities have been involved in the performance of most of the market studies. However this is not always the case. In Mexico, the authority that has penned the most recent market studies on the financial sector is neither of the two the national competition authorities (COFECE or IFT) but the national bank (Banco de México), which is entitled to assess the competition condition in the market for financial services and subsequently adopt the necessary regulatory measures under Mexico’s Law of Transparency and Regulation of Financial Services.[33] The Bank of Mexico did not issue this study in collaboration with a competition authority, despite the fact that the publication included a competition assessment.

88. In Costa Rica, competition assessments of the banking sector or of the financial system as a whole have been carried out by actors as diverse as the Competition Authority, the Central Bank (as mentioned above), and the Financial Ombudsman (in collaboration with a university). These assessments are discussed in box 17 below.

---

32 Superintendencia de Competencia (2016), *Comunicado de Prensa C. 24-16* of 31 October 2016.

33 The Mexican Ministry for the Economy can, following a market assessment, ask the competition authorities to undertake the necessary actions to restore competition in the market.

89. In contrast, Brazil provides an example of collaboration between agencies in charge of applying competition law. A recent report on the Brazilian payment card industry was jointly conducted by the Central Bank of Brazil and two of the three agencies that at the time the study was carried out made up the Brazilian Competition Policy System namely the Secretariat for Economic Monitoring of the Ministry of Finance (SEAE) and the Secretariat of Economic Law of the Ministry of Justice (SDE) in 2010.[34] The report contains a detailed technical analysis of the relevant market and identifies several areas open to improvements, but it does not formulate concrete recommendations.

90. The Brazilian report was created in a framework of institutional co-operation promoted by the Central Bank of Brazil for the modernisation of retail payment instruments. The Central Bank signed a technical co-operation memorandum with the SEAE and the SDE with the purpose of increasing efficiency in the payment card industry by the performance of joint studies on retail payment systems.[35] In this context, the 2010 study follows other efforts related to this industry, namely a 2005 "Report on the Brazilian Retail Payment System" and the resulting Directive 1/2006 in which the Central Bank stated its opinion on and expectations for the payment card industry. In this Directive, the Central Bank also announced that it would be closely monitoring the market to prevent potential market failures and anti-competitive practices in the sector.

91. The Costa Rican authorities have also issued two collaborative competition assessments of the banking market. The first such study was issued in 2007, and was developed jointly by Coprocom, the Foreign Investment Advisory Services of the World Bank Group and the Canada International Development Agency (CIDA). A 2009 study of the financial sector carried out by the Costa Rican Central Bank partly relied on the conclusions reached by the 2007 report, as well as on the findings of another study of the degree of competition in the Costa Rican banking sector carried out by the Central Bank itself in 2005. The second collaborative study was published in 2015, and was jointly developed by the Costa Rican Financial Ombudsman and Conares University. These studies will be further discussed in box 17 below.

Questions:

- If your agency has conducted a study of a financial market in recent years, which organisations did it collaborate with, and why? Were any international organisations involved?
- How did the collaboration work? Did it involve financing, expertise, both?
- What would you do differently if you were currently planning to collaborate on a study of a financial market?

4.4 International experiences

92. Relevant experiences from other authorities, and particularly from foreign jurisdictions, are often used as a benchmark or point of reference in these studies.

93. The report on the market for credit and debit cards and electronic payment systems issued by the Argentinean Competition Authority (CNDC) included an entire section taking stock from international experiences from Australia, Brazil, the US, Mexico and Europe. The CNDC referred to experiences in the markets under investigation and considered both infringement cases and regulatory reforms aimed at promoting competition. Similarly, the 2012 financial market study carried out by the Colombian

[34] Following the entry into force of Law nº 12.529 in 2011, the SDE's competences in competition were transferred to CADE.

[35] https://www.bcb.gov.br/pre/acordos_e_convenios/convenio_bacen_sde_seae.pdf.

Competition Authority included a section comparing the characteristics of the Colombian relevant market to those of its counterparts in several other jurisdictions, on the basis of different indicators.

