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THE COMPETITION POLICY ADVOCACY AWARDS



Changing Mindsets to Transform Markets:
Lessons Learned from the First Annual Awards in Competition Policy Advocacy

Competition Policy Advocacy Award Winners and Honorable Mentions

The Competition Policy Advocacy Contest's aim is to showcase the positive results for consumers, businesses, and overall economic growth generated by forward-leaning policies aimed at thwarting anti-competitive behaviors. In early 2014, the Bank Group announced the winners of the first contest. They were chosen from among a strong—and highly competitive—field of contenders. The Arab Republic of Egypt, Chile, Colombia, and Pakistan were selected as winners in one of several categories emphasizing varying aspects of competition policy. Honorable mentions went to competition agencies in El Salvador, Mexico, Moldova, South Africa, and Turkey.



MEXICO
Honorable
Mention

EL SALVADOR
Honorable
Mention

COLOMBIA
Winner

CHILE
Winner



KEY FACT

35

countries

from all over the world participated in the contest.

- **Colombia** enabled additional firms to compete with the dominant provider in the expanding market for mobile Internet and voice service through the allocation process of spectrum.
- **Pakistan** broke up a price-fixing and market-sharing cartel agreement affecting a high-profile international consumer market for air travel to Saudi Arabia by pilgrims attending the annual Hajj.
- **Egypt** implemented a multi-faceted competition advocacy strategy that delivered positive results in a range of sectors from milk to steel to shipping to school uniforms.
- **Chile's** competition authority engaged with trade associations in drafting pro-competition guidelines to end collusion among association members and instill a pro-competition outlook among businesses.

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Message from the Senior Director

The World Bank Group helps client countries in the developing world grow their economies through advice and lending, all in pursuit of our over-arching goals of eliminating extreme poverty and boosting shared prosperity. Competition policy has become a critical part of our advisory work for countries seeking to develop dynamic and resilient economies, expand market opportunities, and enable private initiative. Healthy competition rewards the most productive and innovative firms, allows new firms to seize market opportunities and incentivizes private investment, thereby boosting productivity. And a productive and competitive private sector, as the source of 90 percent of the 600 million new jobs we need to create over the next 15 years, is essential to economic growth.

Ensuring competition requires effectively enforcing laws against cartels, bid-rigging and other anticompetitive practices. However, the goal will be missed without advocacy for competition. Advocacy embeds competition principles in the mindsets of all stakeholders in the market: governments become aware of the cost of laws and regulations that inhibit competition and begin to champion reforms; private actors are better informed about the law and increase compliance efforts. Both of these forces can transform entire economic sectors long-lastingly.

We are therefore delighted when countries, as a result of their own initiative, implement policies to promote pro-competition practices by private and public actors through innovative advocacy tools. In 2014, for the first time, the Bank Group has formally recognized four countries for their work in competition policy advocacy, along with five other countries receiving honorable mentions.

Their stories reconfirm: Successful competition advocacy delivers clear results. Regulatory barriers to competition are removed, public policies are designed with fewer distortions in the market, and firms refrain from colluding. More intense competition fosters businesses that innovate, bring new ideas and technologies to bear, and deliver better products and services at lower prices. This benefits consumers and allows businesses to become more competitive at home and abroad.

Appropriately enough, there was plenty of competition for recognition this year, as some 35 developing and emerging economies from all over the world participated in the contest. I heartily congratulate the winners, Chile, Colombia, Egypt, and Pakistan, and the honorable mentions, El Salvador, Mexico, Moldova, South Africa, and Turkey, for their diligent work advocating for pro-competition policies. The lessons learned and knowledge gained from their efforts will help the Bank Group in our ongoing work in competition policy.

Sincerely,



Anabel Gonzalez
Senior Director
Trade and Competitiveness Global Practice
World Bank Group

Acknowledgments

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The World Bank Group's Trade and Competitiveness Global Practice (T&CGP) wishes to thank the competition authorities of participating governments for their entries in the Competition Policy Advocacy Awards Competition. Among the honoree countries, we would particularly wish to acknowledge the contributions of officials working in the competition policy field. For the winners: **Chile:** Mario Ybar, Deputy Head of the National Economic Prosecutor's Bureau (FNE) and Carolina Bawlitza, Deputy Head of the Mergers and Studies Division for the National Economic Prosecutor's Bureau (FNE); **Colombia:** German Bacca, Deputy Superintendent for the Protection of Competition for the Superintendence of Industry and Commerce and Juan Pablo Herrera, Coordinator of Economics Study Group, Superintendence of Industry and Commerce; **Egypt:** Haytham El Gammal, Head of Advocacy for the Egyptian Competition Authority; **Pakistan:** Joseph Wilson, Chairman of the Competition Commission of Pakistan. For the honorable mentions: **El Salvador:** Marlene Tobar, Chief Economist for the Superintendence of Competition of El Salvador; **Mexico:** Carlos Mena, Head of the Investigative Authority for the Mexican Federal Competition Commission, Carolina Garayzar, Deputy Director General of International Affairs for the Mexican Federal Economic Competition

Commission, and Patricio Cumming, Assistant director of Forums and Logistics for the Mexican Federal Economic Competition Commission; **Moldova:** Viorica Carare, President of the Competition Council of the Republic of Moldova, and Diana Lapteacru, Head, Abuse of Dominant Position Department, Competition Council of the Republic of Moldova; **South Africa:** Mgiwodumo Rubushe, Head of Advocacy for the South African Competition Commission; **Turkey:** Erdem Aktekin, Competition Expert for the Turkish Competition Authority and Ali Arioz, International Relations Coordinator for the Turkish Competition Authority.

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90%

of the 600 million new jobs we need to create over the next 15 years will come from the private sector.

Introduction

Developing countries have enough obstacles to overcome—disadvantages of geography, climate, access to finance, lack of resources, poor infrastructure—without the additional burden of markets that do not function well. But all too often in these countries, key markets do not yield innovative, low-cost solutions for consumers and businesses due to lack of effective competition.

Despite significant progress by developing countries in improving their investment climates, many markets remain subject to entry barriers and anticompetitive behavior by a few dominant players. A World Bank Group Survey found that in high-income countries only 8 percent of key markets were dominated by a single firm; in Africa and the Middle East, between 25 and 31 percent of key markets were dominated by a single firm.

Anticompetitive norms and practices prevent entry of new market players, stifle innovation, and reduce consumer choice. Moreover, in developing countries prices tend to be 10 to 45 percent higher in cartelized markets.¹ An expansive body of research demonstrates the benefits of competition policy, including innovation, job creation, lower prices, higher productivity, and sustainable growth. One study of 20 developed countries estimated that strengthening competition policies would increase long-run employment rates by 2.5 to 5 percentage points. Another study concludes that if OECD's enhanced-engagement countries reduced barriers to competition in key sectors, their GDP per capita would grow 0.4 percent more per year.²

1. M. Levenstein and V. Suslow, "Contemporary International Cartels and Developing Countries: Economic Effects and Implications for Competition Policy," *Antitrust Law Journal* 71 (3) (2004): 801–52; Yinne Yu, *The Impact of Private International Cartels on Developing Countries*, Diss. Honors Thesis (Stanford University, Department of Economics, 2003).

Competition benefits many groups in the economy.
Farmers in Kenya, Tanzania, and Uganda saved

\$49 million

after the removal of restrictive seed regulations

Intense competition in domestic markets is a key ingredient to a country's performance in trade and competitiveness. A country's steel companies or agribusiness enterprises that vie in a vibrant, competitive environment that rewards innovation, efficiency, and productivity will be much more likely to be competitive in the international marketplace in those sectors. Firms typically buy their inputs, such as energy, transport, financial services, and agricultural inputs, from domestic suppliers. When firms in these upstream markets do not have the right incentives to provide high quality at competitive prices, the cost of supplies goes up and the competitiveness of the firms in the international marketplace declines, affecting the performance of global value chains. Among 82 manufacturing industries in seven countries, relatively higher domestic market concentration is associated with a smaller domestic share in world output and fewer net exporters.³

2. Anita Wölfl et al., "Product Market Regulation: Extending the Analysis Beyond OECD Countries," Economics Department Working Paper No. 799 (2010), Organisation for Economic Co-operation and Development; Giuseppe Nicoletti and Stefano Scarpetta, "Regulation, productivity and growth: OECD evidence," *Economic Policy* 18.36 (2003): 9–72.

3. Aidan Hollis, "Industrial concentration, output, and trade: an empirical exploration," *Review of Industrial Organization* 22.2 (2003): 103–119.



20 million

travelers in Mexico had to pay 40% less for airline tickets after a low-cost competitor was allowed to fly.

Anticompetitive policies and practices allow few businesses to dominate the market without having to meet the challenges of efficiency, innovation, and productivity that are the true measure of success in competitive markets. In such closed markets, innovators are not allowed to emerge. Hide-bound companies that should fall by the wayside remain in business, overcharging for inferior products and services. Taxpayers overpay for inferior goods and services procured by the government under rigged bidding conditions. What the Bank Group's contest highlights is that to prevent such conditions, enforcement is an important tool but by no means the only one.

