

Improving the effectiveness of competition agencies around the world – a summary of recent developments in the context of the International Competition Network

András G. Inotai, Stephen Ryan^{1,2}

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1. Introduction

There is growing interest among competition authorities around the world in better understanding the factors determining the authorities' ability to achieve their objectives in an efficient and effective manner. This interest is evidenced by the increasing number of internal studies, surveys and conferences in this area at both national and international levels.

For example, in 2006, DG Competition set up an internal working group to — inter alia — take stock of where the DG's organisation and resources stand now, where they should go until 2010 and what improvements may be necessary to get there. The report of the working group provided a snapshot of current work and output, identified relevant trends for the years ahead, determined the likely impact of those trends on work and output and discussed options as to how challenges can be addressed, including proposals for measures improving efficiency and effectiveness.

Similarly, the US Federal Trade Commission (FTC) conducted, in 2008, a self-assessment exploring ways to strengthen the agency. The report³ summarising the findings of the exercise argues that the inquiry helped the FTC identify its resource needs, suggested improvements to its prioritisation process, identified ways to strengthen its processes for implementing its programmes and pointed to how it can improve links with other government bodies and non-government organisations.

In the international context, the Competition Policy Implementation Working Group of the International Competition Network (ICN) launched, in 2007, a project on agency effectiveness. As part of this project, a survey was first conducted among 20 ICN member agencies identifying and examining operational and organisational characteristics of competition agencies that may be important for successful competition policy implementation.⁴ Another exercise in the framework of the same project assessed competition authorities' abilities to obtain compliance with remedies and sanctions as an important element of agency effectiveness.⁵

In discussions between heads of competition agencies at the 2008 ICN annual conference it was decided that a high-level face-to-face event dedicated entirely to competition agency effectiveness would be useful. DG Competition offered to host such an event and the 'seminar on competition

¹ Directorate-General for the Internal Market, European Commission (formerly with the Directorate-General for Competition).

² The views expressed by the authors are purely personal and do not necessarily reflect the official position of the institution to which the authors are affiliated.

³ The Federal Trade Commission at 100: Into Our 2nd Century, available at:
<http://www.ftc.gov/ftc/workshops/ftc100/docs/ftc100rpt.pdf>.

⁴ See 'Agency Effectiveness Project' report, submitted to the 2008 ICN annual conference, available at:
http://www.internationalcompetitionnetwork.org/media/library/CPI/CPI_WG_1.pdf.

⁵ See 'Report on the Agency Effectiveness Project, Second Phase — Effectiveness of Decisions', submitted to the 2009 ICN annual conference, available at:
http://www.icn-zurich.org/Downloads/Materials/ICN_CPIWG_Report_on_the_Agency_Effectiveness_Project.pdf.

agency effectiveness' took place on 22-23 January 2009 in Brussels with the participation of around 100 agency heads and senior staff.

Part II of this article will summarise the discussions at the seminar based on the summary report,⁶ which was submitted to the 2009 ICN annual conference. Part III will set out the direction of future work within the ICN in the area of agency effectiveness that is expected to follow in the years ahead.

2. The results of the Brussels seminar on competition agency effectiveness

Agency effectiveness is determined by a wide range of institutional and organisational factors. The seminar focused on four such factors: (i) strategic planning and prioritisation, (ii) effective project delivery, (iii) evaluation and (iv) accountability and communication.

2.1. Strategic planning and prioritisation

There was general agreement that the setting of a clear *strategy* is an important factor in being an effective competition agency. A strategy should set out what the agency aims to achieve in broad terms over a period of a few years. A good strategy should (i) focus on policy and qualitative goals, (ii) be sufficiently clear to provide a basis for prioritisation of activities and (iii) motivate and inspire management and staff.

Agencies should have some kind of a *plan for implementing their strategy*. For example, a work programme defining deliverables over a shorter period (e.g. one year) and containing a broad allocation of resources between the main activities of the agency could facilitate effective implementation of the strategy. Challenges include linking the strategy and the implementation plan, ensuring flexibility of work programmes to allow the agency to react to unforeseen changes in the economic environment and ensuring buy-in from management and staff.

There was also agreement that an agency needs to *prioritise* its tasks. The agency's limited resources should be focused on high-impact or high-significance projects and sectors, although both impact and significance can be interpreted through various proxies (e.g. direct economic impact on consumers, indirect deterrence effect, precedent-setting value). It was also suggested that an agency should not completely neglect the sectors or areas that are not high priority for the moment.

The ability to carry out strategic planning and prioritisation depends on *the degree of autonomy* of competition agencies and their *mandatory activities*. For example, agencies that are more closely integrated into government often have to align their strategies with government strategy, or their strategy may be part of a government strategy. Certain sectors may be 'under the spotlight' to such an extent that there is great external pressure to consider them as priorities. Finally, an obligation to deal with certain merger notifications or complaints limits the agency's discretion in choosing priorities, although there may be some flexibility, such as dealing with obligatory matters which pose no competition issues in a more cursory way.

