ASEAN Self-Assessment Toolkit on Competition Enforcement and Advocacy

Contents

Introduction

The ASEAN Experts Group on Competition (AEGC) was set up in 2007 to discuss and cooperate on competition policy. Good competition practices create a level playing field for businesses and enhance regional economic performance in the long run. The progress with respect to the introduction of national competition laws in ASEAN has been very positive: in time for the ASEAN Economic Community (AEC) 2015, with competition laws now in place in nine out of ten Member States.

The ASEAN Competition Action Plan (ACAP) 2016-2025 foresees a vision for an "effective and progressive competition regime with strengthened capacities" to be built in the region. This includes clear targets and timelines for regional initiatives towards:

(i) effective competition regimes in all ASEAN Member States;
(ii) strengthened enforcement capacities of competition-related agencies in the ASEAN Member States;
(iii) regional cooperation arrangements on competition policy;
(iv) fostering a competition-aware region; and
(v) moving towards greater harmonization of competition policy and law in ASEAN.

The ACAP 2016-2025 comes with the important and difficult task of operationalising the term "effectiveness", i.e. devising specific initiatives supportive of effective competition regimes. It also calls for a framework or methodology to adequately assess "effectiveness". Although policy-makers, international organizations and academics increasingly recognize the necessity to evaluate competition regimes, the challenge lies in the practical implementation. There is a consensus that effectiveness needs to be defined and specified, but the research and experience on how to do so is still at an infant stage.

Competition regimes in ASEAN are comparatively young and diverse. The ASEAN Handbook on Competition Policy for Business, which was published first in 2010 and expanded in 2013, already contains a broad description of the legal and institutional set-up for competition policy in all the ASEAN Member States. In parallel, a set of Regional Guidelines on Competition Policy were also launched in 2010, elaborating on the key areas and scope of a competition policy and law framework as well as different institutional options, based on country experiences and international best practices. As such, the Regional Guidelines have been an essential reference for Member States in drafting their respective competition legislations and their efforts to create a fair competitive environment.

The ACAP 2016-2025's Strategic Goal No. 1 of "establishing effective competition regimes in all ASEAN Member States" builds on the commitment of ASEAN to "endeavor to introduce competition policy in all Member States by 2015" (as outlined in the AEC Blueprint 2009-2015). With a consolidated national competition statute already in place in nine out of ten Member States,the younger regimes in ASEAN are now at the stage of setting up enforcement institutions, developing implementing regulations, procedural guidelines etc. in order to address competition issues and cases with adequate instruments. At the same time, the more experienced jurisdictions are currently in the process of reviewing their existing competition regimes, in light of their enforcement experiences, to meet changing market dynamics and elevate to alignment with international best practices. This Self-Assessment Toolkit on Competition Enforcement and Advocacy is meant to be an instrument helping AMSs to undertake these tasks and collectively achieve the ACAP 2016-2025's Goal 1.

The Toolkit is tailored to the ASEAN context, building on the contents of the aforementioned Handbook as well as Regional Guidelines, and drawing upon relevant international practices and approaches recommended, among others, by the ICN, OECD and UNCTAD. Self-assessments, using the Toolkit, are set to be undertaken by all Member States every two years. This includes collecting and collating quantitative as well as qualitative data on the scope and strength, developments and progress, as well as gaps of the national competition regimes. The data could then be used for monitoring and evaluation purposes concerning the 'effectiveness' of competition regimes in the region. Furthermore, they are also expected to feed as inputs into a Regional Peer Review mechanism, to be developed at a later stage, so that "at least five peer reviews are conducted of competition regimes in ASEAN by 2025".

Conceptual Framework

Economic theory establishes that competition is beneficial for the economy. For consumers, increased competition implies more choice, lower prices, higher consumer welfare, improved quality, and increased access to products. Through competitive processes, producers benefit from lower input prices resulting in lower costs and higher profits. The resulting price-profit signals lead to greater mobility of resources from lower to higher valued uses and efficient allocation of resources. Newer firms and increased competition provide incentives for decreasing costs and enhancing innovation (dynamic efficiency). These benefits are measured by estimating consumer surplus, producer surplus, and the resulting total welfare. That monopoly power and anti-competitive practices reduce welfare and create deadweight loss is also well established by economic theory and from empirical evidence.

Competition agencies in both developed and developing economies are increasingly finding themselves accountable to assess the benefits of their activities relative to their costs. At the same time, donors and development partners now need to see "value for money" while providing assistance and support in this area, to be able to report on "aid effectiveness" and remain accountable to tax-payers' money at home. Hence, the search for a framework to evaluate/prove the impact of competition enforcement activities on economic welfare.

A number of initiatives which could be showcased in this regard include, for example, the effort by the Korean Fair Trade Commission (KFTC) in tracing and analyzing the effects of their enforcement activities against cartels through surveys and comparisons of market prices before and after the law violations. In other instances, the Office of Fair Trading in the UK estimates the positive impact of its activities on direct benefits to consumers and compares these numbers to the budget of the Competition Authority, while the Dutch Competition Authority evaluates its enforcement and its effect on the country's macroeconomic variables, such as growth and employment. In the ASEAN region, the Competition Commission of Singapore (CCS) is known to be estimating the monetized value of consumer benefits and markets opened following specific interventions by the agency; while the Indonesian KPPU have been constructing models to measure the impacts of its decisions and advocacy actions on prices, inflation, unemployment and economic growth, etc. There are, however, grave methodological difficulties with this approach.

To begin with, it is known to be extremely difficult to isolate the impact of competition enforcement and advocacy from other factors that influence welfare and economic growth. This approach also fails to take into account that the most important effect of competition policy and law is that it serves to make market actors abstain from anticompetitive practices/behaviours in the first place. If competition rules and enforcement is effective, firms will not enter into cartel agreements or attempt to abuse their dominant positions, and they may not even try to get clearance for anticompetitive mergers. As a result, there might not be many case decisions/actions by the competition agencies but enforcement and advocacy is still 100% effective. The question remains as to how to estimate the monetized value in such scenario.

As a result, competition agencies around the world have increasingly turned to institutional assessment as another feasible solution in answering this difficult question of assessing "effectiveness", recognising that choices involving their design and their operations could deeply influence the quality of their substantive interventions in the market. Institutional assessments by competition agencies could serve many useful purposes, including:

- To support steering and management, thereby allowing for an internal review of decision-making processes and the efficient use of resources;
- To prevent operational failures, and promote replication of past successes; and
- To enable comparability and benchmarking, thereby creating opportunities for mutual learning and exchange of experiences.

Evaluating the effectiveness of competition regimes usually benefits from a focus from outputs to outcomes. For starters, and particularly with younger agencies in mind, the following considerations could come into play:

- There are various approaches to evaluating the effectiveness of competition regimes on different levels, ranging from reviewing the contents of the competition laws and implementing regulations; institutional capacity, processes and operations; the interplay with other relevant actors from the public and private sector, as well as civil society; the extent to which a competition agency fills its scope of action by making use of its mandates and tools; and ultimately, the effects of decisions for consumers and the economy. Capturing all these aspects takes note of that they are interdependent and mutually re-enforcing.

- Self-assessments, based on an agreed format (e.g. questionnaire or checklist),are useful means to evaluating the effectiveness of competition regimes efficiently and regularly. However, a critical element of self-assessments is carefully designing them so as to ensure a certain degree of objectivity in the responses.

Because self-assessments are comparatively easy to undertake, they can be complementary to more in-depth reviews, which are usually carried out by international organizations, notably in the form of "peer reviews" that combine academic and practitioner views, according to common standards and/or procedures. The peer reviews tend to be more time- and resource-intensive, and thus better suited for evaluation purposes at longer intervals, rather than more frequent monitoring. Nevertheless, self-assessment continues to be an inevitable prelude before a more comprehensive peer review mechanism could be achieved.

A brief review of international practices and experiences to evaluating the "effectiveness" of competition regimes which have been undertaken so far would help us in identifying an appropriate approach as well as the various elements for such a self-assessment framework in the ASEAN region.

The ICN Agency Effectiveness Working Group

The **International Competition Network (ICN)** (http://www.internationalcompetitionnetwork.org/) was founded by 15 competition agencies in 2001 and has since grown, with more than 132 competition agencies from 120 jurisdictions as members as of May 2016. In pursuing its mission of advocating the adoption of "superior standards and procedures in competition policy around the world", the ICN also devotes attention to the "effectiveness" aspect. According to its Agency Effectiveness Working Group (AEWG), effectiveness is simply defined as "the ability of competition agencies to fulfil their mandates effectively"[1].

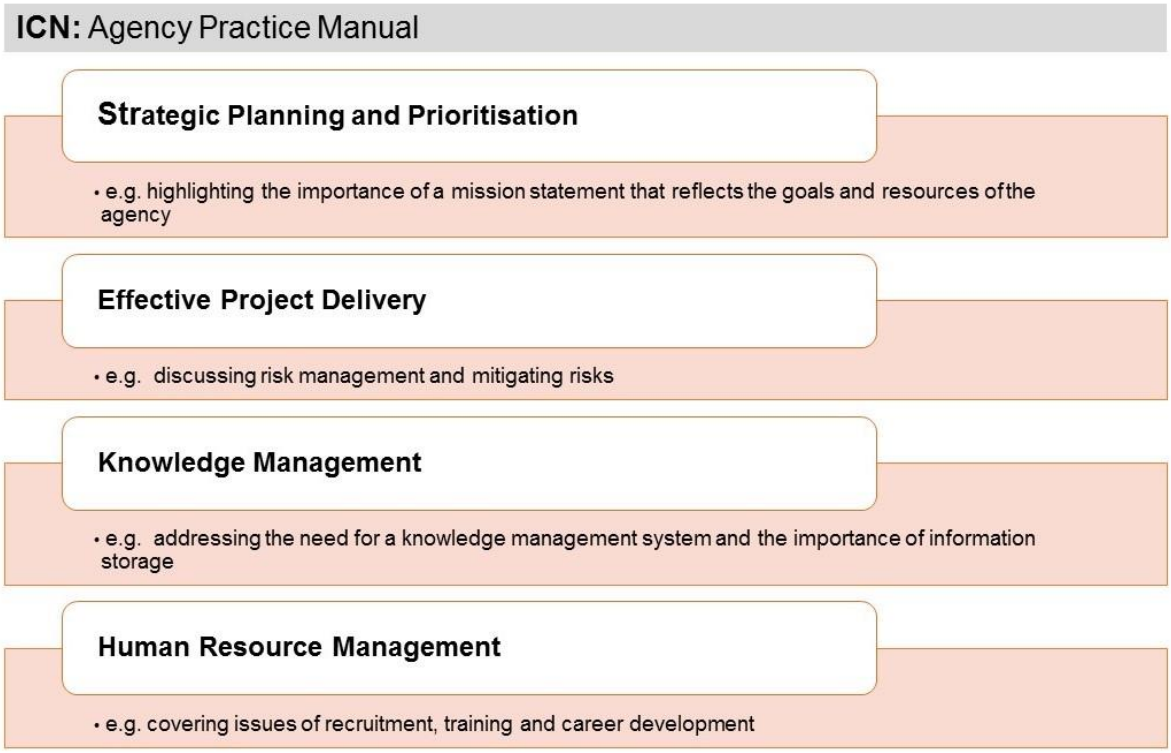
The AEWG has identified key elements of a well-functioning competition agency, in light of factors, such as:

- political powers and the political environment;
- organizational capacity (including planning, selection, resource allocation, implementation, monitoring, communication and evaluation of enforcement and advocacy actions, and achieving results in a timely manner).