94. Some agencies have used findings in other jurisdictions to help identify hypotheses for closer examination. In its 2010 report on the nature and extent of competition in the commercial banking sector, the Jamaican Fair Trading Commission for example, noted how countries such as South Africa, the US and the UK had found that a lack of information for consumers hindered competition in the sector. It concluded that the Jamaican commercial banking sector faced similar challenges.

95. Similarly, studies in other jurisdictions have also been used as a benchmark allowing for a prima facie analysis of competition conditions in the market. For example, the Costa Rican competition authority (Coprocom) banking report used evidence on the standard spread between the interest rate on deposits and loans across different countries as a benchmark against which to estimate the welfare gains that the country could obtain by increasing competition. The report by the Chilean Fiscalía Nacional Económica also compares the concentration index and interest rates of the Chilean banking sector with those in other jurisdictions. The Argentinean report compares the interchange fees charged in Argentina with those charged in thirteen other jurisdictions, and uses the merchant service fees paid in three other countries as a benchmark against which to measure the equivalent fees in Argentina.

96. Changes recommended in the same market in other jurisdictions have also been used as an element of comparison when developing recommendations. For instance, the Brazilian 2010 report takes into consideration a number of measures adopted in the relevant markets by central banks, antitrust authorities and other governmental bodies in different jurisdictions, and the Chilean competition authority noted that the recommendations included in its competition assessment of the Chilean banking sector were similar to comparable measures adopted in the European Union. The study on the competition conditions in the credit and debit cards sector published in 2011 by the competition authority of El Salvador also includes a comparative analysis of international state intervention experiences to improve and strengthen competition in the relevant market for illustrative purposes. Similarly, the 2009 Costa Rica Central Bank report refers to how other jurisdictions (like Panama or Mexico) have acted to address concerns similar to the ones identified in the Costa Rican context.

Questions:

- If your agency has conducted a study of a financial market in recent years, what role did international comparisons play in you're the study?

4.5 Methodologies used

97. The methodology used for the performance of these market studies is another aspect common to several Latin American and Caribbean jurisdictions. Many of the authorities in charge of producing financial sector market studies in the region rely on a comprehensive combination of sources including surveys of the relevant stakeholders, academic research, public statistical data or restricted-access government data.

98. The Brazilian 2010 report incorporates information collected from four distinct sources: payment card companies, payment card issuers, acquirers and data processors, and merchants. Moreover, data from the national information system for consumer defence, which consolidates consumers' complaints and reports, were also considered. The sources used by the Chilean competition authority in its banking sector report included the economic literature, reports by financial sector regulatory agencies and international organisations, and public statistics from the Superintendencia de Bancos e Instituciones Financieras. The

2015 report on the competition conditions for the provision of credit to SMEs issued by the Bank of Mexico draws on public statistical data, restricted-access government databases and distributed among relevant stakeholders. As anticipated above, in late 2016, El Salvador initiated a study on the market for financial services for micro and small enterprises, which will be partly based on interviews and requests for information to financial services firms and to a sample of the micro and small enterprise sector.

Questions:

- If your agency has conducted a study of a financial market in recent years, what methodologies did you use? What information or data did you use?

4.6 Follow-up to the study

99. Mexico provides two good examples of the impact that market studies can have as a result of effective follow-up by the relevant authorities.

100. Firstly, recommendations on the retail banking sector issued in 2007 by CFC (the predecessor of COFECE, Mexico's competition authority) led to changes in the private pensions system and in the regulatory framework for the financial sector. For example, they facilitated customer switching, and provided a more transparent role for the central bank in setting interchange fees in credit cards. In the study, CFC had highlighted the high cost of banking services and the existence of regulatory incentives for banks not to compete on prices. Moreover, it found that users had difficulty comparing products and services offered by different banks, which, together with the high costs of transferring accounts from one bank to another, limited consumer switching. On the basis of CFC's recommendations, the Mexican Congress approved a series of procompetitive legal reforms in early 2010 which were geared towards facilitating consumer switching between accounts by enhancing transparency and facilitating comparison of bank products. The reforms also reduced minimum capital requirements for new banks, guaranteed non-discriminatory access to retail payment systems, and promoted competitive banking fees.