Competition benefits many groups in the economy. Farmers in Kenya, Tanzania, and Uganda saved \$49 million after the removal of restrictive seed regulations; 20 million travelers in Mexico had to pay 40 percent less for air tickets after one additional competitor was allowed to fly on a particular route; and Jamaican businesses and families saw their phone bills cut in half after pro-competitive regulation of mobile termination rates. On the contrary, exporters in Central America pay more for trucking services than their counterparts in some African countries and lack of competition has been found to explain 35 percent of Central American freight rates; the Zambian

government paid an extra \$20 million for fertilizers to two companies that colluded on public tenders; Romanian firms would save \$20 to \$60 million if anticompetitive agreements among professional accounts were eliminated; and the lack of competition in basic consumer goods affects the poorest households in Mexico 20 percent more than the richest.⁴

While benefits of competition are vast in sum, they are often dispersed. In contrast, regulations that limit competition typically benefit few and small interest groups or even individual firms. This can explain how anticompetitive policies and practices prevail. It is therefore paramount to find mechanisms that make benefits of competition become more widely known and recognized and that eliminate existing barriers to competition stemming from regulation or business practices.

Advocacy for competition encompasses efforts geared toward promoting a competitive business environment through such means as public learning and awareness campaigns, interaction with private sector firms and business associations, and cooperation across multiple government agencies. This "soft" approach seeks to address fundamental barriers to effective competition, such as anticompetitive regulation or economic activities by the public sector, in favor of a business culture supportive of free and open

competition and a set of rules structured and implemented so that anticompetitive behavior is less viable or profitable.

Advocacy is a key responsibility of competition authorities. Around the world, competition authorities are embracing this role and engaging in individual initiatives to change mindsets of politicians, regulators, and private sector representatives. Several authorities have already been successful in transforming markets and generating real benefits to consumers.

In 2013 the Bank Group decided to support this work by providing a global platform for sharing lessons learned in competition policy advocacy and recognizing the efforts of individual agencies. The Bank Group took a competitive approach by launching the inaugural **Competition Policy Advocacy Contest**. As defined by the International Competition Network, **competition advocacy** refers to those activities conducted by a competition agency related to the promotion of a competitive environment by means of non-enforcement mechanisms, mainly through its relationships with other governmental entities and by increasing public awareness of the benefits of competition. All country efforts that won recognition show competition advocacy activities that yielded measurable impacts, not only on markets but on consumers, businesses, and other stakeholders who participate in those markets. Potential applicants consisted of Bank Group client countries with competition agencies in place. All regions and sector-specific topics were eligible. The stories were reviewed by members of the competition team working in different regions and then validated by practice Directors. The criteria used for selecting winners were: (i) collaboration with other agencies/organizations and stakeholders, (ii) results achieved— if intervention was successful, (iii) overcoming political economy difficulties, and (iv) specific impact of the results.

4. Michael Waitthaka et al., "Impacts of an improved seed policy environment in Eastern and Central Africa" (Policy Analysis and Advocacy Programme of the Association for Strengthening Agricultural Research in Eastern and Central Africa, 2011); Augustin J. Ros, "A Competition Policy Assessment of the Domestic Airline Sector in Mexico and Recommendations to Improve Competition" (2010); Theresa Osborne, Maria Claudia Pachon, and Gonzalo Enrique Araya, "What drives the high price of road freight transport in Central America?" Policy Research Working Paper 6844 (2014), World Bank; Carlos M. Urzúa, "Distributive and regional effects of monopoly power," *Economía Mexicana NUEVA EPOCA* 22.2 (2013): 279–295, Romanian Competition Council, Annual Report (2010)."

Some of the positive results from competition advocacy

the price of HIV kits dropped

26 in South Africa
percent

Egypt saw steel rebar cost decline by

50 percent

The aim of competition advocacy is to showcase the positive results for consumers, businesses, and overall economic growth generated by forward-leaning policies intended to thwart anticompetitive behaviors. In early 2014, the Bank Group announced the winners of the first contest. They were chosen from among a strong—and highly competitive—field of contenders. Efforts by competition promotion agencies in Chile, Colombia, Egypt, and Pakistan were selected as winners in one of several categories emphasizing varying aspects of competition policy advocacy. Honorable mentions went to competition agencies in El Salvador, Mexico, Moldova, South Africa, and Turkey.

Their efforts had remarkable success on various fronts: As a result of their influence in public decisions, the price of HIV kits in South Africa dropped by 26 percent and Egypt saw the price

of steel rebar decline by 50 percent. Mexico's competition advocacy saved the government around \$4.5 billion in public tenders, and Pakistan's initiative saved pilgrims an estimated \$60 million in air fares. Colombia's advocacy transformed the mobile Internet market relevant to 55 percent of the population. In El Salvador, 75 percent of the competition authority's recommendations to regulatory sectors such as health, air transport, and energy were taken into account. In Chile, 73 percent of members of the legal community responded in a survey that the competition authority had an influence encouraging more competitive business behavior.⁵

5. All information throughout this publication regarding the advocacy cases, including estimated savings, is based on the competition authorities' official submissions to the World Bank Group and has been verified through available secondary sources.

Winning institutions have shown a strong commitment to advocacy over several years. For example, Egypt intervened on competition issues twice from 2006 through 2009; the number of interventions jumped to 10 from 2010 through 2013. El Salvador increased the number of formal opinions from 4 to 20 per year over the past six years. Colombia issued 26 advocacy recommendations in 2013 compared to 8 in 2009.

In telling the stories of how these countries approached the problem of promoting competition through both government policy and private sector behavior, a remarkable variety of applications in the competition policy field emerges. Some key themes emerge in these narratives:

The efforts by the contest winners and honorees show that **enforcement and advocacy work in concert**. Successful advocacy often depends upon the credible threat of enforcement action, particularly where the private sector is concerned. Findings made in antitrust investigations sometimes point directly to the need for a competition advocacy campaign as, for example, the discovery of regulations that sustain or facilitate anticompetitive behavior. The most successful interventions identify key and strategic areas with the potential to have significant impact and then move forward with a mix of enforcement and advocacy.

Often **the issue** is not a lack of legal authority to compel competitive behavior but **a policy culture unfamiliar with the principles of competitive markets** and a business culture ignorant of or impassive to the sanctioning power of competition authorities. Anticompetitive structures exist for many reasons, often having to do with a favored few, sometimes in government, sometimes in the private sector, sometimes both, maneuvering to control power. It is tolerated and sustained by regulatory barriers because policy makers and protagonists do not see the link to the economic harm it does or the good that can come from vibrant competitive markets.

Simply **promoting deregulation is not equivalent to competition advocacy**. In their advocacy work, competition authorities often work closely with sector regulators to implement economic regulation that follows competition principles and ensures effective incentives are in place for market actors to compete.

Frequently advocacy consists in **clarifying the effects on competition of well-intended policies and practices**. For example, cooperation between businesses can achieve more general market knowledge, leverage research and development efforts, or improve quality by standardization. Advocacy can serve to advise associations of when this cooperation breaks competition rules. In the public realm, ensuring that products and services meet certain standards is crucial for public health and safety. Governments put in place regulatory requirements and compliance procedures for entering the market. Competition authorities engage in the design of these procedures to avoid creating regulations that discriminate against certain market players, allow incumbent businesses to bar market entry to potential rivals, or limit price competition.

Competition policy agencies must **work with the tools they have available**. Few have the legal authority to eliminate or neutralize anticompetitive regulations or to sanction the anticompetitive actions of public enterprises or public officials. Most must rely more on their powers of persuasion. A key element of success is for agencies to go beyond simply identifying a practice or rule as anticompetitive by proactively devising alternative solutions so that policy makers and the private sector can more clearly see the potential benefits. Advocacy strategies that leverage tools of persuasion effectively, such as interaction with media outlets or civil society organizations, or engagement with businesses harmed by anticompetitive practices, can play an important role.

Although advocacy is a “soft power,” **authorities have concrete instruments at hand to achieve**

Change in mindsets occurs when people see prices go down as a result of thriving competitive markets. It occurs when firms previously excluded from markets are able to vie for business with innovative and better-quality products. It occurs when a country's firms compete more effectively in international markets, and when policy makers and business leaders see competition contributing to an improved economic climate.

real impact: Engagements with other public agencies or private sector organizations may start with training or capacity building, roundtables with journalists or political parties, and media campaigns. Formal guidelines help to provide a standardized reference and orient private and public actors in the market. Opinions and recommendations to proposed or existing regulations are the most common advocacy tool. Market studies or policy notes can set out comprehensive reform agendas to unleash healthy competition. Transforming markets sometimes requires a longer-term engagement with the sector-regulator or line ministry. This can be facilitated by a memorandum of understanding or a protocol. Competition advocacy can be institutionalized via mandatory competition assessments of draft legislations.

Some of the highlighted cases concern a single economic sector such as telecommunications. Other governments took an economy-wide approach. Competition agencies—the organizations that participated in this contest—are usually independent authorities and several layers removed from the top levels of central government. **Political courage and wit**, therefore, emerges as a critical element of success, particularly where an agency had to take on state-owned industries or firms favored by the prevailing power structure. A willingness to urge powerful government ministries to review policies and curb anticompetitive practices recurs as a key theme throughout these stories. Patience and persistence were equally important. Many of the pro-competition campaigns described here took several years or even a decade to come to fruition.

A thread running through these narratives is the recognition by competition policy officials that their efforts should go beyond dealing with isolated cases of anticompetitive behavior. They understood the need to bring about a full-blown cultural change to inculcate and embed pro-competition principles into the business and political hierarchies. In some cases, selected use of public pressure, with the help of media attention, has helped bring abuses to light and change ways of doing business. In other cases, media pressure worked in the opposite direction—blocking rather than promoting reform, as established power structures resisted efforts to do business differently. Gradually, though, and with committed effort, even entrenched political and business interests strongly opposed to pro-competition initiatives can be won over as the benefits to the overall business climate become clear.