The *Agency Practice Manual* so far consists of four chapters in the form of separate reports, focusing on the operational effectiveness of competition agencies. The manual reflects the underlying idea that the manner by which the agency operates will significantly shape its substantive initiatives. In other words, activity outcomes and effectiveness are understood in a very operational and process-centred way. Rather than formulating specific indicators for assessment, the AEWG looks at best practices and guidance.

[1] http://www.internationalcompetitionnetwork.org/working-groups/current/agency-effectiveness.aspx

The areas covered by the ICN's Agency Practice Manual include the following:



Adapted from: www.internationalcompetitionnetwork.org

The identified areas of importance for the (operational) effectiveness of a competition agency may serve as a starting point to derive suitable effectiveness indicators, specifically also for younger agencies where the organizational capacity, including sufficient resources and efficient processes, is often a first priority.

A new topic that the AEWG has been focusing on is agency ethics and integrity, against the backdrop of common "ethical dilemmas" that officials of competition agency are often confronted with. Furthermore, as part of the work plan 2015-2018, the AEWG is undertaking a project on "Agency Evaluation". While still a work in progress, the project is being implemented in partnership, among others, with the OECD.

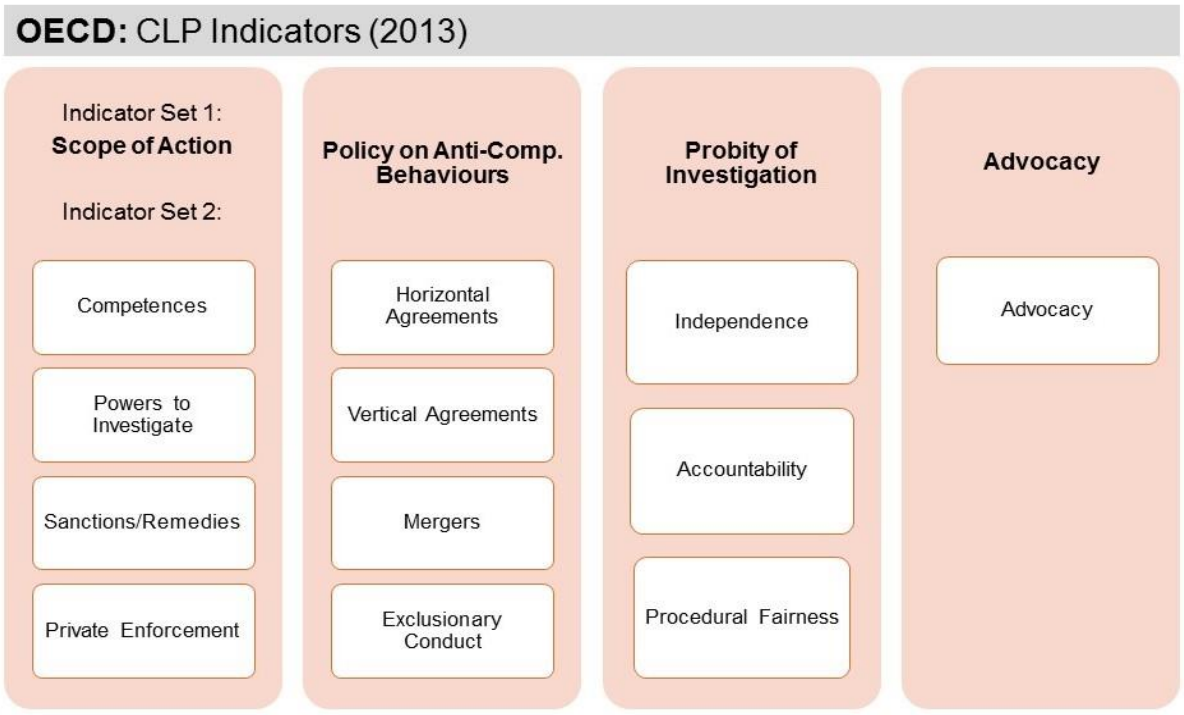
The OECD Indicators

In 2013, the **Organisation for Economic Cooperation and Development (OECD)** developed new competition law and policies (CLP) indicators, based on a self-assessment survey across 43 competition regimes in OECD as well as non-OECD countries[2]. The different categories cover areas "for which there is a broad consensus among member countries on what constitutes 'good' practice for competition regimes" and aim to measure the scope and strength of competition regimes.

Questions relate e.g. to how cases are handled, among others considering whether an economic analysis is performed. Not included are criteria of human and financial resources or the level of sanctions. As such, the approach focuses less on internal processes and project management, but on undertaken activities. Questions, however, include *de jure* and *de facto* aspects (e.g. "Can your competition agency impose sanctions for...?" and "Has your competition agency imposed such sanctions at least once?"). This gives consideration both to the design of competition laws and related policies, as well as the actual enforcement record and impact.

[2] http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=ECO/WKP%282013%2996&docLanguage=En

The indicators developed by the OECD include the following:



Adapted from:
OECD Economics Department Working Paper 1104:
New Indicators of competition law and policy in 2013 for OECD and Non-OECD countries

A significantcomment about the OECD indicators is that they do not allow for capturing of progress and developments which have been made/achieved by the participating jurisdictions. This is, in particular, a concern for younger regimes where the institutional setups, legal frameworks and various enforcement tools are still being built and where the competition agencies are still on a "learning-by-doing" mode.

UNCTAD Peer Reviews on Competition Policy

In 2013, the **United Nations Conference on Trade and Development (UNCTAD**) concluded their project on *Strengthening the capacities in developing countries for the effective enforcement of competition law to minimize constraints to economic productivity*[3]*.* Conducted in the form of voluntary peer reviews and complemented by follow-up technical assistance and study tours, the project aimed at strengthening the capacity of national competition authorities to effectively enforce competition laws and to make recommendations for the improvement of their legal and institutional frameworks.

Participating countries found that the peer review process often was helpful in supporting advocacy and awareness-building to enhance (political) appreciation for the role of competition policies and agencies.
Furthermore, many recommendations from the peer reviews have led to substantial and effective improvements, including initiating changes in laws and procedures.Although studying the content of these recommendations– specifically those for ASEAN countries that took part in the peer review (Indonesia in 2009 and the Philippines in 2014, respectively) – promises interesting insights, so does learning from the peer review process itself: the overall process was considered successful, but improvements could be made with respect to a greater emphasis on training and technical capacity

[3] http://unctad.org/en/pages/publications/Competition-Policies---Voluntary-Peer-Reviews-%28Series%29.aspx

building. In the future, this could incorporate a reporting-back stage after 2-3 years and wider distribution of the recommendations and results of the peer reviews.

In addition to the peer review mechanisms, UNCTAD has shared further perspectives on evaluating agency effectiveness in the form of background notes. Their *2013 Perspective: Competition and Consumer Policy* is a compilation of a number of publications and a good starting point for information on further work in this area. All in all, the work of UNCTAD bridges and builds on the work of the ICN AEWG and OECD, for example through studies on effective resource allocation, human resource development and prioritization, in particular for young agencies.

Towards an ASEAN Approach

Considering existing good practices at the international level and experiences made thus far by selected ASEAN Member States (AMSs), the ASEAN Self-Assessment Toolkit would follow a descriptive approach by mapping the different elements that make up competition regimes. Essentially, these are related to the following broader categories:

(i) legal framework and enforcement;
(ii) institutional and cooperative arrangements;
(iii) advocacy; and
(iv) resources and capacity development.

Each of these categories addresses an important aspect that ultimately determines whether and how the competition agencies could fulfill its mandate effectively. They would be further broken down into a series of questions and exercises that, through subsequent deliberations and discussions, would enable AMSs check where they might want to focus their attention, efforts and resources in order to improve performance vis-à-vis their peers in the region or from one circle of self-assessment to the next.

It was decided that the ASEAN would not go for complex calculations/simulations, as described earlier in this section elsewhere, given the inherent methodological problems with these models. Besides, no scoring or rating would be done as a result of these assessments, at least in the immediate future, given the vast differences in the political economy contexts, levels of development, legal traditions as well as capacity and resource endowments amongst ASEAN regimes.

The guiding questions, 77 in total, are intended for a mixed measurement at different levels, from inputs, to outputs, to outcomes, as appropriate. This is again in due consideration of the different stages of development of as well as the differences between competition regimes in the ASEAN region. For example, when it comes to complaints and case-handling, reporting on the number of cases investigated and decided by a competition agency can be a question to begin with. However, it would subsequently also be necessary to review what happens afterwards, e.g. whether the decisions of the competition agency are reinforced by the courts, or fines paid by the companies etc. Similarly, with respect to advocacy, a question at the output level could be regarding the number of outreach materials produced, while at the outcome level, a competition agency could also assess whether said materials are considered practical and actually used by the targeted stakeholder group, or whether the degree of awareness has increased. Younger competition agencies in the region may, however, start first at the input level, for example with questions concerning what types of prohibitions there are in the competition laws of their countries, what kind of mandates/power the competition agencies are given, or how many capacity building activities for the staff of the agencies have been undertaken with the assistance of donors and/or development partners, etc. In the special case where a consolidated competition statute has not been passed in a country or the competition agency is not yet fully established (with or without a competition law), applicable sections/questions could still be addressed/answered by the relevant Ministries/departments tasked to look after competition matters in that country, which has also been participating as a member of the AEGC so far.

Finally, it is important to reiterate that the purpose for designing this Toolkit is to facilitate assessment of the overall competition regimes. This essentially means some aspects addressed by the questions may lie outside the immediate scope of action by the competition agency, for example the existence of a National Competition Policy, the existence and actions of a specialized court/tribunal to deal with

competition issues, or the use of criminal sanctions to penalize hard-core cartels, etc. The national competition law framework and the competition agency, however, still play a key role in ensuring the 'effectiveness' of a competition regime and thus it is highly important that the agency is aware of these seemingly 'external' factors.

Purpose and Scope

As mentioned in the Introduction, the overarching goal for which this Assessment Toolkit is created is to serve the efforts of AMSs to establish effective competition regimes across the region. Towards that end goal, it is important for ASEAN countries to have an understanding of the strengths and weaknesses of the country's law and policy and their enforcement; the kind of powers and tools available with the competition agency for enforcing the law; whether the relevant stakeholders are properly educated about the provisions of the law and their implications and are supportive of the agency's interventions; and how efficiently the agency has been managing its resources and building up its capacity, etc. A comprehensive and guided assessment using this Toolkit wouldhelp AMSs to subsequently draft a tailor-made plan of action, to overcome the weaknesses identified while boosting the strengths, so as to push forwards reforms which could enhance the "effectiveness" of the overall regime.

The reforms that might come about as a result of the competition agency's actions based on assessments using this Toolkit might range from an amendment of the law, and revision of implementation regulations and guidelines, to re-organisation of the competition agency's structure and various functions, and shifting its priorities and focus in the coming years, to undertaking more advocacy initiatives and public education, etc. To ensure an efficient assessment process, it is therefore important to clearly define the purpose and scope of assessment right at the outset. For example, if the purpose for carrying out the assessment is to push forward an amendment of the law and revision of implementation regulations and guidelines, the agency might want to direct more attention to the first two sections below, on legal framework and institutional arrangements. On the other hand, the younger regimes in the region might want to focus more on the last two sections, on advocacy, and resources and capacity development.