101. COFECE's 2014 market study on the financial sector was similarly successful in effecting change. Its recommendations met with the approval of several authorities and institutions, who made public their interest in implementing some of the report's recommendations. CONSAR (National Commission of the Retirement Savings System) issued a set of strategic guidelines in line with COFECE's recommendations. FOVISSSTE (Home Fund for the Institute of Social Security and Services for State Workers) and INFONAVIT (National Workers Home Fund) announced their agreement with some of the report's recommendations (such as issuing credit products in pesos instead of in minimum salary units). The Ministry for Taxation and Public Credit has also stated that financial authorities in Mexico were in the process of implementing COFECE's recommendations. The Bank of Mexico also included these recommendations in its regulatory agenda, and issued several circulars in 2014 with the purpose of increasing competition in the financial services sector (in particular in respect of ATM fees and account mobility).

102. While the implementation of a study's recommendations depends on the statutory powers of the entity conducting them and the willingness of governments to accept their recommendations, competition assessments can generate significant benefits for markets and consumers (which can, in turn, promote long-term economic growth). Quantifying, or at least qualitatively describing these impacts can be a worthwhile effort to identify the value of conducting market studies, and to build awareness of the impact of regulatory limitations on competition, economic growth and consumer welfare.[36]

---

[36] Further information on the ex-post evaluation of competition interventions can be found in the OECD's Reference guide on ex-post evaluation of competition agencies' enforcement decisions (OECD, 2016).

103. Few of these market studies have yet been subject to an ex-post assessment of whether and how the measures proposed by the market study (if any) were implemented. One exception however is Costa Rica (see box 17), where recent studies have been examining the Costa Rican banking and financial sector at regular intervals. Their findings provide valuable input for the performance of an ex-post review or follow up of the study's impact. A study of these four assessment's conclusions reveals that, although some of the concerns expressed in the 2000's were subsequently addressed by the Costa Rican authorities, the majority of the main recommendations put forward by the studies were not implemented.

Box 17. Four assessments of the Costa Rican banking sector

In Costa Rica, four successive reports issued by different authorities, have analysed competition in the Costa Rican banking sector (one of them dealing with the financial sector generally): a 2005 brief study published by the Central Bank; a 2007 report carried out by Coprocom and other international entities; a financial sector analysis published in 2009 by the Central Bank; and a report issued by the Costa Rican Financial Ombudsman and Conare University in 2015.

The 2005 study found that the banking sector in Costa Rica did not function as a competitive market, and proposed a discussion on the possibility of introducing competition-enhancing policy measures in the sector.

The 2007 report identified important competitive hindrances in the Costa Rican banking sector, many of them of regulatory origin. For instance, operating regulations differed between public and private banking, as did the regulatory and tax segmentation of offshore banking. Moreover, certain banks (having been created through specific laws) still benefitted from special treatment. It was noted that the competition authority itself might not have sufficient resources to distinguish between competition hindrances and practices generated through innovation and product differentiation. The study estimated that welfare gains of up to 1.7% of the country's GDP could be obtained if greater competition could be achieved in order to reduce spread margins to international standards levels. The report then called for the co-ordinated efforts of the different authorities in charge of supervising the sector (Coprocom, Superintendencia General de Entidades Financieras [SUGEF] and the Costa Rica Central Bank) to work jointly for greater competition, moreover advocating for the institutional strengthening of COPROCOM. It also recommended a legal reform in the financial sector with a view to promoting greater competition, since many of the competition hindrances identified originated in regulatory, legal and tax differences under which different operators in the Costa Rican banking market operated. The report even identified some specific laws that would need to be reformed, such as the National Banking System Law, the Costa Rican Central Bank Law, and the Law Creating the Housing Mortgage Bank.