A key ingredient in bringing about cultural change is not just persuasive advocacy and well-crafted arguments but concrete economic results. Change occurs when people see prices go down as a result of thriving competitive markets. It occurs when firms previously excluded from markets are able to vie for business with innovative and better-quality products. It occurs when a country's firms compete more effectively in international markets, and when policy makers and business leaders see competition contributing to an improved economic climate. Some of the most compelling success stories entail pro-competition efforts in specific market sectors or business lines that yielded concrete, measurable results, not only on markets but on consumers and other stakeholders who participate in those markets.



**THE BANK GROUP SELECTED WINNERS AND HONOREES GROUPED
AMONG ONE OF THREE THEMES:**

Successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies:

**COLOMBIA, PAKISTAN
CO-WINNERS**

Assessing the potential negative effects of certain rules and regulations on the market and informing policy makers and public authorities:

**EGYPT, WINNER; EL SALVADOR and
TURKEY HONORABLE MENTION**

Raising awareness of private sector stakeholders and empowering consumers to deter anticompetitive behavior:

**CHILE, WINNER;
MOLDOVA, HONORABLE MENTION**

Two additional countries, MEXICO and SOUTH AFRICA, received honorable mentions for improving the effectiveness of antitrust enforcement through advocacy with relevant public bodies.

The agenda of the World Bank Group's Trade and Competitiveness Global Practice is closely tied to the work being done in the competition policy field, and the issue of competition policy has progressively expanded its importance across the Bank Group.

Bank Group teams have been working with governments and the private sector in a number of developing countries to root out anticompetitive regulations and collusive practices and to develop and implement policies that foster the emergence of competitive markets. At a basic level, promoting and protecting competitive markets involves establishing and enforcing antitrust rules and punishing anticompetitive behavior. Increasingly, though, the Bank Group has been placing particular emphasis on helping countries develop better competition advocacy tools as a means to sustainably promote pro-competition policies, regulations, and practices to the same end.

Currently the Competition Policy Thematic Group works with teams from different regions and departments in more than 30 countries. Through analytical reports and technical advice, the Group develops and shares best practices and innovative tools to identify and better tackle anticompetitive regulations and practices. Successful advocacy for pro-competition policies and regulations is generating specific reforms and positive economic impact across regions and countries, including Armenia, the East African Community, El Salvador, Georgia, Honduras, Kenya, Mexico, Moldova, Peru, and the Philippines.

In the long run, competitive markets will emerge and thrive when private actors are conscious and alert about competition norms and when policy makers believe this is the path to sustainable growth—when they see the benefits for their constituencies: consumers, employees, and business owners. That's what competition advocacy is all about. We hope that this and future Competition Policy Advocacy Awards contests help make that case. ■



Winners



THEME 1:

Successfully promoting pro-competition market reforms, opening of markets, and infusion of competition principles in other sectoral policies.

In many markets in developing economies, competition is hampered by laws and regulations that limit entry or affect firms' capacities to compete. Bans to private investment or legal monopolies close markets to potential new investors; controls on prices and other variables increase business risk and reduce firms' efforts to improve products or services and lower prices; and lack of pro-competitive rules in network sectors limit the ability of equally or more efficient players to compete with incumbents. To ensure effective competition in markets, it is essential for competition authorities to study legal and regulatory barriers to competition and implement advocacy strategies to remove or modify dispositions that are blocking development of healthy competition.



Co-Winners: Colombia and Pakistan

Colombia



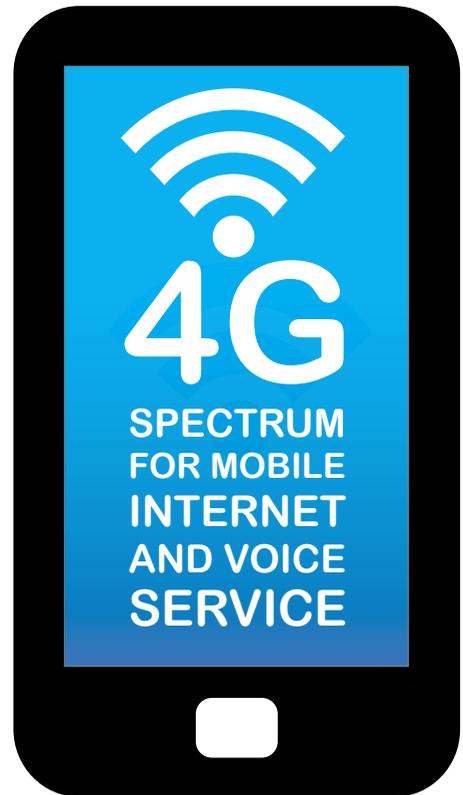
After extensive research, Colombia's competition authority successfully engaged with other government agencies in the allocation of fourth-generation long-term evolution (4G LTE) spectrum for mobile Internet and voice service to ensure competition in an expanding market. As a result, additional firms were able to compete with incumbents in the market, promoting innovation, price competition, and consumer choice.

Key Points:

- » In expanding mobile communications services, Colombia was at risk of perpetuating market dominance by a single player.
- » Competition authority worked with other government departments to enable new entrants in the mobile phone and Internet services industries.
- » Achieved more choice for consumers and a more modern communications system attractive to businesses seeking to locate in Colombia.
- » Industry-specific approach focused on an already huge business sector (mobile telecommunications) and one poised for rapid further growth (mobile Internet).

Narrative:

In Colombia, as in many parts of the developing world, mobile phones are not just devices; they are a vitally important means of connection—to family and friends, to the workplace, to business prospects, to clients. There are an estimated 47 million mobile phones in Colombia—more phones than people. So when the Superintendence of



47 million

The estimated number of mobile phones in Colombia

Industry and Commerce (SIC), the Colombian government organization responsible for competition policy, got involved in the task of reordering the field of play in telecommunications, it understood that this was no obscure regulatory action; this was something that was going to affect just about everybody.

The immediate issue was how to manage the allocation of spectrum for mobile voice and Internet so as to promote greater competition in a field dominated by a single provider. In 2011, SIC engaged early on with government agencies in charge of designing a national strategy for telecommunications, including a policy for spectrum allocation. It immediately launched an extensive study of the existing market for mobile telecommunications and mobile Internet.⁶ The study included simulations of various scenarios to determine whether or how a new allocation would change market conditions. Completed within six months after the Ministry of Information Technology (MinTIC) published its first draft proposal for a spectrum auction, the study found that an open, unrestricted auction of spectrum would result in continued market dominance by a single company. That finding formed the foundation of a new approach, one that would enable new market entrants whose participation could benefit consumers. SIC played an important advisory and advocacy role that helped shape the terms of the auction. The result was a more level playing field that allowed market entrants to effectively vie for a large and rapidly growing customer base, with the promise of more consumer choice, better service, faster innovation, and lower prices.

6. The study is available in Spanish at: http://www.sic.gov.co/drupal/recursos_user/documentos/Estudios-Academicos/Documentos-Elaborados-Grupo-Estudios-Economicos/2_Estudio_Sector_Telecomunicaciones_Colombia_Septiembre_2012.pdf.

A number of reasons beyond the widespread use of mobile phones compelled the government to intervene to promote greater competition in telecommunications. While mobile phones have saturated Colombian society, mobile Internet has barely made a dent, with a 10 percent penetration into the Colombian market. There is room for tremendous growth, and it was important to the government that more than one firm play in this expanding field. Mobile phone service, while widespread, was not yet available via the 4G LTE technology allowing consumers in more and more countries to connect faster. And there are still regions of Colombia with poor or no mobile phone coverage. So a key goal of the pro-competition strategy was not only better service and prices for Colombians but a business environment attractive to potential outside investors whose decisions on locating in Colombia might hinge on the availability of state-of-the-art telecommunications services.

“We are trying to promote the country to another level of technology,” explained Juan Pablo Herrera Saavedra, coordinator of the SIC division whose market study was critical to the design of the spectrum auction. “This is so important for businesses and consumers, and for the entire economy and development of enterprises.”

The concern identified by Herrera’s Economic Research Group (GEE by its Spanish acronym), was that the dominant firm, Claro, with 74 percent of the profits in the telecommunications sector, would crowd out competitors unable to match the company’s well-established infrastructure. A “free and open” rivalry for spectrum would, in practice, become cost-prohibitive and closed to most competitors. SIC warned the relevant government ministries.

The Superintendence did more than just warn of a problem; it proposed a solution. The essence of the idea was to divide the spectrum auction into “reserved blocks” and confine the dominant market



player to competing in just one of those blocks with other established telecommunications firms. A separate reserved block in the advanced wireless service spectrum would be open to potential new market entrants. SIC also recommended that the auction include provisions that would enable new market entrants to use existing infrastructure, such as mobile phone towers, at regulated rates. Over time, as part of the plan, these new entrants would gain sufficient market traction to develop their own infrastructure.

At the conclusion of the spectrum auction, the reserved block approach yielded two new market participants—Avantel and DirecTV.

“This sector is related to each citizen,” said Herrera. “In fact, it’s not a ‘sector’ to consumers, it’s everything; it’s a way to connect.”