The decision about the purpose and scope of the assessment should be made by the leadership of the competition agency, who would continue to provide guidance throughout the subsequent assessment process. It is meant to ensure that this is aligned with the respective conditions, needs and expectations of respective AMSs. Leadership would also ensure ownership, sustainability for the assessment exercise, and ensure that recommendations and/or proposed action points will actually be carried out.

Process

Once the purpose and scope of the assessment has been identified and clearly stated, the first step is for the competition agency to set up/appoint an assessment team. The assessment team should ideally comprise of at least two mid-level technical officials, who would be reporting to and getting guidance from the senior managers of the agency throughout the process. The assessment team would be responsible for collecting and collating information and data from various departments/divisions of the agency, and in some cases from external sources and other relevant stakeholders, in response to the questions listed in subsequent sections, in the form of ***a brief narrative report***.

The questions, as presented in the subsequent sections, range from the option to answer "yes", "no", to choosing from multiple choices. They invite further elaboration in order to allow for continually monitoring and evaluating progress and performance. The assessment teams of respective AMSs are strongly encouraged to use the options "please describe" or "please specify" to record key discussion points, explanations or append existing and relevant formal documents, in order to revisit and review them at a later stage. Although the Toolkit is divided into four areas for assessment, it is not strictly linear. Users are encouraged to read the tool as a whole before beginning, and to refer back and forward throughout its use.

The second step after reporting is the actual assessment. The assessment team, along with the leadership of the competition agency, and senior managers of all relevant departments/divisions within the agency, would discuss the reporting results, clarify any remaining questions, provide missing information and data, and most importantly, identify the strengths and weaknesses of the overall regime and agree on the way forwards. The assessment could be done in the form of a ***SWOT analysis*** along with a ***future plan of action*** which highlights areas the agency would like to focus its attention and resources to improve upon in the next two years. The agency might even choose to involve representatives of key counterpart institutions, independent experts and relevant stakeholders at this stage, for more objective opinions and inputs.

The agency would then choose, to which extent of the assessment results and action plans that it would like to share with other AEGC members, donors and development partners. Sharing of results could merely stop at presenting the brief report providing information and answers to the guiding questions of the Toolkit, or cover the entire assessment, i.e. inclusive of the strengths and weaknesses part, allowing other AEGC members, donors and development partners the opportunity to seek clarifications, and provide comments, suggestions and recommendations. Sharing the future plan of action drafted on the basis of the self-assessment transparently is well recommended for the purpose of resource mobilization.

Sharing the results of self-assessments amongst the AEGC would promote transparency, facilitate intra-regional and inter-agency cooperation, as well as mutual learning and exchange of experiences. It serves as an intermediate step towards a regional peer review mechanisms where one agency would benefit from objective evaluation and constructive recommendations made by its peer(s); while still giving plenty of room for accountability.

Legal Framework & Enforcement

Scope and contents of the competition law

1. What are the objectives of the national competition law?

(use more than one option if required)

	To promote consumer welfare
	To safeguard the competitive process
	To regulate and/or prohibit anticompetitive practices
	To promote economic efficiency
	To ensure the competitiveness of enterprises
	Others (please specify):

Note: A competition law might or might not have some objectives clearly articulated either in a provision, or within the preamble of the law, or elsewhere. Having a clear set of objectives generally helps guiding the subsequent interpretation and implementation of the law, especially in arbitrary cases. It should be noted, however, that having multiple objectives might be confusing, and/or might cause difficulties for the enforcement agencies who have to balance amongst several objectives, which might be contradictory against each other at times, for example the seemingly dichotomy between 'consumer welfare' and 'economic efficiency'. If this is the case, a country might consider improving the situation during a likely law amendment process in the future.

2. Does the competition law cover competition issues in all sectors/industries of the national economy?

	Yes
	No
	Please specify the sector(s)/industries which are not included within the purview of the law:

Note: It is generally a good practice for a competition law to be comprehensive in scope and thus cover competition issues in all sector(s)/industries of the national economy. For different reasons, countries might choose to reserve certain sectors/industries, for example for industrial policy goals, or due to the consideration that sector regulators have better competences in regulating competition issues in regulated sectors, especially utilities. There, however, should be sound economic or regulatory reasons for such sector exemptions, which should be time-bound and/or with a sunset clause.

3. Which of the following actors are exempted from the competition law?

(use more than one option if required)

	Small and medium-sized enterprises (SMEs)
	State-owned enterprises (SOEs)
	Industry bodies and trade associations
	Other exemptions (please specify):

Note: Firms/Industry entities should not be exempted from the scrutiny of the competition law on the sole ground of their size, or ownership. Many industry bodies/trade associations have even been known to act as cover for cartelization behaviours. In other instances, SOEs have been discovered leveraging their links to the government to gain unfair competitive advantages in the market. Exemptions, therefore, if available, should be judiciously granted on a case-to-case basis.

4. Does the competition law also apply to firms located outside your jurisdiction whose conduct directly affects competition and/or consumers in your domestic market?

	Yes
	No

Please specify:

Note: In this era of globalization, a competition law which lacks jurisdiction to try any anticompetitive practices originating from outside its country (though having substantial adverse effects on the competitive process or on consumer welfare in its domestic market) would only be half-effective.It is therefore generally recommended that national competition laws have provisions for extra-territorial jurisdiction, building on the "effects doctrine," to legally empower competition agencies to deal with such cases.

5. Which of the following practices are prohibited by the competition law?

(use more than one option if required)

	All types of anticompetitive agreements and cartels
	Abuse of dominant positions
	Anticompetitive mergers

Other conducts and abuses (please specify):

Note:The anticompetitive practices that are prohibited by the competition law in most countries fall into three broad categories:

- Collusive arrangements, agreements or understandings between a number of firms to limit competition among themselves or deter other firms from entering the market,
- The abuse of market power by firms which are dominant in a market,
- Mergers, acquisitions or takeovers which will substantially lessen competition or prevent access to a market.

It should also be noted that the competition law of some countries, including in the ASEAN region, also cover other conducts such as unfair trade practices (also called 'unfair competition practices'), and/or consumer abuses such as excessive pricing, unreasonable pricing, misleading advertisements/indications, pyramid selling, etc, even though these are generally not considered as core areas of competition laws.

6. Which amongst the following conducts are*per se* prohibited by the competition law?

(use more than one option if required)

	Price-fixing
	Output restriction
	Market-sharing
	Bid-rigging
	The law takes a *rule-of-reason* approach in all cases

Please specify:

Note: Some anticompetitive practices are considered as fundamentally detrimental to competition and always lacking in economic and social justification, and thereforethey are prohibited outright. These are *per se* offences for which there is no defence once their existence has been proved. Competition laws of many jurisdictions in the world often prohibit *per se* conducts such as price-fixing by a cartel, output restriction, collusive tendering (bid rigging) and market sharing.

In the case of other types of anti-competitive agreements and conducts, as well as in merger cases, competition agencies usually adopt a *rule-of-reason* approach. That is, the possible public benefits associated with a particular anti-competitive arrangement are taken into account, provided the parties to the arrangement provide the necessary evidence. Competition agencies must then judge whether

or not those benefits exceed the adverse effects of the restriction on competition.

7. Does the competition law provide for merger notification?

(use more than one option if required)

	Yes (with requirements for pre-merger notification)
	Yes (with requirements for post-merger notification)
	Yes (voluntary merger notification regime)
	No (merger control is not covered under the competition law)

Please specify:

Note: The review and approval of mergers, acquisitions and other corporate combinations (hereinafter referred to as 'mergers' for convenience) is normally entrusted to competition agencies or other relevant branches of government such as ministries of company affairs or sectoral regulators. Many mergers will have little or no negative impact on competition. Some mergers may be pro-competitive, for example, by enhancing production efficiencies resulting from economies of scale or scope.

Large merger cases require prior review and approval in many jurisdictions. As part of their review, competition agencies may prohibit mergers or approve them subject to conditions. Mergers are usually only prohibited or subjected to conditions if the agency concludes that the merger will 'substantially harm competition'.

As part of the merger review process, the merging firms must normally provide information to the reviewing authority. It is standard practice in jurisdictions, which impose merger review, to require parties to be merger to submit advance notice of the proposed transaction. The information disclosed in the pre-merger notification will normally be used by a competition agency in the first stage of merger review (i.e. to determine if any anticompetitive concerns are present and whether to proceed with a more detailed review of the proposed transaction).

8. If applicable, what trigger notification obligations by merging firms/merger review by the competition agency?

	The combined market share of the merging parties in the relevant market is equal to or beyond a fixed threshold
	The combined turnover of the merging parties is equal to or beyond a fixed threshold
	The competition agency is concerned that the merger may reduce/limit competition in the market
	Others, please specify:

Note: The competition law in many countries provides for mandatory notification of proposed mergers or acquisitions above a specified threshold size. In general, there are certain advantages in establishing a threshold size for merger transactions that must be reported in advance. If the value of the transaction is below the threshold level, the parties to the merger can then be certain that they are not at risk of breaching the competition law and are saved the expense of providing detailed information to the competition agency.

The setting of the threshold value, however, requires some careful consideration. The higher the threshold, the lower the administrative costs that will be incurred by the competition agency and by merging enterprises (since there will be fewer mergers reported). However, a higher threshold increases the risk that some anti-competitive mergers, without merit from the public interest point of view, will go through unchallenged.

The competition agencies, while reviewing proposed transactions, usually also take into consideration other factors such as the level of concentration of the relevant markets, the existence of countervailing power, import competition, barriers to entry and exit, etc.

Investigative power of the competition agency

9. Which amongst the following options could form the grounds for the competition agency to initiate investigations?

(use more than one option if required)

	Complaint(s) of firms about alleged infringement(s) of the law
	Consumer complaints about alleged infringement(s) of the law
	Reportings of whistle-blowers
	On the competition agency's own initiative when suspecting/detecting possible anticompetitive practices
	Referrals by other agencies
	Others - Please specify, including the number of complaints, reportings, self-initiated investigations, or referrals, etc in the past two years if possible/available:

Note: For the competition agency to function properly, it is important that it has the right powers, which include investigative and adjudicative ones. The investigative power, naturally, is always bestowed with the competition agency. A good practice is that the investigative powers vested with the competition agencyare broad. At the highest level, competition agenciesshould be able to monitor markets and obtain information on the conduct of market participants, then act upon suspicions or detections of possible anticompetitive practices. Moreover, the competition agencies could also accept referrals of cases from other agencies, or initiate investigations on the basis of consumer complaints and/or whistle-blowers' reports. At the lowest level, competition agencies could only act in response to complaints submitted by firms about alleged infringements of the law.

10. Does the competition agency carry out an economic analysis of the competitive effects when investigating anticompetitive conducts?

	Yes, in all cases (anticompetitive agreements, abuse of dominant positions, merger control)
	Yes, but not in hard core cartel cases
	No
	Please specify:

Note: All jurisdictions prohibit abuses of market power by dominant firms, as well asanticompetitive horizontal and vertical agreements. During the investigation phase, it is considered a good practice to carry out aneconomic analysis to determine whether a conduct is likely to raise competition concerns as well as to identify efficiency gains it may generate. For instance, some anticompetitive practices and some mergers maynegatively affect competition but also bring economic benefits to consumers that outweigh the former (e.g.economies of scale, reductions in transaction costs). Only a detailed economic analysis can identify theseeffects.