The Costa Rica Central Bank studied the possibility of adopting a bank deposit insurance scheme. This was expected to improve competition for deposits, since in this respect public banks could already rely on the State's guarantee, whereas private banks could not. However, no consensus was reached on this reform, which remained unimplemented. However, with regard to tax segmentation of offshore banking, a new regulation issued in 2008 prevented offshore banks from operating under an international licence; their licence was instead to be granted by the authority of the jurisdiction where they were located, which subjects them to that jurisdiction's regulation and supervision. This regulatory change addressed one of the concerns expressed in the report and contributed to increasing competition in the sector.

Two years later, the Central Bank issued a working document analysing the competitiveness of Costa Rica's financial system and proposing measures to increase competition. The Central Bank's analysis, although not exclusively focused on the banking sector, identified competition concerns similar to those expressed in the 2007 report. There were still differences in the operating regulations of private and public financial entities. Limitations to the operation of foreign banks in Costa Rica persisted. The financial institutions created by means of special laws continued to benefit from preferential treatment. Moreover, the institutional reforms suggested for Coprocom were still required. The analysis maintained some of the main recommendations included in the 2007 report.

In 2015, the Costa Rican Ombudsman and Conare University published a report on the competition conditions of the Costa Rican banking sector. The report still found significant competitive concerns of regulatory origin that hindered competition between private and public banks and prevented the existence of a level playing field for all operators. It noted that, although several legislative initiatives had been issued addressing the majority of these concerns, they had failed to be approved.

104. Market studies can also lead to enforcement responses. For instance, the Argentinean market study on the credit card market resulted in investigations of potential abuse of dominance and cartelisation. Similarly, in Honduras, the CDPC initiated an investigation of potential anti-competitive behaviour in the payment cards market as a follow up on the findings of a market study, which had concluded that, at a minimum, tacit collusion was taking place in the sector. The investigation however found no evidence of a cartel.

Questions:

- If your agency has conducted a study of a financial market in recent years, what follow-up did you conduct, e.g. to ensure recommendations were acted upon, or to measure the impact?
- What was the outcome of the study? What impact did it have? E.g. On legislation? On regulation? On consumer behaviour?
- What would you do differently if you were currently planning to follow-up on a study of a financial market?

4.7 Context for the study

105. The context in which the market studies were undertaken varied across jurisdictions.

106. Some studies were part of a "series" of studies planned by the relevant authorities in the context of a broader policy effort. For instance, the market study undertaken by COFECE in Mexico and published in 2014 was carried out in the context of the second financial reform that Mexico launched in 2014 in order to strengthen the sector's performance. One of the objectives of this reform was increasing competition. In this broad context, the inquiry carried out by COFECE covered credit, savings, stock market financing, insurance and a set of cross-category sector aspects (issues related to regulation, payment systems, credit reporting agencies, trusts and State interventions on the financial sector). In this regard, the Mexico study differed from most of the market studies discussed in this chapter, since it did not focus on one single subsector such as payment cards.

107. The market study undertaken by the Argentinian competition authority was the first of eleven market studies announced by the CNDC in April 2016 aimed at assessing competition conditions in highly concentrated markets.

108. The performance of a market study can also serve as a form of ex-post regulatory impact assessment. The CDPC's study on the payment cards sector was carried out *ex officio* as a follow-up on the new Law of Payment Cards. The CDPC had expected the new law to lead to lower interest rates, and yet they increased. This failure of the law to deliver the anticipated decrease in interest rates raised concerns of potential collusive behaviour. Although the CDPC could have initiated a formal infringement investigation, it opted instead for a market study.

109. In other cases the market study was carried out *ex ante* to inform draft regulation or legislative initiatives. This is the case, for example, in the 2007 Opinion issued by the now extinct CFC, which analysed the Mexican retail banking sector in the context of ten legislative initiatives presented in the country between October 2006 and March 2007 with the purpose of implementing reforms in the regulation of retail banking by addressing, among other issues, low levels of competition in the sector.

Questions:

- If your agency has conducted a study of a financial market in recent years, who requested it? who did you send it to?