The communications sector represents about 3 percent of Colombia’s gross domestic product. With the telecommunications market growing at a 7.2 percent annual rate, and with mobile Internet services in their infancy in Colombia, the communications share of the economy seems certain to expand.

Colombia’s approach might seem counterintuitive, which makes it all the more impressive as a case of how technical knowledge of market dynamics can improve public policies. Competition advocates in the government understood that open and unregulated competition among firms for access to public airwaves would stifle rather than foster competition. The counterintuitive move was to restrict competition at the front end in order to produce a more competitive market, and all its benefits, as an end result. The lessons learned are useful beyond the telecommunications field.

3%

of Colombia’s gross domestic product comes from the communications sector

7.2%

is the annual rate of growth of the telecommunications market in Colombia

Knowledge Brief

Colombia's 4G spectrum allocation



4G



The Colombian government has prioritized mobile Internet as an emerging, important market for growth.

In response to a proposed public auction of 4G LTE spectrum, Colombia's competition authority, the Superintendence of Industry and Commerce, acted quickly at a strategic moment to inform a decision beyond its usual regulatory comment. SIC conducted an economic analysis of the country's mobile voice and Internet market, including simulations of post-auction market scenarios. The study identified risks in the plan to assign the spectrum that could prevent new entrants from participating in the auction. These findings prompted SIC to recommend a reconsideration of the auction design. The government adapted the auction process and promoted regulations on infrastructure sharing and network access (roaming) to encourage at least one entrant in the market.

Competition Advocacy

SIC advised the national government's regulatory agencies on the protection of competition in allocating spectrum and participated in congressional discussions on the importance of competition in the telecommunications sector. The process involved collaboration among several branches of government: the National Spectrum Agency (ANE), the Communication Regulatory Commission (CRC), the Ministry of Information Technology (MinTIC), the military, the academy, the General Prosecutor Office, the Comptroller General, and the National Planning Department. During the process, SIC kept in close contact with the ANE, CRC, and MinTIC and presented their points of view on various adjudication process drafts for the Congress and other stakeholders. Private institutions and firms, including current providers, had the opportunity to provide comments, which were received and considered.

Impact

The auction resulted in the adjudication of five licenses for the next 10 years, allowing two new companies to enter the Colombian mobile telecommunications market. This result is expected to promote competition, higher quality and coverage, and competitive prices on mobile voice and Internet services. Service via 4G LTE is now available in over 130 cities and municipalities in Colombia, and the country is becoming a leader in 4G development in South America. One of the four companies already providing this new service reports coverage of 55 percent of the population. Among the emerging differentiated products are packages targeted to business applications and per-second charging.

Key Lessons

- 1) **Market and other economic analysis can provide the critical empirical basis for competition advocacy. SIC's study examined market characteristics and simulated various scenarios to advance the bidding process.**
- 2) **Continuous monitoring of key sectors was necessary to take advantage of strategic moments to intervene. SIC was able to inform the process at its earliest stages—before the auction design was released for public consultation—by reacting swiftly upon notification of the proposed auction design.**

Reform Design at a Glance:

How Colombia leveled the mobile Internet playing field

Objective

Ensure that effects on competition are considered in the design of the government's auction of 4G LTE spectrum and its planned development of the mobile Internet market. This objective supports the goal of better allocation of public resources, in this case, spectrum.

Approach

Economic study: The Economic Research Group (GEE), a unit within the Superintendence of Industry and Commerce, conducted an analysis of the mobile telecommunications market, using the Herfindahl-Herschman Index (HHI) and the Stenbacka Index of Dominance.⁷ The team considered the barriers to entry, such as the infrastructure requirements to deploy service in the new spectrum, and the potential implications for price competition, judging by international experience. The analysis revealed the mobile voice market in 2010 was dominated by one operator (with 74 percent share, in terms of sector profits, and 62 percent in terms of subscribers) and a wide disparity in terms of financial capacity between the dominant operator and other providers. GEE simulated a set of market

scenarios, forecasting the participation of different current providers and possible entrants under the planned process for allocating the spectrum.

Identification of risks: The original design of the auction process proposed an open mechanism in which incumbents and entrants were able to bid on two segments of spectrum to develop mobile Internet services. GEE concluded this design posed several risks that could hinder competition. The findings indicated the proposed plan to assign the spectrum for mobile Internet services would likely replicate the structure of the existing mobile voice market. Smaller operators and market entrants, who would not have the means to deploy the necessary infrastructure, would be deterred from competing against the well-capitalized, dominant provider.

Advocacy strategy: SIC informed the Ministry of Information Technology (MinTIC), the National Spectrum Agency (ANE), the Communication Regulatory Commission (CRC), and Congress of the study's conclusions. In two concept papers⁸ published in early 2013, SIC recommended that the plan for allocating the spectrum be adapted to (i) encourage the entry of at least one new operator in the voice and mobile Internet market; (ii) include mechanisms for implementing network access (roaming) and infrastructure sharing to expedite a new competitor's entry and position in the market; and (iii) include a forward-looking strategy for new operators to build and deploy their own infrastructure within four to five years of using the spectrum to effectively operate in the market.

7. A. Melnik, O. Shy, and R. Stenbacka, "Assessing Market Dominance," *Journal of Economic Behavior* 68(1) (2007): 63–72. The Herfindahl-Herschman Index (HHI) concentration indicator is a commonly accepted measure of market concentration in competition analysis, based on the market shares of firms in a particular market. The Stenbacka Index determines when an individual firm has a dominant position. It takes into account the intensity of existing competition and any entry barriers.

8. Concept papers are available at http://www.sic.gov.co/drupal/recursos_user/documentos/Competencia/Integraciones/Resoluciones/Abogacia/2013/Febrero/13-014194-1.pdf.



Results: MinTIC and CRC designed different scenarios to advance the bidding process, weighing the pros and cons of reserving spectrum for entrants (and excluding the dominant operator). The auction process was adapted to specify which operators could bid on available blocks of spectrum, and two blocks were held for bids from entrants and smaller operators. The ministry promulgated regulations about infrastructure sharing (roaming) and network access, which meant new operators in their early years would face lower costs in providing services than incumbents. A follow-up mechanism was designed to ensure that entrants would develop infrastructure sufficient to enable them to compete autonomously after several years.

Milestones in SIC's Advocacy Process

February 2009: The Communication Regulatory Commission declares Claro (then ComCel) the dominant operator.

December 2011: MinTIC invites stakeholders to participate in the auction design process of the spectrum allocation.

March 2012: MinTIC publishes the first draft of the auction design for comment.

September 2012: SIC publishes market study with auction design scenarios.

October 2012: SIC publishes recommendations to MinTIC that auction be designed to allow at least one new operator.

November 2012: MinTIC publishes second version of auction design for comment.

February/March 2013: SIC publishes additional advocacy concepts with further pro-competition recommendations. ■





Co-Winners: Colombia and Pakistan

Pakistan



Pakistan identified and corrected a sector-specific problem affecting a high-profile international consumer market for air travel to Saudi Arabia by pilgrims attending the annual Hajj. The negotiated solution, brought about with the help of public pressure, quickly resulted in new choices and price competition in the marketplace and presented an approach that promises to yield positive results in other business sectors.

Key Points:

- » Rapid response to public complaints over price spike for plane tickets to religious pilgrimage.
- » Effective use of media and public leverage to bring about a swift negotiated solution that delivered concrete results in the form of more market competition and lower prices.

Narrative:

The Hajj, or pilgrimage to Mecca and other holy sites, brings millions of people to Saudi Arabia each year in what for many is a once-in-a-lifetime experience. Travel arrangements for the pilgrims is a major undertaking, one that became the central concern of a cartel case in Pakistan in which pilgrims contended they were being gouged for the cost of airline tickets. The controversy became public as Pakistani newspapers reported complaints about a dramatic price spike for air travel on both scheduled and chartered flights from Pakistan to Saudi Arabia during the Hajj season in late 2008. It then unfolded as an enforcement and competition policy issue, one that involved alleged violations of law by government-run institutions. It was resolved through a combination of enforcement and advocacy.

As a result of the Competition Commission’s intervention the leading Saudi and Pakistani airlines cartel agreement was broken-up and other airlines were allowed to enter into a previously restricted marketplace.



\$60 million
in savings to Pakistani
travelers to the Hajj during
the year 2013–14.

At the center of the action was the Competition Commission of Pakistan, which undertook to investigate the price-spike complaints when they came to light. As often is the case in competition policy disputes, this one required an agency to challenge powerful economic and political interests while working to shift priorities in other, higher-ranking government ministries. The results of the Competition Commission's intervention were considerable: the break-up of a cartel agreement between the leading Saudi and Pakistani airlines, the entry of other airlines into a previously restricted marketplace, and some \$60 million in savings to Pakistani travelers to the Hajj during the year 2013–14. The case showed how a combination of public pressure, persistent investigation, and negotiation can yield significant results.

An agreement on fares between Pakistan International Airlines (PIA) and Saudi Arabian Airlines (SV), both state-owned enterprises, came to light when the Competition Commission made inquiries with both airlines about reports that fares to fly from Pakistan to Saudi Arabia for the Hajj were more than 80 percent higher than in the previous year. In the case of pilgrims who wanted a shorter-duration trip, fares had more than doubled. A Saudi airline official politely responded that since the national airlines of Pakistan and Saudi Arabia had mutually agreed on fares, queries should be directed to the Pakistani airline.