11. Which factors are considered by the competition agency when defining and determining dominance?

	The competition agency uses fixed market share thresholds as the sole basis to determine dominance
	In addition to the market share(s) of dominant firm(s) in the relevant market, the competition agency also consider other factors

Please specify:

Note:High market share is generally considered as a necessary, though not a sufficient, condition to establish market power/dominance. Besides, as debate exists on what criteria best reflects potential market power; even the measurement of market share is a controversial issue. For example, market share can be measured by current sales, historical sales or even capacity (potential).
Some jurisdictions have established *de facto* or *de jure* benchmark market shares above or below which market power is presumed to exist or not exist. Yet, it is not clear that there is an economic justification for pre-determining the existence of market power at any given market share. Alternatively, concerns about administrative efficiency sometimes justify a market share 'safe harbour', below which market power is deemed not to exist.
Determining whether a firm or group of firms have market power or not is the starting point for case analysis with regard to abuse of dominance. Important factors that should be considered in measuring the market power of a firm or a group of firms, other than market share, include:

- number and market shares of competitors;
- nature of the relevant product;
- countervailing power of other market participants;
- intellectual property rights (IPRs);
- market characteristics such as regulatory environment, rate of technical change, existence of potential or poised competitors; and
- barriers to entry.

12. If applicable, which factors are considered by the competition agency during merger review?

	Market shares of the merging parties in the relevant market
	Turnover of the merging parties
	Market shares of the merging parties in the relevant market, and other relevant factors
	Others, please specify:

Note: As mentioned in the Note to Question No. 8 above, a specific threshold size may be prescribed by the competition law, which triggers notification obligation by merging parties. Once the competition agency has received an application for a major merger or acquisition and has obtained the requisite information about the market, the level of concentration, the extent of import competition, the barriers to entry and any anticipated efficiency gains from the merger, the detailed analysis of the merger proposal can begin. In such analysis, the competition agency could consider other factors such as:

- products, customers, suppliers, market shares, financial performance;
- activities of competitors and competitors' market shares;
- availability of substitute products;
- influence of potential competition (including foreign competition);
- the pace of technological or other change in the relevant markets, and its impact on competition; and
- the nature and degree of regulation in the relevant markets.

13. Is it mandatory for firms being investigated for a possible infringement of the competition law to respond to information requests/enquiries by the competition agency on their conducts?

	Yes
	No, only the court would have that power to compel information from firms
	Not at all

Please explain:

Note: As mentioned in the Note to Question No. 9, for a competition regime to be effective, it is essential that the competition agency is vested with broad investigative powers. The agency needs to be able to monitor markets and obtain information on the conduct of market participants. To perform such tasks, the authorities must be equipped with investigative tools that enable it to obtain the relevant information. To begin with, they should have the power to compel information from investigated firms, or at least ask a court to do so. They should also be empowered to enter into business premises to collect information, to investigate managers and employees of firms and to demand information from business entities, where there is suspicion of violation. And there should also be a high penalty for failing to comply with investigative efforts by the competition agency.

14. Is there a leniency/immunity programme/policy?

	Yes, please describe (including the number of leniency applications in the past two years if possible/available)
	No (please explain the current status)

Note: Leniency is a generic term to describe a system of partial or total amnesty from the penalties that would otherwise be applicable to a cartel member, which reports its cartel membership to a competition agency. In addition, agency decisions that could be considered lenient treatment include agreeing to pursue a reduction in penalties or not to refer a matter for criminal prosecution. The term leniency, thus, could be used to refer to total immunity and "lenient treatment", which means less than full immunity.

A leniency policy describes the written collection of principles and conditions adopted by an agency that govern the leniency process. A leniency policy is one component of a leniency programme, which also includes internal agency processes, for example, how the agency implements their leniency policy.

Many jurisdictions have developed programmes that offer leniency in order to encourage violators to confess and implicate their co-conspirators with first-hand, direct "insider" evidence that provides proof of conduct parties want to conceal. Leniencyprogrammeshelp competition agencies to uncover conspiracies that would otherwise go undetected, can destabilize existing cartels and can act as a deterrent effect to entering into cartel arrangements. Leniency programmes elicit confessionsand direct evidence about other participants, as well as leads that investigators can follow for other evidence too. Evidence can be obtained more quickly, and at lower direct cost, compared to other methods of investigation, leading to prompt and efficient resolution of cases. To get this information, the parties who provide it are promised lower fines, shorter sentences, less restrictive orders, or even complete leniency.

Leniency programmes, therefore, are considered as a strong investigative tool which could be used/developed by competition agencies in their fight against hard-core cartels.

15. Can the competition agency perform unannounced inspections/searches/dawn raids in the premises of firms investigated for a possible infringement of the competition law for gathering evidence?

	No (please explain)
	Yes, please specify (including the number of such inspections/searches/raids conducted in the last two years if possible/available):

Note: As mentioned in the Note to Question No. 13, the possibility of a competition agency to conduct unannounced inspections/searches/dawn raids in the premises of firms being investigated for a possible infringement of the competition law for gathering information is considered as another strong investigative tool of an effective competition regime. Dawn raids are not too difficult to undertake, and can generally bring good results, especially in the case the alleged firms refuse to cooperate.

Remedies and Sanctions

16. Can the competition agency impose sanctions, remedies or cease and desist orders on a firm that has been found to have infringed the competition law?

	Yes, please describe the sanctions and remedies that could be imposed by the competition agency
	No, the competition agency could only ask a court to impose sanctions, remedies and cease and desist orders on the firms

Please describe the applicable sanctions and remedies

Note: Sanctions and remedies for breaches of the competition law are essential; otherwise the law will be ineffective. The level of deterrence of a law is largely determined by the probability of detection of a violation and the height of sanction imposed upon the violator. If sanctions were not sufficiently high, then it would still be rational for market players to engage in anticompetitive conduct, and then willingly pay fine if caught. This is particularly true in the case of large multinational companies, or serious violations where economic rents earned are enormous. Accordingly, the law should provide the enforcing bodies with the ability to impose sanctions that are high enough to act as a disincentive for firms to engage in anticompetitive conduct, when taking into account enforcement levels.

17. What type of decisions/remedies could the competition agency adopt/impose in case of an anticompetitive merger?

(use more than one option if required)

	The competition agency could block the mergers from proceeding
	The competition agency could order for de-merging if the merger has already been completed
	The competition agency could impose certain conditions/undertakings on the merging parties to minimize the anticompetitive effects of the merger
	Others

Please describe the applicable remedies

Note:The goal of merger control in competition laws is to prevent or remove anti-competitive effects of mergers. Three types of remedies are typically used to achieve this goal.

- *Prohibition or Dissolution*: The first remedy involves preventing the merger in its entirety, or if the merger has been previously consummated, requiring dissolution of the merged entity.
- *Partial Divestiture*: A second remedy is partial divestiture. The merged firm might be required to divest assets or operations sufficient to eliminate identified anticompetitive effects, with permission to proceed with the merger in other respect.
- *Regulation/Conditional Approval*: A third remedy is regulation or modification of the behaviour of the merged firm in order to prevent or reduce anticompetitive effects. This can be achieved through a variety of one-time conditions and ongoing requirements.

The first two remedies are structural, and the third remedy is behavioural. Behavioural remedies

require ongoing regulatory oversight and intervention. Structural remedies are often more likely to be effective in the long run and require less ongoing government intervention.
Partial divestiture or behavioural constraints are less intrusive into the operation of market than preventing a merger from proceeding or requiring dissolution of a previously completed merger. Partial divesture can reduce or eliminate anticompetitive effects while preserving some of the commercial advantages of a merger. Partial divestiture is emerging as a preferred remedy in many jurisdictions.

18. Could the competition agency impose fines/financial penalties on firms which have been found to violate the law?

	Yes, fines equivalent up to ……could be imposed by the competition agency
	No fine could be imposed but the competition agency could apply other administrative sanctions
	Please specify:

Note:Financial penalties are frequently employed for breaches of competition law, with a view to ensuring their deterrent effects. In a number of developed and developing countries, the competition agency has a limited power to impose such a penalty. In some other countries, the power to impose a financial penalty for an offence under the competition law rests exclusively with the courts. Typically, the competition agency will recommend to the court what it believes to be an appropriate penalty in the particular circumstances of each case and this may be accepted by those responsible for the offence to avoid further litigation.
The maximum level of fines that can be imposed for breaches of competition law have increased significantly in recent years with the aim of providing a stronger deterrent against anti-competitive conduct. Increasingly, jurisdictions are imposing penaltieswhich might be equivalent to a specific percentage of the turnover of all products worldwide, not only the products involved in the infringement.

Judicial review

19. Can the decisions taken by the competition agency be appealed to the court(s) or designated appellate bodies?

	No
	Yes, please specify, including the number of appeals per year in the last two years:

Note:The competition laws in most countries nearly always provides for a right of appeal to a higher court of tribunal. However, the institutional arrangements are not uniform across countries. Each country has to choose the arrangements that suit it best – there is no single correct model. The fact that nearly all countries have appeal mechanisms of one kind or another based on the rule of law is encouraging. This can help to provide some of the checks and balances needed to ensure fairness and transparency in the process of evaluating anti-competitive practices.

20. Is there a specialized court/tribunal dealing *only*with competition issues in your jurisdiction?

	No
	Yes, please describe:

Note:In many countries, the ordinary courts continue to play a very important role in the enforcement of competition law. A question that is often debated is whether the ordinary courts should hear cases

involving anticompetitive practices or whether it would be better to establish a specialist court for the purpose. The latter solution is said to have the advantage that persons with specialist knowledge of competition matters would be appointed, procedures could be streamlined, and therefore, cases could be determined much more efficiently and expeditiously.
On the other hand, there is a practical reason for retaining a system in which the ordinary courts hear anticompetitive practice matters. That is, under this arrangement, hearings can take place in different parts of the country and witnesses have less distance to travel to give evidence. A specialized court is likely to be located in a single central location, such as the capital city.
Besides, given the fact that developing countries are often faced with severe resource constraints, whereas the caseload might not be busy enough, the establishment of a specialized court/tribunal might also invite criticisms that resources are not used efficiently.

21. Is it possible for individuals, firms or consumer groups in your jurisdiction to claim private damages from firms that have committed an infringement of the competition law?

☐	No
☐	Yes, please specify, including the number of such claims in the past two years if possible/available:

Note: Generally, a private individual who has suffered loss or damage as direct result of a contravention of the competition law can take civil proceedings against the perpetrator of the offence to recover that loss. Furthermore, it should also be noted that class actions seeking damages for anti-competitive behaviour can also be instituted in some jurisdictions.

Impact assessment of competition law enforcement

22. Does the competition agency undertake any assessment/measurement of the benefits to consumers as an effect of competition law enforcement?

☐	No
☐	Yes, please describe:

Note: Economic theory establishes that competition is beneficial for the economy. There is, however, not a strong consensus on whether the adoption and implementation of competition policy and law benefits the economy – particularly in developing economies which may not have the supporting legal, judicial, or infrastructure systems. Competition agencies in both developed and developing economies are increasingly finding themselves accountable to assess the benefits of their activities relative to their costs.