BIBLIOGRAPHY

Acodeco (2011), El Microcrédito, Informe Técnico nº21, www.acodeco.gob.pa/acodeco/uploads/pdf/nuestra_labor/InformetecnicosobreelmicrocreditoenPanama.09_09_2011_10_05_43_a.m..pdf.

Acodeco (2013), Estudio sobre los Puestos de Bolsa en Panaá, Informe Técnico nº 32, www.acodeco.gob.pa/acodeco/uploads/pdf/nuestra_labor/EstudiosobrelosPuestosdeBolsaPanama1_14Mayo2013.05_14_2013_11_39_55_a.m..pdf.

Allen & Gale, 2004, "Competition and Financial Stability" Journal of Money, Credit and Banking, 26, 3, 453-480.

Armstrong, 2002, "Competition in Two-Sided Markets" http://adres.ens.fr/IMG/pdf/24022003.pdf

Banco Central de Costa Rica (2005), Identificación del Grado de Competencia en el Mercado Bancario Costarricense, www.bccr.fi.cr/investigacioneseconomicas/sistemafinanciero/Identificacion_Grado_Competencia_Mercado_Bancario_Costarricense.pdf.

Banco Central de Costa Rica (2009), Análisis de la Competitividad del Sistema Financiero Costarricense, DEC-AAE-130-2009, www.bccr.fi.cr/investigacioneseconomicas/sistemafinanciero/Analisis_de_la_competitividad_del_sistema_financiero_costarricense.pdf.

Banco de México (2013), Reporte sobre las condiciones de competencia en el mercado de emisión de tarjetas de crédito, www.banxico.org.mx/publicaciones-y-discursos/publicaciones/informes-periodicos/reporte-sobre-las-condiciones-de-competencia-en-lo/%7B32337A40-0984-B48B-621E-93CE4104806A%7D.pdf.

Banco de México (2015), Reporte sobre las condiciones de competencia en el otorgamiento de crédito a las pequeñas y medianas empresas (PYMEs), www.banxico.org.mx/publicaciones-y-discursos/publicaciones/informes-periodicos/reporte-sobre-las-condiciones-de-competencia-en-lo/%7BB0D52028-C9F4-9410-0DA9-AA76BD9474AB%7D.pdf.

Bank of England, 2015, "The Prudential Regulation Authority's secondary competition objective" Dickinson, Humphry, Siciliani, Straughan and Grout; Quarterly Bulletin, 2015 Q4, p334. http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/2015/q402.pdf

Bank of England, 2016, "Evaluating the PRA's approach to its Secondary Competition Objective" Independent Evaluation Office, Bank of England, March 2016 http://www.bankofengland.co.uk/about/Documents/ieo/evaluation0316.pdf

Bank of England, 2016, "The PRA's response to the Independent Evaluation Office's evaluation of the PRA's approach to its secondary competition objective" Bank of England, March 2016. http://www.bankofengland.co.uk/about/Documents/ieo/praresponse0316.pdf

BCB (2005), Report on the Brazilian Retail Payment System, https://www.bcb.gov.br/Pom/Spb/Ing/ReportontheBrazilianRetailPaymentSystem.pdf.

BCB, SDE and SEAE (2010), Report on the Brazilian Payment Cards Industry, www.bcb.gov.br/Pom/Spb/Ing/Payment_Cards_Report.pdf.

Boyd & De Nicolo, 2005, "The theory of Bank Risk-taking and Competition Revisited" Journal of Finance, 60, 3, 1329-1343

CDPC (2008), Informe de Investigación: el Mercado de las Tarjetas de Pago (Crédito y Débito) en Honduras, www.cdpc.hn/sites/default/files/Privado/estudios_mercado/estudio%20sectorial%20001.pdf.

CPDC (2016), Análisis del Mercado de las Tarjetas de Pago (Crédito y Débito) en Honduras, www.cdpc.hn/sites/default/files/Privado/estudios_mercado/Analisis_del_Mercado_de_las_Tarjetas_de_Pago_en_Honduras_Junio2016.pdf.