The statement amounted to an admission of price collusion. On further inquiry, the Competition Commission learned that the two airlines had entered an agreement to split the customer base of Pakistani Hajjis and for PIA to pay royalties for any pilgrim carried in excess of its agreed share. The bilateral government agreement allowed these two firms to control the entire Hajj air travel market

between Pakistan and Saudi Arabia—about 165,000 passengers in 2008—to the exclusion of all other potential competitors.

So great is the demand for travel to the holy sites that Saudi Arabia grants each country a set number of pilgrimage travel slots. Pakistan's Hajj customer base was fixed at 165,000 pilgrims in 2008; the total number of foreign pilgrims attending the Hajj that year was estimated at 1.73 million. Also fixed were the airlines that could carry them and the rates at which they would fly. Hajj travelers paid more than regular passengers on some of the same routes, the Competition Commission noted, and pilgrims wishing to stay for a shorter time in Saudi Arabia paid more still.

After completing a detailed inquiry, the Competition Commission reported that it could find "no objective justification" for the fare discrimination and no sound economic reason for the price increase over 2007 rates. Jet fuel prices had been generally stable and even declined during some periods of 2008. Since other fares had not gone up by similar amounts, the price increase seemed to the Competition Commission to have more to do with the anticompetitive agreement between the two airlines granting them exclusive market rights and with the captive nature of the customer base than with any economic or cost explanation.

The Competition Commission found that PIA had engaged in price fixing and had imposed unreasonable and discriminatory increases on passengers, all in violation of the country's competition law. Because the Saudi and Pakistani governments had authorized the price-fixing agreement, the two airlines were not found to have violated the Competition Ordinance provision on



“prohibited agreements.” PIA was ordered to work out a refund to be paid back to Hajjis based on the amount they were charged over what regular passengers paid along the same routes at the same time. But the emphasis in its finding was on a negotiated solution that would end the cartel and give consumers fairer prices and more choice going forward.

“With law enforcement, you only treat a single patient; with advocacy you get to the source of the problem and eradicate the disease,” said Dr. Joseph Wilson, Chairman of the Competition Commission of Pakistan.

A non-binding policy note issued in 2010 to the government ministry that oversees air transport formalized a negotiated resolution of the case. Two new airlines, one from each country, would be able to compete with PIA and SV for Hajj travelers. Fares would be determined independently and competitively by each airline. There would be no agreements or passenger quotas among the airlines.

Previous competition cases had tended to be technical in nature and drew little if any public attention. This case was different.

“Press coverage—positive coverage of the benefit to consumers—was important to doing the advocacy,” Dr. Wilson said. Other countries seeking to foster more competitive business environments through pro-competition policies have taken note of Pakistan’s example. “There was no change in law,” he said. Through advocacy and public pressure and at least the possibility of sterner enforcement action, “the bilateral agreement between the airlines changed, and the cartel was stopped.”

“Advocacy is an inherent obligation of a competition authority.”

—Dr. Joseph Wilson, Chairman,
Competition Commission of Pakistan

Pro-competition

Other countries seeking to foster more competitive business environments through pro-competition policies have taken note of Pakistan’s example.

Knowledge Brief

Pakistan's air services agreement with Saudi Arabia





Pakistan’s Competition Commission determined, during a 2009 cartel investigation of Hajj season airfares, that a 1972 bilateral agreement between Pakistan and Saudi Arabia had created an unduly severe barrier to competition.

The agreement granted exclusive rights to operate direct routes between Pakistan and Saudi Arabia to two state-owned airlines⁹—one in each country—and allowed them to jointly set prices. This practice resulted in higher airfares and limited choice for international passengers. In 2010, the Competition Commission recommended to the Pakistani government that the existing bilateral agreement between Pakistan and Saudi Arabia be amended to allow for competition in air travel services.

Competition Advocacy

With support from the Civil Aviation Authority, the Competition Commission proposed in a policy note¹⁰ that the bilateral agreement be amended to (i) allow multiple airlines from each country to operate direct, scheduled services between Pakistan and Saudi Arabia, including during Hajj season; (ii) require open and unrestricted competition between all airlines operating between the two countries; (iii) abolish any quotas or payment of royalties;¹¹ (iv) require each airline operating between the two countries to decide its own airfare independently, without interference from either country’s aviation authority or airlines. These recommendations were accepted and implemented through an amended bilateral agreement between Pakistan and Saudi Arabia.

9. In 1972, there were no private airlines operating in Pakistan.

10. Policy note available at http://www.cc.gov.pk/images/Downloads/policy_notes/basa%20policy%20note%20-%2018%20may%202010.pdf

11. Under the 1972 bilateral agreement, the two airlines had agreed to split the market during Hajj season by setting a joint airfare and payment of royalties (for service in excess of one airline’s 50 percent share). The cost of the royalty paid by the Pakistani airline resulted in a \$20 increase in airfares for all its Hajj passengers.

Impact

Two airlines—one from each country—were allowed to enter the market and offer direct routes between Pakistan and Saudi Arabia. The market now includes four competitors offering more choices for passengers in flights, scheduling, and fares. Fares for Pakistani Hajj passengers decreased from 2008 rates (before the Competition Commission’s actions were taken), reflecting an aggregate \$60 million in consumer savings in the year 2013 alone. Fares in 2013 in Pakistan rupees were nearly the same as in 2007; taking into account the dollar parity, jet fuel prices, and inflation, passengers each saved approximately 50,000 rupees off 2007 rates, a benefit enjoyed by more than 120,000 Hajj passengers in 2013.¹² Positive media coverage conveying the consumer benefit helped improve the competition culture in Pakistan.

Key Lessons

- 1) **Advocacy can provide a path to resolution when prosecution is not an option. In this case, the root of the problem was collusion involving a state-owned enterprise, which was facilitated by a bilateral air regulation that effectively legitimized exclusivity and price fixing.**
- 2) **The policy note was a particularly effective tool in bringing together the interests of stakeholders at an opportune time. The Competition Commission was able to address problems with the Hajj pilgrimage at a time when the Ministry of Defense was ready to renegotiate bilateral service agreements to attract new airlines.**

12. This calculation by the Competition Commission of Pakistan is based on an exchange rate of 1 U.S. dollar equals 100 Pakistan rupees.

Reform Design at a Glance:

How Pakistan opened the market for air travel

Objective

Amend the Pakistani government's bilateral air service agreement to allow multiple airlines to ply direct routes between Pakistan and Saudi Arabia, thereby allowing lower fares and more choices for international passengers, particularly during Hajj season. This objective supports the Competition Commission's goal of increasing consumer welfare—reflected in low prices, innovation, and choice in products—through competition.

Approach

Law enforcement: The Competition Commission took notice of media reports that the state-owned airline was charging exorbitant fares for Hajj season travel and filed a complaint charging the airline with abuse of dominance.

Inquiry report: The report issued following initial investigations noted the presence of a quota-sharing agreement between the two state-owned airlines through their respective governments.

Advocacy strategy: The Competition Commission issued a non-binding policy note to the Ministry of Defense (which oversees the Civil Aviation Authority), recommending changes to the bilateral agreement. Talks in process and the policy note provided the impetus to strengthen the will of other stakeholders. Copies of the note were made available to print and electronic media for public dissemination.

Results: The Competition Commission's recommendations were implemented in a renegotiated air services agreement between Pakistan and Saudi Arabia.

Milestones in the Competition Commission's Advocacy Process

November 2008: The Competition Commission of Pakistan notices media reports about Hajj fare increases and writes to Pakistan International Airlines to determine facts and to Pakistan Ministry of Defense to request relevant documents.

December 2008: PIA replies to the Competition Commission, including the fact that PIA cannot carry passengers from Saudi Arabia to Pakistan. The Pakistani Ministry of Defense provides copy of "Hajj Agreement" between PIA and Saudi Arabian Airlines. An official from Saudi Airlines writes that "Hajj fares were mutually agreed upon with the National Carrier of Pakistan International Airlines."

April 2009: Competition Commission Inquiry Officer submits inquiry report finding "no objective justification" for 80-percent fare increase and says PIA/SV agreement violates 2007 Competition Ordinance.

May 2009: The Competition Commission issues show-cause notice to PIA.

June 2009: PIA cites 1972 Air Services Agreement allowing each country to designate one airline for air service to Saudi Arabia and says Hajj fares are set by the Ministry of Religious Affairs. First hearing is held by the Competition Commission on Hajj fares case.



September 2009: Second hearing is held.

November 2009: The Competition Commission finds that PIA, not the Ministry of Religious Affairs, was responsible for price increase and that it was in violation of two counts of the Competition Ordinance for “abuse of dominant position” and “price discrimination.” Because PIA and SV set prices at the behest of their governments, they were not found to have violated the Ordinance provision concerning “prohibited agreements” such as collusion between two firms.

November 2009: The Competition Commission issues a “token” fine and orders PIA to work out a refund agreement with overcharged passengers.

March 2010: The Ministry of Defense renegotiates the Bilateral Air Services Agreement between Pakistan and Saudi Arabia that allowed two new airlines, one from each country, to ply direct routes between Pakistan and Saudi Arabia. ■





Winner



THEME 2:

Assessing the potential negative effects of certain rules and regulations on the market and informing policy makers and public authorities.