The need for *adequate information* as a basis for strategic planning and prioritisation was emphasised. This can include information on markets (including data provided by sectoral regulators) and information on past agency actions and their outcomes.

⁶ Available at: http://ec.europa.eu/competition/information/icn_seminar_2009/report_final_version.pdf. The interpretation given to and the emphasis placed on certain parts of the report by this article reflects the views of the authors and does not necessarily correspond to any official opinion of the ICN or of any member of the ICN.

2.2. Effective project delivery

There were three main issues discussed under this topic: *management of cases and other projects*, *agency structure* and *human resources*.

2.2.1. Management of cases and other projects

Most agencies will have a number of projects in the pipeline at any given time, with some projects at the stage of preliminary ideas of evaluation, others at an early investigation phase and others more advanced.

Effective management of projects (whether enforcement cases, market studies, advocacy activities, information campaigns or other policy initiatives) requires *regular re-assessments* of whether the project should continue to be taken forward. For example, unpromising cases should be terminated as early as possible as otherwise they can be very costly in terms of resources. Such reviews commonly take place at a preliminary stage, at an intermediate stage following preliminary investigation and an advanced stage immediately prior to the preparation of a final decision or prosecution.

The internal reviews can be carried out either by staff members not involved in the case (for example by a peer review group assessing the evidence and theory of harm) or by management (for example, a meeting of senior management deciding on the priority status of a project).

It was generally agreed that *deadlines* help in focusing resources and even in the absence of legal deadlines it can be helpful to set internal milestones (i.e. targets with fixed dates) for the project team to reach specific stages of the project.

It was also considered that *software applications* allowing management to review the project portfolio at any time can be useful, although they should not be overly burdensome or used in a formalistic bureaucratic way. More sophisticated tools allowing recording of time spent on different tasks can make for better planning of work.

2.2.2. Agency structure

The *internal organisation* of a competition agency will also influence the effectiveness of project delivery. The basic options are a sectoral-based organisation (allowing the pooling of sectoral knowledge), an instrument-based organisation (allowing the concentration of specific skills for a particular instrument, such as cartels) and a hybrid structure. In any event, flexibility in re-allocation of resources internally — i.e. a *project-based allocation of resources* — is essential.

2.2.3. Human resources

There was agreement that even the best project management techniques cannot succeed without *competent and motivated staff*. High-quality training, opportunity to engage in academic work, work-life balance and career development advice have been mentioned as competitive advantages that agencies can offer to motivate and retain staff for whom they cannot compete in terms of salary with private sector employers.

Rewards for individual staff members, such as bonuses or promotions, should be based on the effective delivery of their personal objectives that should flow naturally from the objectives of the organisation and should consist of clear deadlines and targets.

It was also considered that a certain level of staff turnover (including to and from the private sector) is healthy. *Knowledge management systems* — or some mechanism for preserving institutional memory — are necessary in case of high staff turnover.

2.3. Evaluation

Evaluating the effectiveness of agency activities may be useful in setting future priorities and informing agencies on necessary internal changes. At the same time, provided the results of the evaluation are made public, they can improve accountability to stakeholders.

Experience shows that agencies engage in four basic types of evaluation (the first focusing on output measurement, while the others focus on outcome measurement):

- Evaluation of the efficiency of agency procedures, based on — among other things — activity indicators (e.g. numbers of cases within a given timeframe, average duration of cases) and informal internal evaluations;
- Evaluation of the impact of cases on the directly affected markets (looking at compliance, price levels, strength of competition a certain time after the decision);
- Evaluation of the impact of cases on markets other than the directly affected market (e.g. deterrence effect);
- Evaluation which goes beyond cases and takes into account other activities of the agency, such as advocacy and communication.

Possible challenges in evaluating effectiveness include the difficulty of isolating the impact of agency intervention from other factors that may have influenced market developments, measuring deterrence value and precedent value of agency action and allowing sufficient time for agency action to produce effects.

Evaluations can be carried out either internally (for example, a case team conducting a detailed assessment of what went wrong in a lost case or a small team in charge of evaluating consumer harm resulting from previous cartel cases) or externally (for example, general evaluations by national parliaments, audit offices, the OECD).

2.4. Accountability and communication

2.4.1. Accountability

Accountability can be understood in a narrow sense, referring to formal accountability to a political body exercising some kind of oversight (e.g. parliament, government), or in a broader sense, including general accountability to all stakeholders, in particular consumers. There was general agreement that a transparent decision-making process is an important way of expressing accountability, but approaches differed as to the degree of transparency to be ensured during investigations.