To name a few examples, the Office of Fair Trading in the UK estimates the positive impact of its activities on direct benefits to consumers and compares these numbers to the budget of the Competition Authority. The Dutch Competition Authority evaluates its enforcement and its effect on the country's macroeconomic variables, such as growth and employment. In Asia, the Korea Fair Trade Commission traces and analyses the effect of their enforcement activities against cartels through surveys and comparisons of market prices before and after the law violations.The Competition Commission of Singapore (CCS) estimates the monetized value of consumer benefits and markets opened following specific interventions, while the KPPU have been constructing models to measure the impacts of its decisions and advocacy actions on prices, inflation, unemployment, and economic growth.
Such assessments/measurements could be useful for advocacy purpose sincethey help to make the case for competition policy and law with policy-makers if their incentives are aligned with the incentives of competition authorities, and to establish a more convincing case with the public about the benefits that effective competition law enforcement could bring about.

Institutional and Cooperative Arrangements

Institutional set-up & Independence

23. Please describe the position of the competition agency within the government structure

Note: An appropriate institutional framework is a prerequisite for the effective administration and enforcement of competition law. The centerpiece of this framework is the competition agency, which should be independent, have adequate resources to investigate and prosecute alleged breaches of the competition law and be accountable for its actions to the minister or the Parliament.
The competition agency could be placed under the auspices of a government minister/ministry, or it could be an independent statutory body. Which model is the most efficient for a particular country depends on a variety of factors, including past experience in implementing and enforcing a competition law, the legal system, and the expertise available to the competition agency, etc. However, common safeguards to ensure the independence of competition agencies vis-à-vis government and other public and private bodies often include legal and structural separation of the authority from the government and physical separation from ministries.

24. Please describe the composition, appointment procedures, term of office and required qualifications/background of the members of the competition agency

Note:The competition law typically specifies the composition of the competition agency, including such matters as:

- The number of members, both full-time and part-time
- The experience or qualifications required for appointment as a member
- The appointment of the Chairman
- The tenure of the appointed members

Different countries have different approaches to these matters and it is difficult to discern any consistent pattern, or determine which approach works best. However, there would probably be a wide measure of agreement on the following points:

- Some members of the competition agency should have knowledge and experience either in the fields of economics or the law. These are indispensable tools in the proper analysis and understanding of anti-competitive practices.
- The competition law should include provisions designed to overcome the possibility of conflict of interest by members of the competition agency.
- Appointments to the membership and the chairmanship of the competition agency should not in any way compromise its independence.

25. From which source does the competition agency draw its operating budget?

- ☐ The legislature allocates an annual budget to the competition agency, who has discretions over budget use and allocation
- ☐ The budget of the competition authority is part of/allocated within a government ministry's budget
- ☐ The competition agency can generate revenues through its various functions

Please explain your answer:

Note: The availability of financial resources to implement and enforce the competition law effectively is a critical issue in most developing countries. Insufficient funds could adversely affect the planned work programme of a competition agency, and consequently its ambitions. Moreover, the authority should not be put in a position where it believes its budget would be endangered if it does not grant a particular authorisation or if it prosecutes particular companies for a breach of the competition law. In

other words, whatever the sources might be, the competition agency should be able to have a certain degree of budgetary independence to ensure its overall autonomy.

26. On which amongst the following matters doesthe government/a minister have overriding power over the competition agency, as provided by law?

(use more than one option if required)

- ☐ The decision to open/close an investigation on an alleged infringement of the competition law
- ☐ The decision to impose/not to impose specific sanctions and/or remedies when closing an investigation on an alleged infringement of the competition law
- ☐ The decision to clear/block a merger
- ☐ The decision to grant/not to grant exemption for anticompetitive conducts which would otherwise have contravened the competition law
- ☐ Neither the government nor any minister could override the decisions of the competition agency over competition matters

Where applicable, please specify the number of incidents wheresuch overriding power was exercised in the past two years:

Note: It is a generally accepted good practice that competition agencies should be independent when exercising their functions. Competition agencies should be able to make their decisions impartially, unhindered not just by political interests but also other external influence or pressures. In principle, the condition of independence improves policy outcomes. It enables a competition agency to exercise its powers based on the application and interpretation of the competition rules, solely relying on legal and economic arguments and in accordance with widely accepted competition policy principles. Independence allows the agency to resist demands that it serve special interests at the expense of the larger public welfare and provides greater confidence and trust that its decisions are impartial. On the other hand, the agency should not need to act in instances where it does not believe there is acompetition concern or if a previous inquiry or investigation has already shown that there are no problems and that when it acts, the remedy is more likely to be based on evidence and sound economics.

The fact that the competition law provides the government or any minister with broad overriding power over the competition agency regarding its core businesses could be interpreted as a lower degree of independence on the competition agency's part.

27. In which amongst the following sectors does the competition agency have concurrent jurisdiction with the sector regulators?

(use more than one option if required) (choose none if not applicable)

- ☐ Telecommunications
- ☐ Power and gas
- ☐ Water
- ☐ Banking and other financial services
- ☐ Petrol and oil
- ☐ Education
- ☐ Healthcare

Others (Please specify):

Note: Competition law is just one element of competition policy. The effectiveness of the competition law will depend on the extent to which it is coordinated with other regulatory policies and, consequently, the most direct overlap will be with sectoral regulators governing key utility sectors, which are mandated to create and promote competition in the regulated sector. The boundaries and roles of the sectoral regulators and the competition agency are difficult to define and in many countries the overlap issues remain unresolved. Ideally, the sectoral regulators would concentrate on the structure of the sector, trying to create a competitive market so that the regulator's day-to-day role in setting prices would diminish over time.

Transparency & procedural fairness

28. On which matters amongst the following that the competition agency has published any guidelines or guiding information/materials?

(use more than one option if required)(choose none if not applicable)

- ☐ Procedural steps (investigation, hearings, appeals, etc)
- ☐ The assessment of horizontal/vertical agreements
- ☐ The assessment of abuse of dominance
- ☐ Merger review
- ☐ Sanctions, remedies and fines
- ☐ Leniency policy
- ☐ Others (please specify)

Note: The independence of competition agencies cannot be defended without a requisite level of accountabilityand transparency. To begin with, to ensure transparency in the operations of competition agencies, it is important that the public can understand the general guidelines employed by the agency in analyzing the cases that come within its purview. Developed jurisdictions with long-standing competition laws usually publish a wide range of guideline documents to assist businessmen, lawyers and others in understanding how the agency interprets the law, what procedures it follows, what criteria are used in determining the amount of a penalty, and the lenient treatment that firms could benefit from by coming forward with confessions, etc.

29. Does the competition agency undertake regular reporting of its activities, including publication of annual reports, audited accounts, etc?

- ☐ No
- ☐ Yes

Please specify:

Note: To ensure the accountability of competition agencies, there should be properly constructed mechanisms to allow for an assessment of whether the agency has reached the general objectives set for it and has used public resources accordingly. This may be achieved through a requirement for competition agencies to report on an annual basis about their activities to parliament and through the appearance of the head of the authority before competent parliamentary committees for questions. Furthermore, it is considered a good practice to promote accountability and transparency if a competition agency publishes annual reports about its operations and putsits audited accounts on public domains for general view.

30. On which amongst the following anticompetitive practices does the competition agency make its final case decisions publicly available?

(use more than one option if required) (choose none if not applicable)

☐ Anticompetitive agreements
☐ Abuse of dominance
☐ Anticompetitive mergers

Where applicable, please attach or provide the web-links to such decisions issued/made public in the past two years

Note: Competition agencies could further promote transparency by openly communicating about its case decisions and enforcement intentions. If case decisions could not be published in their entirety, at least the reasons for each decision made by the competition agency or the court should be made known to the public, in the form of summaries, briefings, or press releases, etc. This helps to build confidence in the fairness of the system and also acts as a safeguard to the independence of the competition agency.
It is sometimes suggested that reasons should not be given in cases where commercially sensitive information has been provided by one or more of the parties, and the agency has relied on some of this material to reach its decision. However, experience indicates that this is rarely a significant problem. While the competition agency must not disclose any secret or confidential information, this does not preclude it from explaining in broad terms how it arrived at its findings.

31. Does the competition agency publicly announce its decisions to pursue/not to pursuecompetition cases?

☐ No
☐ Yes

Please specify:

Note: Competition agencies should take measures to progresstoward a norm that favours explanations for all important decisions to prosecute or not to prosecute. Onemight define as “important” any matter in which a competition authority conducts an elaborate inquiry.The norm suggested here would dictate that the agency seek as often as possible to explain why it decidednot to intervene following an extensive investigation.

32. Do parties have the right to be heard and present evidence/arguments for their defence before the competition agency (or the applicable court) decide to impose any sanctions or remedies on them for infringing the competition law?

☐ No
☐ Yes

Please specify:

Note: The right to due process and procedural fairness encompasses principles such as: (i) the right to legal representation; (ii) the right to be heard; (iii) respect for privilege; (iv) notification of the legal and factual basis on which an agency relies; (v) opportunity to challenge inculpatory evidence; (vi) checks and balances on decision-making with the relevant investigative agency; and (vii) the avoidance of undue delay. Amongst these, the right to be heard by actual decision-makers (about the case on trial) is considered fundamental.
Ensuring due process and procedural fairness is an effective way to help prevent downsize risks for competition agencies. Besides, there are also other tangible benefits for example:

- It allows cases to move more smoothly through the pipeline with more predictability on timing and key stages for both merger and anticompetitive conduct cases. This allows the competition agency to improve the management of its case pipeline and better allocate agency resources.
- Better process means fewer appeals (since appeals will need to focus on the merits). The improved quality of process will lead to better and more robust decision-making. This, in

turn, means a stronger authority. In practice, this also frees up resources for more enforcement as fewer resources will be tied up in defending the decisions on appeal.

- Better due process means more demonstrable benefits to consumers because of greater political legitimacy for the enforcement of decisions both domestically and internationally. Assuming the authority is right to take enforcement action in the first instance, procedural fairness means a better final decision able to withstand scrutiny, which better showcases the authority's activities as pro-consumer.

33. Do the parties under investigation for an infringement of the competition law have the opportunity to consult with the competition agency regarding significant legal, factual or procedural issues during the course of the investigation?

☐ No
☐ Yes
Please specify, including the number of such consultations in the past two years if possible/available:

Note:As seen in the Note to Question No. 32 above, the right of parties under investigation to consult with the competition agency and be notified of significant legal and factual basis on which the agency relies forms another aspect of the overall right to due process and procedural fairness. Ensuring prosecutorial transparency could also help the overall investigation process, since it allows companies being investigated to respond more effectively to information request/enquiries by the competition agency and even clarify their intentions in some circumstances.
Often complex evidential and economic dataused in antitrust investigations or complexmerger cases is confidential to third parties.How competition authorities balance the respect for legitimatelyconfidential information with parties' rightsto review all necessary evidence in a particularcase can be a critical issue. Failures by authorities to providesufficient access to underlying evidence(whether because documents are so heavilyredacted that they cannot be understood orwhether they have not been provided at all)can be particularly problematic.