CFC (2007), Opinión, Oficio PRES-10-096-2007-110. CMA, 2014, "Regulated Industries: Guidance on concurrent application of competition law to regulated industries" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/288958/CMA10_Guidance_on_concurrent_application_of_competition_law_to_regulated_industries.pdf

CMA & FCA, 2015, "Memorandum of understanding between the Competition and Markets Authority and the Financial Conduct Authority – concurrent competition powers" https://www.fca.org.uk/publication/mou/fca-cma-concurrent-competition-powers-mou.pdf

CMA & FCA, 2016, Memorandum of Understanding between the Competition and Markets Authority and the Financial Conduct Authority on the use of concurrent powers under consumer protection legislation" https://www.fca.org.uk/publication/mou/fca-cma-consumer-protection-mou.pdf

CNDC (2016), Análisis de las Condiciones de Competencia en el Sector de Tarjetas de Crédito, Tarjetas de Débito y Medios de Pago Electrónicos, www.argentina.gob.ar/sites/default/files/cndc_resol_invmerc_tarjetas_2.pdf

COFECE (2014), Trabajo de Investigación y Recomendaciones sobre las Condiciones de Competencia en el Sector Financiero y sus mercados, www.cofece.mx/cofece/images/Estudios/COFECE_trabajo_investigacion_prot.pdf.

González, A., and Gómez-Lobo, B. (2010), Competencia en Servicios Bancarios a Personas, www.fne.gob.cl/wp-content/uploads/2011/03/estu_0004_2010.pdf.

Herbert Smith FreeHills, 2016, "Overview of Regulatory Sandbox Regimes in Australia, Hong Kong, Malaysia, Singapore, and the UK" Oxfrod Business Law Blog, 18 December 2016. https://www.law.ox.ac.uk/business-law-blog/blog/2016/12/overview-regulatory-sandbox-regimes-australia-hong-kong-malaysia

ICN, 2004, interrelations between antitrust and regulatory authorities" Report to the third ICN annual conference Seoul, by the Antitrust Enforcement in Regulated Sectors Working Group, Subgroup 3. April 2004. http://www.internationalcompetitionnetwork.org/uploads/library/doc380.pdf

ICN, 2004, interrelations between antitrust and regulatory authorities, Report to the fourth ICN annual conference Bonn, by the Antitrust Enforcement in Regulated Sectors Working Group, Subgroup 2. June 2004. http://www.internationalcompetitionnetwork.org/uploads/library/doc381.pdf

IMF, 2013, “Macroprudential and Microprudential Policies: Toward Cohabitation” IMF Staff discussion note; Osiński, Seal, and Hoogduin; June 2013, SDN 13/05 https://www.imf.org/external/pubs/ft/sdn/2013/sdn1305.pdf

Jamaica Fair Trading Commission (2010), Nature and Extent of Competition in the Commercial Banking Sector, www.jftc.com/Libraries/Industry_Studies/2011_1_10_Final_-_Nature_and_Extent_of_Competition.sflb.ashx.

Keeley, 1990, “Deposit insurance, risk and market power in banking” American Economic Review, 80, 1183-1200.

Monge-González, R., and Rosales-Tijerino, J., (2007), Promoviendo más Competencia en el Sector Bancario Costarricense, www.coprocom.go.cr/documentos/informes/DocSFCOPROCOM-BM_030208.pdf.