Policy makers and regulators often design laws and regulations without consideration of the effect on competition. Regulatory requirements and compliance procedures to enter the market, sell a new product, or provide a new service may limit the ability of new firms to enter and compete without contributing to an identified policy objective, such as safety or public health. Policies that aim at promoting the development of certain sectors or regions may tilt the playing field, for example, if only a few firms in the same market are aware of or eligible for state-provided aid. Many competition authorities have understood the relevance of cooperating with policy makers and public officials in the design of norms to avoid regulations and policies that discriminate against certain market players.



Winner

Egypt



Egypt's Competition Authority implemented a comprehensive and multi-faceted advocacy strategy to promote competitive marketplaces in a difficult environment in which state-owned businesses and longstanding traditions of political favoritism presented significant political and policy challenges. Early successes have been achieved in markets for steel, milk, school uniforms, and shipping agents.

Key Points:

- » The Egyptian Competition Authority (ECA) took on entrenched political and business interests to address the lack of competition culture as it related to economic development that was exerting downward pressure on the economy.
- » Deft navigation of government ministries and business interests brought about solid results amid tumultuous period of political transformation in Egypt.

Narrative:

The task undertaken by competition policy officials in Egypt was formidable. The political and social turmoil touched off by the Arab Spring included periods during which the national legislature was entirely dissolved. An economy that was not overly robust to begin with was further hobbled by instability. At a time of civil unrest and political re-setting, the Egyptian Competition Authority ceased activities considered too dangerous (such as surprise raids on suspected cartels) and redoubled its advocacy efforts. Overarching these conditions was a private enterprise culture only newly emerging and without a tradition of competitive business practices. In this environment, ECA sought to change the way the country does business.

“Law No. 3”

established in 2005 along with the ECA was Egypt's first experience with competition policy as it related to economic development.

July 2014

marks a new law that consolidates ECA's independence and allows for greater effectiveness in enforcement and advocacy. In particular, it mandates that the Competition Authority is consulted on any draft laws and regulations that are likely to harm competition.

In a series of interventions involving anti-competitive practices in products ranging from construction rebar to school uniforms to raw milk, ECA investigated, identified, and took enforcement and advocacy action to promote more free and open competition. Because competition policy would ultimately be enforced in the courts, ECA undertook a training program that has so far provided guidance in the nuances of competition laws to more than 80 percent of the economic court judiciary.

Egypt was a relative newcomer in terms of focusing on competition policy as a component of economic development. ECA was only established in 2005 by “Law No. 3” for that year, the Law on Protection of Competition and Monopolistic Practices. The authority’s agenda was far-reaching, entailing the spreading of a culture of competition throughout both the public and private sectors so that business interests—some of them well entrenched in the existing power structure—and government ministries understood the value of open and competitive marketplaces.

Strategic communications, therefore, were a critical part of ECA’s implementation agenda. The Competition Authority saw the need not only to enforce competition laws but also to persuade key stakeholders of their value. One of ECA’s first steps, therefore, was the launch of an awareness program aimed at spreading the culture of competition among business interests. Companies were not only urged to comply with competition laws but to act as whistleblowers when appropriate, reporting anticompetitive practices. This latter point helped ECA emphasize one of its important messages to businesses: that they are just as likely to be victims of collusive behavior as beneficiaries, if not more so. A series of workshops in major cities and regions provided a platform for conveying these key messages to businesses and trade associations.

Dialogue with the private sector, academia, political parties, and key government agencies

helped set the competition reform agenda and played an influential role in shaping new or reformed laws, policies and procedures. As part of its advocacy approach, ECA made a particular point of enlisting the potential support of “unconventional allies” — businesses affected by anticompetitive practices. For example, a business paying too much for key supplies because of a cartelized supply chain might consider blowing the whistle on the colluding suppliers. Taking on considerable political risk, ECA directly challenged existing government practices including price fixing policies, restrictive purchasing strategies, and special protections for state-owned enterprises.

So ingrained were some anticompetitive practices in Egypt that at one point ECA itself was informed that any advertisements it wished to broadcast would be carried exclusively on Egypt’s state-owned television channels. The authority informed the Ministry of Communications, which had issued the edict, that without an exemption, the proposal would violate Egypt’s competition law. In another instance, ECA challenged a plan by the Ministry of Petroleum to provide a price advantage for established natural gas firms over potential new competitors. The Competition Authority was able to prevail in these and other instances because the problem at the ministerial level was not so much a determination to thwart competition but rather a “lack of competition culture among senior officials,” in the words of an ECA document.

In a pattern replicated by other countries’ competition authorities, enforcement and advocacy tended to mutually reinforce one another in Egypt, as actions in specific cases generated positive results that helped widen support for the pro-competition effort. In addressing concentration and market dominance in Egypt’s steel industry, for example, an ECA study found that the dominant manufacturer of steel rebar faced only one viable competitor, which had managed to gain a market share of less than 1 percent. ECA worked with the Ministry of Trade and Industry on two fronts. First, it pushed the ministry to



support licenses for more modern and integrated rebar manufacturing plants in Egypt. Second, it pushed for the elimination of the customs tariff and adaptation of the technical specifications on imported rebar. In 2009, the amount of steel rebar imported to Egypt jumped from 1 percent of the Egyptian market to 23 percent as a result of these changes, while the price per ton decreased by 49 percent between 2008 and 2010.

“A key lesson is that it’s always easier to tackle contemplated legislation and remove anticompetitive provisions than to take on existing laws and regulations and try to change them after they’ve come into force,” said Haytham El Gammal, head of ECA’s Policy and Advocacy Department.

Following the revolution, ECA undertook to work with all of the key political parties engaged in the national election campaign to urge them to incorporate pro-competition provisions in their party platforms. In 2012, the new government was seeking only minor strengthening changes in the existing competition law; ECA pushed for a more comprehensive approach.

Continuous dialogue on the importance of competition with various stakeholders—but in particular with political parties— as well as tangible results of successfully advocating for pro-competitive market regulation bore fruit: As of July 2014, a new law is in effect that consolidates ECA’s independence and allows for greater effectiveness in enforcement and advocacy. In particular, it mandates that the Competition Authority is consulted on any draft laws and regulations that are likely to harm competition.

As always, words on paper are one thing; actual practice in the field is another. So ECA undertook a training program designed to introduce the Egyptian judiciary to key concepts of pro-competition policy. The program provided comparisons to policies in other countries, articulated the underlying motivations for these policies, and explained the specifics using

“Our approach was to make the agency effective in a state of crisis, which we saw as an opportunity for advocacy.”

—Haytham El Gammal
Head of Policy and Advocacy
Egyptian Competition Authority

hypothetical cases, but it did not bring up any specific competition policy issues already pending before the courts.

“We’re not imposing on them how to interpret the laws, but we want to give them a ‘competition sense,” said El Gammal. “You get different courts and divergent decisions; we want to instill the competition concept and a competition sense.”

As of early 2014, Egypt’s constitution prohibits monopolistic practices and as such, competition has become part of the national economic model. The new provisions in law and ECA’s advocacy and training programs may prove particularly timely. Competition policy advocates in Egypt are well aware that the economic crisis resulting from political instability may lead to retrenchment and a trend back toward protectionism and anticompetitive provisions in certain industrial policies.

In that event, says El Gammal, “Our role is to try to minimize the adverse effects. If you cannot stop it, you need to minimize the adverse effects.”

Knowledge Brief

Egypt's advocacy to infuse competition into government practices





Although Egypt began moving to a market economy in the early 1990s, the country did not adopt competition legislation until 2005.

In recent years the Competition Authority, established under the 2005 law, embarked on a wide-ranging advocacy campaign to inform public stakeholders of the potential impact of their actions on competition. ECA dramatically increased its activities, engaging political parties on the reform agenda, lawmakers on existing and contemplated legislation, and policy makers on specific decisions, such as price controls. The agency worked with prosecutors and judges to build their capacity to administer the law and trained public procurers to curb bid rigging on government contracts. Targeting anticompetitive activities of state-owned enterprises, ECA successfully intervened to help the government remove restrictions to competition in a number of cases.

Competition Advocacy

The objectives of ECA’s multi-faceted advocacy campaign were to: (i) introduce competition policy to a full spectrum of political parties and gain stakeholder support for the authority’s proposed review of the competition law and amendments that further empower ECA in its advocacy role; (ii) target government price-fixing policies by inducing the Cabinet and departments to review and comply with the law;¹³ (iii) introduce the concept of collusive tendering and methods to prevent and detect bid rigging to public procurers; (iv) build awareness of competition policy among businesses, help ensure their compliance, and encourage whistleblowing of firms affected by cartels among their suppliers; (v) ensure better

coordination with the judiciary by promoting competition policy among public prosecutors and judges of the economic and administrative courts; (vi) spread the competition culture among economic journalists, academia, and non-governmental organizations.

Impact

Steel rebar: The Ministry of Trade and Industry opened the steel rebar market to new integrated plants and eased imports, which neutralized the monopoly pricing power of the dominant firm and reduced its market share by 10 percent. Four new licenses to operate integrated plants were awarded. Prices decreased (from 8,000 to 4,100 Egyptian pounds per ton between 2008 and 2010), and imports rose from 1 to 23 percent of the national rebar market.

Raw milk: Following the Competition Authority’s recommendation that packed milk producers adopt a “milk-to-feed” ratio formula when dealing with farms, the industry’s main buyer (holding 65 percent market share) agreed to apply the formula and signed a protocol with many farms on this basis. ECA proposed the “milk-to-feed” ratio, an international standard for pricing raw milk, to help ensure supply and relative price stability by allowing Egyptian farms to cover their feed costs and stay in business.