Cooperative arrangements

34. Does the competition agency have MOUs/cooperative relations with sector regulators in your jurisdiction?

☐ No
☐ Yes
Please specify:

Note: See also the Note to Question No. 27: Where there are overlaps between the mandate of the competition agency to promote competition and watch over anticompetitive conducts and mergers across all sectors/industries of the national economy and those of sectoral regulators, whose mandates might include creating and promoting competition within their regulated sectors, usually utilities, the overlaps need to be addressed and collaborative arrangements between the competition regulator and the sectoral regulators need to be built, to ensure the overall effectiveness of the regime.
To prevent potential conflict and confusion, the competition law and the sectoral laws should specify clearly the circumstances under which the competition agency could investigate the behaviour of companies in the regulated sectors. The legislations should also define a consultative role for the competition authority in the implementation and development of sector regulatory policies. Where not specified by law, the competition agency and sector regulators could still enter into MOUs and/or other types of cooperative arrangements, which reiterate the common goal of promoting competition shared by the two sides, clearly delineate the boundaries of each side's responsibilities/power, and prescribe a consultative mechanism for both specific competition cases and policy-making matters.

35. If possible, please inform on any actual consultations on competition matters between the competition agency and sector regulator(s) in your jurisdiction in the past two years:

Note: Consultations between the competition agency and sector regulators could take many forms, including *inter alia*:

- Where the competition agency has the mandate to deal with all anticompetitive practices and mergers across all sectors/industries of the national economy, the agency could still benefit from the technical expertise and hands-on knowledge of sector regulators about market structure, the nature of competition and how market players interact with each other and with consumers, etc in their respective sector. The competition agency, in this case, might need to proactive seek the advices of sector regulators when examining competition cases happening in these sectors, or when prescribing remedies to restore competition therein.
- Vice versa, sector regulators could refer specific competition cases/issues within their regulated sectors to the attention of the competition agency.
- Competition agencies and sectoral regulators could also mutually consult each other in the development/revision of sectoral regulatory policies so as not to hamper competition therein.

36. Which of the following organization/network does the competition agency participate in?

(use more than one option if required) (choose none if not applicable)

	UNCTAD Intergovernmental Experts Group on Competition (UNCTAD IGE)
	International Competition Network (ICN)
	OECD Global Competition Forum (OECD GCF)
	ASEAN Experts Group on Competition (AEGC)
	APEC Competition Policy and Law Group
	East Asia Competition Policy Forum
	Others (Please specify)

Note: Participation in these international organizations and networks would provide competition agencies, especially the younger ones, with opportunities to exchange information, learn from the experiences and knowledge of other more advanced jurisdictions, and discuss international best practices in the area of competition policy and law. In addition to topical exchanges and discussions, it should be noted that it is within the framework of some of these organizations and networks that peer reviews have been successfully conducted in the part. Whereas resource constraints might limit the physical participation of developing and least-developed countries in these forums, these countries could still benefit from the mass of knowledge, data and information which have been generated and maintained by them.

37. Which of the following free trade agreements are your jurisdiction participating in/negotiating?

(use more than one option if required) (choose none if not applicable)

	Trans-Pacific Partnership Agreement (TPP)
	Regional Comprehensive Economic Partnership Agreement (RCEP)
	Bilateral Free Trade Agreements (with competition chapter)
	Others (Please specify)

Note:Competition provisions have become increasingly popular in free trade agreements (FTAs) recently concluded. A most often quoted objective for these provisions is that they areneeded so that the benefits of trade and investment liberalization are not compromised by cross-border anti-competitive practices, and State-constructed trade barriers are not substituted by other forms of private restrictive practices (such as for instance market-sharing or price-fixing agreements, or market foreclosing or exclusionary tactics). Other reasons include to create region-wide competition policies and institutions that seek greater levels of integration, or to help protect developing countries without a national competition law or strong competition regime against anticompetitive practices originating outside their national borders such as international cartels, or cross-border anticompetitive mergers and acquisitions, etc.

FTA competition provisions vary widely in their spectrum of potential obligations. Some FTAs simply have 'best endeavours' measures to adopt, maintain and apply competition law. The language used in some other FTAs might also be more legally binding than 'best endeavours'. Either language can apply to non-discrimination, due process or transparency in the statement and/or application of competition law. There may also be provisions for cooperation or coordination of activities by competition enforcement agencies: either on the basis of "positive comity" or "negative comity". At the deeper end of obligations, there can be an independent dispute resolution or consultation mechanism, or a supra-national authority that can apply competition law directly on private entities within the free trade area, a most popular example being the European Union.

38. Which amongst the following types of cooperation regarding competition law enforcement does the competition agency enter into with other jurisdictions?

(use more than one option if required)
(choose none if not applicable)

☐	Consultation and information exchange
☐	Positive and/or negative comity principles
☐	Joint investigation
☐	Mutual Legal Assistance Treaties (MLATs)
☐	Other types

Please describe:

Note: With or without formal provisions in RTAs/FTAs being concluded, it is recommended that competition agencies from different countries engage in consultation and exchange of information in order to better control anticompetitive practices and mergers with cross-border elements. The information available to the competition authority in a developed country may be critical to an understanding of what impact an international price-fixing cartel is having on the domestic economy of a developing country. Moreover, joint action by the competition authorities in a number of countries may be required if the cartel's operations are to be curtailed.

A further advantage to a developing country from co-operation with an established and experienced competition authority overseas is the opportunity it may provide for procuring technical assistance, including the exchange of staff, internships, training courses and assistance in the drafting of competition legislation.

39. Which amongst the following types of informal cooperation arrangements does the competition agency have with its counterparts from other jurisdictions?

(use more than one option if required)
(choose none if not applicable)

☐	Capacity building
☐	Exchange of non-confidential case information
☐	Case referral
☐	Other types

Please describe:

Note: As seen in the Note to Question No. 38 above, cooperation between competition agencies of different jurisdictions could take place within or outside the framework of formal cooperation arrangements. Examples of *ad hoc* cooperation could include joint studies/researches, staff exchanges and secondments, joint trainings, seminars, workshops and conferences, one-time joint investigation or case referral, etc

Monitoring & Evaluation (Agency)

40. Which amongst the following matters are evaluated by the competition agency at regular intervals?

(use more than one option if required) (choose none if not applicable)

- ☐ The quality of case decisions passed/issued by the competition agency
- ☐ Rules, regulations and guidelines issued by the competition agency
- ☐ Internal processes and procedures for enforcement decision-making
- ☐ Other matters

Please specify:

Note:Another approach to evaluating the effectiveness of competition regimes is to assess how the competition agency have been going about systematically interpreting and applying the law, the quality of the rules, regulations and guidelines issuedby it, the technical soundness of case decisions passed, and other matters. While Question No. 22 addresses the issue of assessing outcomes and impacts of the competition agency's works, the evaluation outlined in this Question deals with assessing the agency's outputs, which for example comprise of the investigations conducted and case decisions passed with regards to anticompetitive practices in the market; guidelines, guidance, as well as other interpretative documents issued by the agency.

In recent years, the Competition Directorate of the European Commission (DG Comp), for example, has conducted a number of formative studies of its own procedures and, more generally, of the operation of the European Union's system of competition law. In the period since 2000 alone, the results flowing from DG Comp's evaluations have included the creation of the position of chief economist within the top management tier of the institution; the establishment of "devil's advocate" panels to test the strength of theories and evidence on which cases might be based; an internal reorganisation that, among other effects, redistributed authority for the review of mergers; and a modernisation program that decentralises key decision making functions to the national competition authorities of the EU member states and vests the national courts with expanded adjudication responsibilities.

In another example, the Swedish Competition Authority (SCA) has been known to conduct evaluations and analyses of decisions and court cases that have been deemed to be of special interest.Parameters that have been analysed include the way the SCA handled cases in court as well as the soundness of underlyinglegal and economic analyses that it used.

41. If possible, please inform on any changes/reforms that has taken place as a result of these internal evaluations during the past two years:

Note: Evaluation is costly. Even when it is conducted internally by the personnel of the competition agency itself, it might still entail significant costs on the organisation, since the authority would have to divert part of its already scarce resources to this exercise, instead of focusing wholly on its core business – which is law enforcement. Therefore, the findings/results of evaluations should be translated into action plans and concrete actions should be taken to follow up on the findings of such evaluations. Otherwise, the resources spent on these costly evaluation excises would be wasted.

Advocacy

Policy advocacy

42. Is the government's commitment to promote competition in the economy reflected in any policy document/statement?

☐ Yes
☐ No
☐ Others
Please specify

Note:Generally, in a narrow sense, conventional competition policy is regarded as the enactment and enforcement of competition laws that regulate anti-competitive practices.
In a broader sense, however, competition policy encompasses more fundamental aspects of economic policy, aiming at the promotion of market principles throughout the entire economy. For example, competition policy includes regulatory reform policy which eases market entry barriers and guarantees equal business opportunities to market participants; injecting market principles into the process of privatization of state-run enterprises; playing the role of competition advocate in order to ensure sectoral policies follow market principles; and developing a culture of competition by instilling a competition mindset into the players in the market. Competition policy, in this sense, can be a very effective strategy for economic reform.
However, unlike competition laws which are primarily adopted as a single statutory instrument, not many countries in the world have adopted a formal, comprehensive competition policy. Very often governments might only demonstrate their commitment to promote competition in the economy by a statement, or have competition principles built in a broad array of economic policies and laws.
Towards building effective competition regimes, competition agencies could play the role of pioneers of reform by going beyond simple enforcement of competition laws andgearing towards more comprehensive policy objectives. This holds particularly true for a country in the early stages of adopting competition laws. The antitrust authority needs to disseminate competition principles throughout every corner of the economy as well as enforce competition laws. Such activities/effortswould be more effective if they are in tandem with the governments' overall commitment to promote competition in the national economy.

43. Does the competition agency have the mandate for policy advocacy?

☐ No
☐ Yes
Please specify, including the number of policy recommendations made by the competition agency to the government or other agencies in the past two years:

Note: An important set of powers for a developing country competition agency is the power of advocacy. In order to create a competition culture, awareness of competition issues and how they affect various groups needs to be created among businesses, consumers, policymakers and the media. This would help to increase compliance and deterrent effects, foster recognition and acceptance of competition mechanism within the society, as well as generate support for competition law enforcement. The authority will need to allocate resources for these activities. Besides, in order to conduct these activities effectively, advocacy should be specifically included in the mandate of the authority. In many jurisdictions, such a power is granted to the competition agency.

44. Are new policies that may have implications for competition subject to a competition assessment?

- [ ] No
- [ ] Yes (voluntary)
- [ ] Yes (mandatory)

Please specify, including the number of assessments that have been undertaken in the past two years if possible:

Note:Private anticompetitive practices are one cause for alteringmarket conditions. Inappropriate regulations and policies by national and sub-national governments leading toanti-competitivemarket outcomes is the othercause ofmarketdistortion.Furthermore,when government policies limit competition, even unintentionally, more efficient companies cannot replace less efficient ones, therebyhavingnegative implications for growth.

Amajor difficulty posed by distortions of such nature emanates from the fact that in most government policies, such as trade remedial measures, public procurement policy, price control, etc and others thathave the effect ofweakening competition, the distortivecomponent isaccompaniedwithsignificantpolicy objectives and justifications. Such justifications may well be necessary in the largerpublic interestorfortheachievementofsocialandenvironmental objectives. However, such justifications/assumptions cannot bepresumed andneed tobe transparentlyandclearlycommunicated for an informed debate before a decision is reached. This is seldom the case.