OECD, 2008, “Competition Law and Policy in El Salvador: A Peer Review” http://www.oecd.org/daf/competition/41597078.pdf

OECD, 2009, “Competition Law and Policy in Colombia: A Peer Review” http://www.oecd.org/daf/competition/44110853.pdf

OECD, 2010, “Strategies for Competition Advocacy” http://www.oecd.org/competition/latinamerica/2010%20Latin%20American%20Competition%20Forum.pdf

OECD, 2010, “Competition Law and Policy in Brazil: A Peer Review” http://www.oecd.org/daf/competition/sectors/competitionlawandpolicyinbrazilapeerreview.htm

OECD, 2010, “Chile – Accession Report on Competition Law and Policy” http://www.oecd.org/daf/competition/sectors/47950954.pdf

OECD, 2010, “Competition Law and Policy in Panama: A Peer Review” http://www.oecd.org/daf/competition/competitionlawandpolicyinpanama-2010.htm

OECD, 2011, “Competition Issues in the Financial Sector”, http://www.oecd.org/daf/competition/sectors/competitionissuesinthefinancialsector-2011.htm

OECD, 2011, “Competition Law and Policy in Honduras: A Peer Review” http://www.oecd.org/daf/competition/sectors/competitionlawandpolicyinhonduras-2011.htm

OECD, 2012, “Follow-up to the Nine Peer Reviews of Competition Law and Policy of Latin American Countries” http://www.oecd.org/daf/competition/2012Follow-upNinePeer%20Review_en.pdf

OECD, 2014, “Competition Law and Policy in Costa Rica: A Peer Review” https://www.oecd.org/daf/competition/CostaRica-PeerReview2014en.pdf

OECD, 2015, “Competition and market studies in Latin America 2015: The case of Chile, Colombia, Costa Rica, Mexico, Panama and Peru” http://www.oecd.org/daf/competition/competition-and-market-studies-in-latin-america-2015.htm

OECD, 2016, “Colombia: Assessment of Competition Law and Policy” http://www.oecd.org/daf/competition/Colombia-assessment-competition-report-2016.pdf

OECD, 2016, "Reference guide on ex-post evaluation of competition agencies' enforcement decisions" http://www.oecd.org/daf/competition/reference-guide-on-ex-post-evaluation-of-enforcement-decisions.htm

Panetta and Alessandri, 2016, "The Co-ordination of Micro and Macro-Prudential Supervision in Europe" European Economy: Banks, Regulation and the Real Sector, 2 March 2016. http://european-economy.eu/leading-articles/the-co-ordination-of-micro-and-macro-prudential-supervision-in-europe/

Philippi, 2016, "The Antitrust Review of the Americas 2017: Chile: National Economic Prosecutor's Office" Global Competition Review, August 2016.

Superintendencia de Competencia (2011), Sector Tarjetas de Crédito y Débito: Estudio sobre condiciones de competencia en el sector de tarjetas de crédito y débito en El Salvador, http://sc.gob.sv/site/uploads/est_15_inf.pdf.

Superintendencia de Competencia (2011), Recomendaciones de Política Pública: Estudio de Condiciones de Competencia del Sector de Tarjetas de Crédito y Débito, RC-AE-02/2011, http://www.sc.gob.sv/site/pages.php?Id=1524.

Superintendencia de Industria y Comercio (2012), Crédito de Consumo en Colombia.

Vickers, 2010, "Central Banks and Competition Authorities: institutional comparisons and new concerns" Bank for International Settlements Working paper No. 331, November 2010.

Villamichel Morales, P. (2015), Análisis de los 20 Años de Competencia en el Sector Bancario Costarricense, http://estadonacion.or.cr/files/biblioteca_virtual/021/economia/VillamichelBancaC3.pdf.

Vives, 2010, "Competition and stability in banking" CEPR Policy Insight No. 50, August. http://cepr.org/sites/default/files/policy_insights/PolicyInsight50.pdf

Vives, 2014, "Strategic Complementarity, Fragility, and Regulation". *Review Financial Studies* 2014; 27 (12): 3547-3592. https://academic.oup.com/rfs/article/27/12/3547/1849484/Strategic-Complementarity-Fragility-and-Regulation

Vives, 2016, "Competition and Stability in Banking: The role of regulation and competition policy", Presentation at CCP Conference, Norwich, June 2016 http://competitionpolicy.ac.uk/documents/8158338/13138885/CCP+Annual+Conference+2016+Session+3+-+Xavier+Vives.pdf/329c9ffd-2942-40b9-bf0e-f242920a8444