School uniforms: After discovering private schools’ widespread practice of imposing given suppliers of uniforms on students resulting in high prices and bad quality, ECA cooperated with the Ministry of Education to publish a “periodic book” of rules binding on all private schools to (i) prevent the schools from requiring such specific uniforms that students are forced to buy from one supplier (de facto exclusivity); (ii) levy administrative sanctions on schools that do not comply and refer the suspected practices to ECA.

13. Article 10 of Egypt’s competition law: “The Cabinet of Ministers may, after taking the opinion of the Authority, issue a decree determining the selling price for one or more essential products for a specific period of time”(emphasis added by the authors).

Shipping services: As a result of the Competition Authority's awareness program, the Ministry of Transportation was alerted by a reform bill to the Maritime Law and requested ECA's revision with respect to potentially anticompetitive provisions. ECA pointed out that the reform would seal off state-owned shipping agency services from any effective competition due to its bans on foreign companies and significant limits to market participation by domestic private agencies. The proposed reform did not come into effect; foreign and private actors remain in the market for shipping services, which will be important for the success of the new large-scale development project around the Suez Canal.

Key Lessons

- 1) Making marginal improvements to an anticompetitive regulatory environment can be a viable strategy. Confronted with a range of regulatory barriers to competition, ECA targeted achievable changes at the outset to produce demonstrable results, build capacity, and gradually strengthen the Competition Authority's position to enforce the law.
- 2) ECA recognized that businesses are not alone in originating conduct that discourages competition. The authority added the government and the judiciary to its advocacy and scrutiny, backed by a provision in Egypt's constitution that prohibits anticompetitive practices.

As a result of the Competition Authority's awareness program, the Ministry of Transportation was alerted by a reform bill to the Maritime Law and requested ECA's revision with respect to potentially anticompetitive provisions.





Reform Design at a Glance:

How ECA widely advocated with public and private stakeholders

Objective

Address anticompetitive behavior of public and private actors and anticompetitive legislation, regulations, and policies. This objective contributes to ECA's goal of ensuring an effective competition policy within a framework of scarce public resources.

Approach

Legislation: ECA recommended a full review of Egypt's competition law and several amendments that further define the law's scope and strengthen the authority's independence and effectiveness.

Advocacy strategy for specific public policy actions to adhere to competition principles: Through formal recommendations, ECA identified potential violations and contradictions with Egypt's competition law in agreements initiated or undertaken by the government. A key objective was to induce the government to comply with the price-fixing article of its competition law.

Advocacy strategy to raise general awareness: The Competition Authority targeted political parties, senior officials, and sector regulators to promote the concept of competition and its positive impact on consumers and the economy at large. Through customized programs for specific audiences, including business federations and associations, smaller businesses, public procurers, construction regulators, public prosecutors, and judges, ECA

held 93 training workshops and conferences and 11 media events between July 2005 and October 2013. The authority also developed a simulation module as part of its academic outreach.

Results: ECA intervened in an increasing number of cases (from 2 in the 2006–09 period to 10 in 2010–13) involving several ministries and regulators. As a result of ECA's government advocacy efforts, then Prime Minister Hesham Kandel issued a circular to all ministries and governmental entities directing their compliance with competition law and rules in drafting laws, decrees, and policies. ECA also succeeded in engaging with political parties to further its recommended legislation.

ECA intervened in an increasing number of cases from

2 in
2006–09

_____ to _____

10 in
2010–13



Milestones in ECA's Advocacy Process

May 2005: Egypt's competition law goes into effect.

July 2008: The Ministry of Trade and Industry awards four new licenses to operate integrated steel plants, allowing for more competition in the long run.

September 2008: Minister of Trade and Industry, Rashid Mohamed Rashid, issues a decree relaxing the specification requirements of imported steel rebars, breaking monopoly power.

December 2009: The Competition Authority launches an awareness program to educate public procurers on preventing and detecting bid rigging.

January 2011: Mass protests demand overthrow of Egyptian President Hosni Mubarak in January 25 Revolution.

September 2011: ECA launches an advocacy program targeting political parties to introduce the concept of competition policy within their programs.

June 2012: Mohamed Morsi is elected President.

September 2012: Prime Minister Hesham Kandel issues circular requiring public entities to comply with competition law in their draft laws, decrees, and policies.

November 2012: Release of formal rules banning the practice of forcing students to buy school uniforms from one exclusive supplier.

March 2013: Launch of ECA's judiciary advocacy program for both economic and administrative courts.

June 2013: A second revolution removes President Mohamed Morsi from office.

August 2013: Prime Minister Hagem Al Beblawi assigns his powers to initiate criminal lawsuits and settle with violators to the chair of ECA.

September 2013: ECA prevents promulgation of provisions that would have restricted foreign and domestic private competitors to the state-owned enterprises from providing shipping agency services.

January 2014: The new constitution includes explicit prohibition of anticompetitive practices (article 27).

June 2014: Abdel Fattah el-Sisi is elected President.

July 2014: A new competition law is passed that consolidates ECA's independence and advocacy powers. ■



Winner



THEME 3:

Raising awareness of private sector stakeholders and empowering consumers to deter anticompetitive behavior.

Private market players are often unaware of the anticompetitive nature of certain actions in the market, whether their own or their competitors'. Also, they are often unaware of the sanctioning power of the competition authority. Raising awareness can help deter anticompetitive behavior, increase compliance efforts within firms and trade associations and stimulate private stakeholders affected by cartels or abuses of dominance to report such behavior. Competition authorities recognize that awareness of these issues among firms, entrepreneurs, and consumers leverages their capacity to monitor behavior of market players.



Winner

Chile



The Competition Authority engaged directly with trade associations in drafting guidelines to head off the risk of collusion among association members while also carrying out related enforcement actions. The effort showed positive impact in changing the overall business culture of the country toward a more pro-competition outlook.

Key Points:

- » A team from the National Economic Prosecutors Office identified and reported on the anticompetitive influence flowing from business associations.
- » Against strong initial resistance, the team opened discussions, an awareness campaign, and training.
- » The team achieved a marked shift in attitudes toward competition and wider understanding of the contribution pro-competition practices can make to economic growth.

Narrative:

The existence of trade and business associations in a maturing economy would seem to imply a sufficient number of market players as to assure a healthy level of private sector development. The trouble is that while trade associations can play a beneficial role in promoting economic growth, for example, by working together to jointly seek more synergies and efficiencies, they sometimes work to stifle competition and secure an entire business sector for a few key players. Instead of serving the useful purpose of promoting research, development, and innovation in a given field, these associations can evolve into forums for collusion, price fixing, protectionism, and other forms of market control.



The right balance is crucial for the development of Chile's economy: Thriving businesses that cooperate to pursue market opportunities without hampering open and competitive markets.

The problem in Chile was not the absence of laws and regulations designed to prohibit anticompetitive behavior but rather private sector actors unaware and unobservant of the anticompetitive nature of some of their actions. In good faith or not, in practice the association of electricians, for example, fixed service fees, an association of manufacturers divided urban zones into exclusive supply areas, and an organization of bus companies penalized one of its members for charging a price below that of all other members. The president of a bakers' association even announced a bread price increase of 17 percent in the newspaper.¹⁴

Enforcement actions remained part of the government approach; for example, a complaint against poultry producers alleged that their trade association helped organize collusive practices in the sale of chicken to supermarkets. But enforcement only accomplishes so much, since it is necessarily limited to individual cases as opposed to overall market conditions. While enforcement, whether actual or threatened, often strengthens advocacy efforts, the poultry case was one in which the stick would not have been so effective without the carrot. The case against anticompetitive practices in the poultry markets was strengthened because Chile's Competition Authority had already clearly and openly stated what kinds of behavior are subject to sanction.

The Competition Authority in Chile recognized some of the symptoms of trade association involvement in anticompetitive practices and decided to combine enforcement with an advocacy strategy designed to turn the associations from

part of the problem into part of the solution. At first glance, an advocacy approach might appear to be the "softer" option, as compared to enforcement. But the information and advocacy campaign launched in 2010 by the Chilean National Economic Prosecutor's Office (NEPO), or FNE by its Spanish acronym, was plenty controversial. In the early going, reaction to the Economic Prosecutor's agenda was quite hostile, not only among business and trade associations but in the Chilean media as well.

The tough action against the poultry producers—including NEPO's recommendation that the association be fined and then dissolved—fueled charges from the business community that the government viewed normal business association activity as criminal. The Economic Prosecutor continued to press the advocacy strategy, including extensive efforts to clarify guidelines for business and trade association behavior and even counseling for individual associations. NEPO engaged the help of communications specialists to better frame strategic messaging and ensure an inclusive, consultative process. Associations, individual businesses, consumers, and other stakeholders had the opportunity to comment on draft guidelines.

At their core, the guidelines focused on the kind of information collected by business and trade associations and shared internally among association members. Specifically, associations were cautioned against information sharing about prices, costs, production and trade volume, and other sensitive business information.

NEPO considers its information campaign a work in progress. But gradually, attitudes are starting to change. Opinions within associations about pro-competition policies and public attitudes about the activities of associations have shifted, with keener public awareness—driven by traditional and social media coverage of the poultry case—of

14. While in this case, the final verdict determined that the mere announcement of a price increase by the association's president was—even though very "unsuitable"—not anticompetitive, the publication of an actual agreement among bus companies did trigger a sanctioning verdict a few years later.



anticompetitive tendencies of associations. An impact study that was planned from the beginning by authorities as part of the campaign found that among a group of 22 lawyers experienced in competition and antitrust law, nearly three out of four reported that trade associations are changing their ways as a result of the campaign. Media coverage has continued to be critical of the pro-competition effort, but even the negative coverage helped disseminate the issue more broadly.