Asecondchallengeposedbysuchpolicies isthat in most developing countries, there isnomechanism that ensures that policiesareformulated inamannerthattheiranticompetitiveoutcomes areminimized and they are least competition restrictive.

These restrictions could, however, be avoided or reduced if new policies that might have implications for competition are subject to a competition assessment. This is essentially a screening checklist that helps to identify unnecessary restraints on competition and developing alternative, less restrictive policies that still achieve government objectives. A good methodology in this regard is the OECD Competition Assessment Toolkit, which could be viewed and/or downloaded for further references and application at <https://www.oecd.org/competition/assessment-toolkit.htm>.

Competition assessments could be done by the competition agencies, as part of its policy advocacy mandate or any other institutions which might have great interests in ensuring the most competitive policy outcomes.

Awareness raising & Capacity building for Stakeholders

45. With whom amongst the following actors does the competition agency engage in awareness-raising about the competition law?*(use more than one option if required)(choose none if not applicable)*

- [ ] Line ministries and other agencies at the central level
- [ ] Relevant departments at the sub-national (provincial and local) level
- [ ] Legislators
- [ ] Sector regulators
- [ ] Judiciary
- [ ] The media
- [ ] Others (please specify)

Please substantiate with specific details to the extent possible:

Note: The International Competition Network (ICN) defines advocacy as “those activities conducted by the competition authority related to the promotion of a competitive environment for economic activities by means of non-enforcement mechanisms, mainly through its relationships with other

governmental agencies and by increasing public awareness of the benefits of competition". Awareness-raising, therefore, constitute one central part of advocacy works by competition agencies. Awareness-raising could take many formats including trainings, workshops and seminars, media campaigns, distribution of informative and promotional materials, interactions through website and social media, etc; and could target at different categories of stakeholders.

46. Does the competition agency engage in consumer education about the content of the competition law?

☐ No
☐ Yes
Please substantiate with specific details to the extent possible:

Note: Consumers – and more generally civil society – are, by definition, the main beneficiaries ofcompetition law enforcement. Therefore, a competition agency should be interested in consumer education.
The competition agency should undertake activities to inform consumers about what competition policy and law is and what benefits it brings: in short, newer, better quality and cheaper products. Understanding such benefit is indispensable in creating public support favouring the agency's interventions and spreading a competition culture throughout the country.
It is also important to inform consumers of the rights and opportunities a competition enforcement system offers and to motivate them to enforce their rights both by way of complaints to the competition agency (which is better informed about anti-competitive practices) and throughprivate enforcement of competition law (which complements the competition agency's public enforcement).
At the same time, consumers should be made aware that their active behaviour (e.g. comparing prices and reacting to price differences; changing suppliers when more convenient) influences competition and helps competitive markets produce the expected benefits.

47. Does the competition agency engage with the academia for research?

☐ No
☐ Yes
Please substantiate with specific details to the extent possible:

Note: The academia should be considered as a special channel for building up specialised competition law knowledge. Such expertise is beneficial as it helps build a constituency of experts who can support the system of competition law and make it work more effectively at all levels.
As well as being a *target* of advocacy activities, the academia could potentially be a*partner* of the competition agency in developing advocacy activities for other stakeholders.
Engagement with the academia could include activities such as designing and implementing specific university courseson competition law, policyand economics; promoting research, academic articles and other publicationson competition matters; and organisingconferencesand specialised events.

48. Does the competition agency undertake market/sector studies?

☐ No
☐ Yes
Please specify, including the number of such studies/research in the last two years if possible/available:

Note: Sector studies can help substantiate the advocacy and awareness-raising efforts of competition agencies. They can provide vital information about existing market structures and conditions,

regulatory frameworks and the state of competition in particular areas. As such, they can illustrate and investigate structural and behavioral aspects related to competition in the market, in order to detect possible distortions of competition in the sector. Competition agencies can draw on the findings of sector studies to recommend policy changes or compliance in order to encourage fair competition to the long-term benefit of both businesses and consumers. For some agencies, the findings of sector studies can even serve as entry-points for enforcement action if anti-competitive practices are suspected. The latter is often a result of considerable public debate and pressure for the competition agency to intervene in the interest of consumers (for example regarding food staples or petrol prices).

49. Does the competition agency have any outreach programme to the business community?

☐ No
☐ Yes
Please specify:

Note: The business community (business people, their businesses and trade associations) is theprimary target of competition law prohibitions and is a privileged target of advocacy activities.Advocacy activities for the business community should favour self-compliance. Acompetition regime is effective only where most of the stakeholders voluntarilycomply with the law.
In their outreach to the business community, the competition agency should communicate to them that competition law not onlyimposes constraints and threatens punishment but also enables fair competition as a meansof redress against competitors' anticompetitive practices, and so increases businessopportunities.
For younger regimes where a competition law has just recently been introduced, awareness-raising activitiesfor the business community can help provide a basic understandingof the (new) competition law and its implications. Awareness-raising may alsohelp inform businesses of new law-related developments at a later stage (e.g. with the introduction of merger control or a leniency programme).

50. Does the competition agency have any outreach programme to the legal community?

☐ No
☐ Yes
Please specify:

Note: Businesses' own lawyers(both in-house counsels and those in private practice) should also be amongst the targets of advocacy activities by the competition agency. Lawyers have a key role in advising business and should be aware of the risks and opportunities of competition law. The competition agency, for example, could help organise practical trainings to help developing lawyers' ability to advise upon compliance and run compliance programmes for their clients.

51. Can businesses consult with the competition agency on their competition compliance programmes?

☐ No
☐ Yes
Please specify, including the number of such consultations in the past two years, if possible/available:

Note: If the competition regime is working well, it is in each business's own best interests to develop an appropriate compliance programme. Such a programme establishes thespecific framework, internal to each company, for dealing with competition law in dailybusiness management and in specific situations (such as whenthe competition agency initiate investigations against the company). Suchprogrammes should favour self-assessment (i.e. the companies, their executives, staff andlawyers evaluating their actions under competition law) and seek self-compliance. Once the competition agency has achieved a significant enforcement record and presents a credible threat

againstcompetition law infringements, businesses are likely to autonomously develop complianceprogrammes (internally or with the help of their lawyers or business associations).
A significant incentive for self-compliance in all stages of competition law development is whether the competition agency is being transparentabout its operations. The agency could help businesses to develop effective compliance programmes by publicising allrelevant information about its activities and in particular new law-related developments as well as any guidelines or interpretative documents, and its decisions and any other information about pending cases, of course within the boundary of confidentiality requirements. Offering businesses with opportunities to consult directly with the competition agency about their compliance programmes would also help such programmes to be practical and effective, and might result in less violation, including unintentionally.

Public Relations

52. Does the competition agency issue press releases/public statements about its actions?

	No
	Yes

Please specify, including the number of press releases in the last two years if possible/available:

Note: It is recommended practice to introduce any new piece of legislation (including "soft" law andguidelines) by way of a press releaseexplaining the content and substance of thedevelopment and setting the right tone for the media. For the same reason, it is equallyimportant to issue a press release of all (or at least the main) enforcement decisions andpossibly also the opening of important cases. Such a step serves both the purpose ofexplaining the meaning of the competition agency's action and, from a "defensive" perspective, justifies theagency's action towards the business community.

53. Does the media regularly report on the activities of the competition agency, or competition cases/issues detected from public sources?

	No
	Yes

Please specify, including the number of news articles on competition issues in the past two years in local media if possible/available:

Note: The media has a clear role in spreading the competition agency's outreach programmes to key groups, andpublicizing laws, regulations, case law and practices. It also plays an important role increating a competition culture by ensuring the goal of adequate competition enforcement is perceived as a relevant outcome for society.It is therefore recommendable for the competition agency to establishing productive relations with the media.
In younger regimes, the media may even serve as an important source of market information for the competition agency to draw from.

54. Do representatives of the competition agency make public speeches about competition policy and law issues?

	No
*	Yes

Please specify, including the number of such speeches in the past two years if possible/available:

Note: The appearance of representatives of the competition agency could be another part of a communications/public relations (PR) strategy by the agency. This does not only help raising public

awareness about competition policy and law issues, but also contributes to promoting the public image, reputation and credibility of the agency itself.It is also an effective way of getting the messages across to the consumers at large and the business community.

55. Does the competition agency publish any advocacy/awareness-raising materials (books, booklets, brochures, video clips, newsletters, magazines, etc) about the law and the agency?

☐ No
☐ Yes
Please specify, including the number of such materials published in the past two years if possible/available:

Note: The publication of promotional and informative materialssuch as booklets, brochures, magazines,audiovisual content, or other items forms an essential part of the competition agency's advocacy activities. The publications should be reader-friendly and able to communicate effectively about the content of the law, the activities of the agency and most importantly the benefits of competition law enforcement.

56. Does the competition agency have its own website which is accessible, interactive, and regularly updated?

☐ No
☐ Yes
Please qualify:

Note: It is generally a recommended practice that the competition agency has its own dedicated website, and not just a web-page shared with/hosted by other agencies or institutions. The website should be informative and promotional, i.e. regularly updated with information about the law, activities of the agency, legal developments, relevant local, national and international news items, and other resources, including the publications mentioned in Question No. 55. It should project a good image of the agency, promote the necessity of effective competition law enforcement, and facilitate contacts with the agency to provide general feedback or to lodge an antitrustcomplaint, or seek consultations.

57. Please inform on any other innovative communications methods employed by the competition agency, e.g. social media, contests and awards, National Competition Day, etc?

Note: The competition agency should try to tailor-made its engagement methods, make the best use of any available tools, including newly-emerging ones such as the social media, and be innovative in conducting advocacy activities. Some jurisdictions have been known to organize contests and awards, for example in developing video-clips about antitrust issues, or essay/writing contests, or awards for best antitrust practitioners of the year, etc. Another example is the adoption of a National Competition Day, with specific themes for each year, with a view to raising the ante of competition policy and law in the country.

Monitoring & Evaluation (Advocacy)

58. Have the policy recommendations made by the competition agency ever been taken up?

☐ No
☐ Yes
Please specify, including the number of incidents in the last two years if possible/available:

Note: Policy recommendations made by the competition agency are primarily aimed at tackling unnecessary "public" restrictions of competition, or in other words persuading public authorities not to adopt anti-competitive measures. Such recommendations are crucial for those sectors which are not specifically covered by (or are exempted from) the purview of the competition law and also for those public policies that might have implications on the competitive process/landscape and/or consumer welfare. In providing such policy recommendations, a competition agency should highlight theleast competition-distorting policy options and propose a careful balance betweencompetition objectives and other policy objectives.
Once the recommendations are made/communicated to the relevant government/legislative bodies and/or sectoral regulators, the competition agency should be able to check whether they have been taken up (in their entirety or partially).

59. Have the results/findings of market/sector studies ever been taken up as government actions/reforms in the studied sectors?

☐ No
☐ Yes
Please specify, including the number of incidents in the last two years if possible/available:

Note: The competition agency also undertakes market/sector studies, which analyze the competition structure of the nationaleconomy or specific markets (selected on the basis of their relevance in the nationaleconomy). These studies should investigate and illustrate the functioning of therelevant markets, with reference to the products, the structure of supply (actualand potential competition) and demand, the characteristics of the industry, so as to identify and propose specific legislative or regulatory action (or inaction).
The findings and recommendations of these market/sector studies should be validated with, or at least communicated to the relevant government agencies or sector regulators for their consideration. The best scenario is of course when the agency is able to engage with these other agencies and regulators and convince them to take up the findings and recommendations of the studies.