Accountability is closely linked to independence. It was agreed that accountability was necessary to maintain independence in the longer term. And although there was general consensus that competition agencies should be independent (i.e. that their actions should be based on facts and the law), there was less agreement on how independence should be accomplished, especially when it comes to organisational formats and funding. A wide variety of models exist, from agencies that

are stand-alone institutions to those that are integrated into government or from agencies that are funded through the national budget to those that have own sources of funding, such as filing fees.

2.4.2. Communication

Communication is closely linked to accountability: there can be no accountability without communication. The importance attached to communication was highlighted by the general consensus that communication considerations should be part of strategic planning and that adequate resources should be allocated to communication. Whereas the existence of a stand-alone communication team may depend on the size of the agency, there was general agreement that the communication staff should not be isolated from the rest of the agency.

Communication should be adapted to the target group. Typical target groups include policy makers (government, parliament), media, business entities/firms, consumers and their organisations, academia, judiciary, lawyers and educational institutions. Communication with these stakeholders should be a two-way street: feedback from them should be received and digested within the agency. Many agencies considered staff as one of the constituencies of stakeholders and emphasised the importance of two-way internal communication.

Challenges involved in external communication include (i) the conflict between the long-term welfare benefits and the adverse short-term effects of particular competition agency interventions, (ii) the difficulty in identifying and explaining the impact of agency intervention, (iii) managing excessive expectations of stakeholders and (iv) the need to avoid being doctrinaire or patronising, especially with regard to consumers. It was felt that a patient pedagogical approach to the benefits of competition was necessary, particularly in times of economic recession.

There was broad agreement that the indispensable premises of communication are an effective and comprehensive competition law and active enforcement of that law. In other words, good enforcement comes first: there must be something to communicate.

2.5. Some conclusions

Participants in the seminar agreed that although there is no ‘one size fits all’ solution, some universal characteristics of a ‘good’ competition agency can be discerned, such as:

- it has a clearly articulated long-term strategy, and a plan for implementing that strategy;
- it understands that it has a range of policy tools at its disposal, including case investigations and different forms of advocacy and communication, and it has a problem-solving approach that tries to fit the right solution to each problem;
- it adapts its internal structure and processes to its environment and objectives, and keeps its internal organisation flexible;
- it uses clear criteria to select which projects to undertake, among the many (discretionary) actions it could launch;
- it keeps ongoing activities and projects under review and terminates projects that are not meeting their objectives;
- it understands that its main resource is its staff, and tries to provide them with a stimulating, pleasant and rewarding working environment, to compensate for the lower salaries than in the private sector;
- it is constantly reviewing and evaluating its activity, and feeding the results back into the planning process;

- it understands that communication is an essential part of its task, and devotes adequate resources to communication, adapted to different stakeholders;
- it understands that it cannot work alone and forms alliances with other public and non-public bodies (regulators, NGOs, academia, etc.);
- it benchmarks itself against other agencies worldwide, and exchanges best practice with them.

3. Next steps

The Brussels seminar highlighted several areas of common interest for the international competition community in the area of agency effectiveness that should be further examined. The topic of agency effectiveness promises to be one of the most important areas of future research and discussion among competition authorities.

The Steering Group of the ICN decided at its meeting during the 2009 ICN annual conference in Zurich to refine the mandate of its Competition Policy Implementation Working Group, focusing on agency effectiveness. Accordingly, the name of the Working Group has been changed to '*Agency Effectiveness Working Group*'.

The work programme of the Working Group comprises the development of a comprehensive '*Competition Agency Practice Manual*' by 2012. The Manual would cover six themes that have been identified on the basis of work carried out so far as containing the main institutional and organisational factors that determine agency effectiveness. These are:

- *Strategic planning and prioritisation* (including internal planning mechanisms and priority setting);
- *Effective project delivery* (including the use of performance indicators in the management of a competition agency, tools and procedures used for optimal case management, quality control, enforcement and monitoring of compliance with agency decisions);
- *Effective knowledge management* (how agencies should invest in knowledge, what kind of research activity they should undertake, how to ensure that knowledge is retained);
- *Ex-post evaluation* (including project-specific and macro-evaluation, estimating the impact of agency action);
- *Human resource management* (what HR strategy agencies should develop, including the recruitment, retention and motivation of agency staff); and
- *Communication and accountability* (including the role of communication in ensuring effectiveness).

The Manual is intended to serve as a *set of guiding principles* for all ICN members. Where possible, it will set out good practices. It will be a 'living document' in the sense that it will be revised and updated on a regular basis.

This project is only one of the increasing number of initiatives by competition agencies around the world that are aimed at better understanding the drivers of agency effectiveness. It is an indication that in addition to regularly reviewing substantive competition rules and assessing the ways these should be applied, *competition agencies are investing in becoming modern public institutions* that deliver services to their constituencies in an effective and efficient manner.