60. Does the competition agency monitor and respond to the feedbacks/responses of participants/beneficiaries in its awareness-raising and advocacy activities?

☐ No
☐ Yes
Please specify:

Note: Similarly as in the case of impact assessment of competition law enforcement activities, or institutional assessment of competition agencies, advocacy activities by the competition agency also need to be monitored and evaluated. Monitoring and responding to the feedbacks/responses of participants/beneficiaries in the agency's awareness-raising and advocacy activities would help the agency to check whether the objectives set out for those activities have been achieved, whether the expectations of participants and beneficiaries have been met, to understand successes (for possible replications in the future) and shortcomings (so as to rectify in a timely manner).

61. Does the competition agency have a mechanism in place to monitor the level of awareness about the competition law amongst different groups of relevant stakeholders?

☐ No
☐ Yes
Please specify:

Note: Understanding the level of awareness about the competition law amongst different groups of relevant stakeholders would help the competition agency to tailor-made its advocacy and awareness-

raising activities. Awareness, however, is not static and therefore needs to be monitored for the agency to make appropriate adjustments in its programmes/activities.

Resources and Capacity Development

Strategic Planning

62. Does the competition agency have a strategy that includes *inter alia* its vision and mission, enforcement and advocacy plan of action, mapping of capacity needs and capacity development plan, and ethical principles, etc?

☐ No
☐ Yes
Please specify:

Note: To be effective, a competition agency, be it old or new, must havea conscious process for setting goals and planning steps to accomplish them. To do otherwise is to be the passive captive of external demands, whether in the form of complaints from consumers or businessoperators, or requests for action by public bodies such as legislatures or government ministries. Even themost modestly funded competition agency must develop a strategic plan that defines what it will seek toachieve in the coming year or series of years.
The agency's strategy should be formulated keeping in mind the environment (political, economic and social-cultural) and the conditions in which the agency is operating. The agency might also consider consulting with relevant stakeholder groups for the formulation and also with its board members and its entire staff, to ensure external relevance as well as internal ownership.
It should also be noted that the agency's strategy might not include all the elements mentioned in the Question, or alternatively all those elements might not be contained within one single document. In other words, the no-one-size-fits-all rule is as well applicable for strategic planning as for competition laws and accompanying institutional structure. What is important is that the agency has a strategic approach and has taken constructive actions to achieve the goals it set for itself.

63. Is the strategy periodically reviewed and updated?

☐ No
☐ Yes
Please specify the frequency:

Note: The strategy needs to be periodically reviewed and updated to make sure that it remains progressive and relevant. The competition agency might not need to set a fixed period for reviewing and updating its strategy, but should at least consider doing so in accordance with the development milestones of the regime.

64. Does the competition agency conduct periodic operational and budget planning?

☐ No
☐ Yes
Please specify:

Note: In the long run, effective management of the competition agency requires it to undertake proper strategic planning. In short to medium terms, given that the number of functions and tasks being assigned to a competition agency is wide ranging, whereas the budget being allocated to it is more often than not limited or insufficient, operational and budget planning is essential. This helps the agency to prioritize anduse financial, human and temporal resources in the most effective way to reach the goals set and perform all the tasks and functions entrusted.

65. Does the competition agency periodically undertake evaluations of its organizational structures, management methods, and operational procedures?

☐ No
☐ Yes
Please specify:

Note: Different from the *impact* assessments conducted as per Question No. 22, or the *output* evaluations asked by Question No. 40, another approach to evaluation, as outlined here in this Question, is process-based or essentially evaluation of *inputs*. In lieu of or in addition to evaluating outcomes and outputs, anevaluation program might seek to assess the quality of the competition agency's internal operations – themix of managerial methods and organisational choices that determine how the agency allocates and appliesits resources. This approach treats management and organisation as critical *inputs* into the implementationof competition policy and law and seeks to identify improvements in how the competition agency operates. Thelogic is that progress toward superior managerial and organisational techniques will increase the likelihoodthat the agency's substantive *outputs* generally promote the realisation of the competition law's objectives (i.e. *outcomes*).

Examples that could be listed here include New Zealand's evaluation of how to structure the responsibilities of the competition authority's legal services department and to define its relationship with other units within the authority. In another instance, at the end of 2000, the Finnish Competition Authority (FCA) initiated an internal evaluation project, targeting its working processes. The aim of the project was to reform the FCA's working processes so that unnecessary bureaucracy would be abolished and the new working processes would make optimal use of FCA's information management and intranet systems. At the beginning of October 2002, the FCA's organisation was reformed again as a result of aninternal evaluation launched in the autumn of 2001. The objective of the organisational reform was toimprove the efficiency of the agency by making better use of the expertise related to different types ofcompetition restrictions and other expertise in the agency. Hence, the new organisation is again composedof units handling different types of competition restrictions.

66. If possible, please inform on any changes/reforms that has taken place as a result of these evaluations during the past two years:

Human resource development

67. Please inform on the actual number and percentage of staff members of the competition agency with qualifications in the following areas:

☐ Law
☐ Economics
☐ Finance and accounting
☐ IT forensics
☐ Statistics
☐ Communications
☐ Strategic planning
☐ Others (please specify)

Note: A typical situation with competition agencies from developing countries is that they are alwaysconfronted with the challenges of an increasing workload and a limited number of staff. In this context, it is crucial to have a firmhandle on the size and type of human resources available within the agency, so as to be able to draw up an appropriate human resource development policy. A further step is to evaluate staff expertise to find the right balance between senior andjunior staff, and permanent staff and contractual agents. Also the right balance isneeded between people with different types of expertise (lawyers, economists andother skilled staff).

68. Please inform on the degree of staff turnover and new recruitment in the last two years:

Note: As seen in the Note to Question No. 67, if the competition agency is aware of the size and composition of its stock of human resources, it would be able to formulate an appropriate human resource development policy/plan to address the high turnover and the shortage of staffs required, if any.
The degree of new recruitment, on the other hand, would reflect how quickly the competition agency is building up its human capital to meet with the demand of the increasing workload.

69. Do the staff members of the competition agency undergo periodic performance appraisals?

☐ No
☐ Yes
Please specify:

Note: Performance appraisal is an essential part of the human resources department's contribution to any organizations, including competition agencies. There are many benefits that performance appraisal could bring about:

- It encourages staff members to perform better in the future.
- It presents an opportunity for staff membersof the agency to leverage positive performance for an increase in salary or promotion.
- During the appraisal, junior staff members can discuss strengths and weaknesses with a supervisor/senior colleague, in effect, allowing them to discuss personal concerns.
- It provides communication between senior and junior staff members on a regular basis to discuss job duties and issues with work performance.
- It allows the staff members being appraised to identify what skills or knowledge may be lacking and need to be acquired or improved upon. This would feed into the agency's internal training and capacity development plan.
- It provides the opportunity for managers to explain the agency's goals, visions and missions, and the ways in which all staff members can participate in the achievement of those goals.

Performance appraisal therefore should be judiciously undertaken even in a system where all staff members of the competition agency are civil servants and/or technocrats.

70. Does the competition agency have staff exchange/secondmentprogrammes with any other counterparts in other jurisdictions within and beyond the ASEAN region?

☐ No
☐ Yes
Please specify, including the number of such exchanges/ secondments in the last two years:

Note: Staff exchanges and secondments do not only serve the purpose of capacity development for staff members of competition agencies. They also help to build trust, promote mutual understanding, including of the ways other agencies operate and how that might be similar to or different from their home agencies. This in turns would facilitate cooperation at higher levels amongst agencies, such as information sharing and exchange, case referral, joint investigations, etc.

71. Does the competition agency have a structured orientation programme for new staff?

☐ No
☐ Yes
Please specify:

Note: Having a structured orientation programme for new staff members would help them to integrate into the agency's works and be able to take up the tasks assigned to them more efficiently.

72. Does the competition agency organize internal training activities or staff research?

☐ No
☐ Yes
Please specify:

Note: Continuous institutional improvement requires a competition agencyto regularly evaluate its human capital. The capacity of an agency's staff deeply influences what it canaccomplish. An agency therefore must develop a systematic training regimen for upgrading the skills of its staff members.
An essential element of continuous institutionalimprovement is the enhancement of the competition agency's knowledge base. In many activities,particularly in conducting advocacy, the effectiveness of competition agencies depends on establishingintellectual leadership. To generate good ideas and demonstrate the empirical soundness of specific policyrecommendations, competition agencies must invest resources in "competition policy and law R&D", and organize for their staff members to be involved in those research activities themselves, other than just focusing on their core enforcement tasks.

73. Does the competition agency offer opportunities for its staff to join in-depth training/academic programmes outside the agency and/or outside the country?

☐ No
☐ Yes
Please specify:

Note: Similar as in the Note to Question No. 72, enabling and facilitating its staff members to join in-depth training/academic programmes outside the agency and/or outside the country would help the competition agency to build up the quality of its human capital. Those staff members with advanced training could also be expected to act as trainers for other junior staffs at a later stage.

Knowledge Management

74. Does the competition agency have an internal document management system and/or case database for references by staff?

☐ No
☐ Yes
Please specify:

Note: In the context of staff turnover, it is important that as muchindividual staff expertise (such as know-how and experience) is turned into anaccessible, institutional asset now and in the future. Expertise acquired in previouscases should be available to other current and future staff. This institutionalknowledge management requires developing tools facilitating easy access toprecedents (in particular by junior staff), while ensuring confidentiality of informationwhere necessary. Knowledge management systems designed to support sharingknowledge between employees include: an Intranet; electronic documentmanagement and document-flow systems (all the case documents are entered andregistered); specific applications to facilitate storing, retrieving and sharing largevolumes of data (e.g. in the framework of an investigation or for merger controlpurposes);and the use of shared folders.

75. Is there a mechanism for knowledge transfer (e.g. debriefing) and sharing within the competition agency?

☐ No
☐ Yes
Please specify:

Note: Very often staff members of the competition agency are nominated/sent to participate in external trainings, workshops, seminars and conferences on the agency's behalf. This means to set up a mechanism for the transfer and sharing of knowledge and information obtained from such occasions with other staff members of the agency. This is also increasingly becoming a requirement/condition by donors/development partners to support such nomination/participation, so as to achieve the multiplying effect of trainings provided.

Training & Education

76. Please inform about the number of external training programmes on competition policy and law organised/hosted/co-hosted by the competition agency in the past two years:

Note: Organizing trainings on competition issues for external actors means going one step further than simple awareness raising and advocacy. The targeted beneficiaries of such training programmes could include the judiciary, staff members of line ministries, government agencies and sectoral regulators, trade/industry inspectors and investigators, journalists and reporters, and even lecturers from colleges and universities. The competition agency has a definite stake in developing the capacity of these actors since it would eventually help to facilitate the works of the agency

77. Is there any tertiary education programme/syllabus on competition law and economics?

☐ No
☐ Yes
Please specify:

Note: The existence of these programme/syllabus would contribute to developing the human capital base from which the competition agency could draw from. These programmes/syllabus could be built up independently by the academia or shepherded/co-hosted/contributed by the competition agency.