A degree of pro-competitive self-regulation has emerged, as industries and powerful associations such as the Chilean Chamber of Construction and Mining Council develop their own guidelines. Notably, three Chilean entities joined forces in publishing competition guidelines “to create awareness among company staff, irrespective of their seniority, on the importance of competition.” The three entities were an association of executives that oversees business ethics, the Confederation of Production and Trade, and the leading Chilean newspaper that had been so critical of NEPO previously. These self-generated guidelines counseled business leaders “never (to) hold discussions with competitors about competitively sensitive topics ... never make agreements with competitors ... (and) always apologize and retire if, during a conversation with a competitor, some issues that violate competition come out.”

NEPO is aiming for nothing less than a paradigm shift in Chile, driven by a greater public awareness of the dangers of business collusion and a greater appreciation among businesses of the benefits of a more competitive business environment. The broader context concerns Chile’s economic trajectory. The World Economic Forum has characterized Chile as an economy transitioning from a focus on efficiency to a focus on innovation, an important step in the economic maturation

“Regardless of the heat of the public debate, we encouraged an open and technical discussion with the private sector.”

–Mario Ybar, Deputy Head of the National Economic Prosecutor’s Bureau of Chile

process.¹⁵ Free, open, and competitive markets are crucial at this stage in Chile’s development to continued economic growth. Competition is increasingly seen as a critical driver of innovation, as, for example, new market entrants test new technologies and business approaches in a competitive arena, where the best ideas can flourish. Economies the size of Chile’s, with a well-established middle class and maturing markets, are particularly vulnerable to members of the same business community seeking efficiency in information sharing and standardization—often on the borderline of anticompetitive practices. The issue, then, was not economic survival but the more ambitious idea of “getting to the next level” that NEPO saw as particularly at risk.

15. World Economic Forum. *Global Competitiveness Report 2013–14* (2013).

Knowledge Brief

Chile's advocacy with trade and business associations





Since the creation of the Competition Tribunal in Chile, 40 percent of its cartel cases have involved trade associations.

In 2010, the National Economic Prosecutor's Office decided to evaluate the risk of collusion presented by trade and business associations, commissioning a study of Chilean trade association conduct and undertaking a review of regulations in other countries. Acting on the research findings, NEPO established its preliminary position and embarked on a broad-based and controversial advocacy process to curb collusive practices among association members. The Economic Prosecutor raised the issue for public discussion early in the process, filed complaints against suspected violators and their associations, and developed and promoted guidelines to help businesses comply with the competition rules. Despite initial opposition in the business community and media, NEPO's efforts have begun to change how the associations operate and their members exchange information.

Competition Advocacy

Addressing concerns related to trade associations was an important opportunity for NEPO to effectively use the country's competition advocacy policy to: (i) initiate changes in the country's business culture; (ii) act in areas where enforcement tools are not as efficient, because costs are higher and enforcement is limited to particular cases; (iii) enable Chile to enjoy the real benefits emerging from trade associations, such as an increase in research and development activities; (iv) foster a cultural change on the subject and promote practices within business associations that are consistent with a competitive market. NEPO implemented a broad advocacy process to inform Chile's trade and business associations about how they should adapt their conduct to comply with competition rules. The process included issuing guidelines, holding a series of

meetings all over Chile, counseling associations, and applying the guidelines in particular cases.

Impact

A shift has occurred in the business community's acceptance of competition principles, even among associations; former skeptics of the Economic Prosecutor's actions seem more willing to accept the rules of competition in their work. Industries, such as those represented by the Chilean Chamber of Construction and Mining Council, have begun to develop antitrust guidelines to help trade associations adjust their conduct to conform with competition principles. Three important players in Chile's economy, the Fundación Generación Empresarial (Enterprise Generación Foundation),¹⁶ the Confederation of Production and Trade, and a newspaper previously critical of the Economic Prosecutor, have jointly published competition guidelines for company staff.

Key Lessons

- 1) Competition advocacy strategically supports a country's economic growth and development progress. NEPO acted to deter trade associations' anticompetitive behavior at a time when it was considered vital for Chile's development to intensify competition.¹⁷
- 2) Involving stakeholders early in a public discussion can build awareness and understanding. NEPO encouraged a dialogue from the outset, which resulted in broader visibility and a more informed view of the issues among the country's trade associations.

16. Fundación Generación Empresarial is a non-profit organization to foment ethical behavior in the work environment by supporting firms with compliance-focused programs and other activities.

17. World Economic Forum, *Global Competitiveness Report 2013–14* (2013).

Reform Design at a Glance:

How NEPO challenged the culture of collusion among trade associations

Objective

Ameliorate the anticompetitive risks conveyed by trade associations. Promoting policies in this area is intended to help trade associations contribute to Chile's greater economic benefit and foster innovation among various industries.

Approach

Evaluation of risk and review of regulatory best practices: Chile's main competition policy center was commissioned to conduct a study to evaluate the actual risk of collusion via trade associations. The study concluded, based on national case law, that the associations were "common instruments for collusive behavior" and foster practices that "increase implicit coordination among competitors leading to less competition in the market." NEPO also conducted a review of best practice regulations to understand how trade associations are treated.

Advocacy strategy: The issue was presented and discussed with stakeholders during an annual seminar for the national competition community. This process led to the drafting of the Economic Prosecutor's advocacy materials, which established guidelines and recommendations for business associations to comply with competition rules and explained the analysis and criteria used in NEPO's investigations to assess breaches of antitrust law. Public consultation allowed the

business and legal communities to comment on the draft guidelines, sparking a discussion and eliciting opposition from major associations. The final guidelines, published in August 2011, were promoted through conferences and seminars at universities and visits to major national associations in each of Chile's regions.¹⁸

Enforcement: The Economic Prosecutor filed complaints before the Competition Tribunal, including one against three poultry producers alleging collusion in the sale of chicken to major supermarkets. The Tribunal recently ruled in favor of this complaint, which cited the trade association as a platform for the producers' collusion. It sanctioned the producers with the maximum fine and ordered dissolution of the association as a violator of competition rules.

Results: At the end of 2012, NEPO commissioned a survey to measure the perceptions of antitrust lawyers on the deterrent effect of antitrust institutions in general and NEPO's activity in particular. The survey¹⁹ found that 73 percent of respondents believed trade associations in Chile had modified their conduct since the guidelines were published.

18. A cooperative project with Mexican competition authorities financed several visits to each region to promote the guidelines and inform trade association members of potential anti-competitive risks.

19. Of 22 lawyers mentioned in Chambers as competition experts and with great presence before Chile's Competition Tribunal, 73 percent noted changes in the internal structure of associations and information exchanges to comply with the principle of antitrust regulation.



Milestones in NEPO's Advocacy Process

December 2010: A study conducted by Chile's main competition policy center concludes that Chilean trade and business associations are instruments for collusive behavior.

December 2010: NEPO conducts a review of best practices in regulations related to trade associations.

November 2010: NEPO first presents and discusses the issue with stakeholders at annual Competition Day Seminar.

January 2011: Draft guidelines and recommendations are released for public consultation.

August 2011: Final guidelines are published.

May 2011 – December 2012: NEPO begins "roadshow" to present and discuss guidelines with major national associations and at conferences and seminars.

November 2011: The Economic Prosecutor files complaints against poultry producers before the Competition Tribunal, and against their trade association.

December 2012: A study commissioned by NEPO finds that a majority of antitrust lawyers surveyed believe trade associations have modified their conduct.

September 2014: The Competition Tribunal rules in favor of the complaint against the poultry trade association and orders its dissolution. ■

73%

of antitrust lawyers surveyed said trade associations in Chile had modified their conduct since the guidelines were published.

2012

3 entities from the private sector and media reacted to advocacy with a joint initiative to ensure compliance with antitrust rules.

Honorable Mentions

Honorable Mentions

El Salvador and Turkey

THEME 2:

Assessing the potential negative effects of certain rules and regulations on the market and informing policy makers and public authorities.

Policy makers and regulators often design laws and regulations without consideration of the effect on competition. Regulatory requirements and compliance procedures to enter the market, sell a new product, or provide a new service may limit the ability of new firms to enter and compete without contributing to an identified policy objective, such as safety or public health. Policies that aim at promoting the development of certain sectors or regions may tilt the playing field, for example, if only a few firms in the same market are aware of or eligible for state-provided aid. Many competition authorities have understood the relevance of cooperating with policy makers and public officials in the design of norms to avoid regulations and policies that discriminate against certain market players.

El Salvador

Undertook a broad training effort in the analysis of regulatory impact on competition and managed to embed competition as a main principle in the process of rulemaking and design of broader public policy.

Narrative:

In some countries, laws and regulations designed to promote private sector competition are on the books but not well understood or enforced. El Salvador's Competition Authority (Superintendencia de Competencia) confronted a different and all-too-common problem: regulations expressly restricting competition. Research by the Competition Authority's very small staff disclosed that key government institutions simply were not considering the implications for private sector competition of the regulations they were promulgating. Inadvertently or otherwise, these restrictions were having a negative impact on key economic sectors. Lack of awareness of the benefits of open competition—rather than opposition to the concept—was the problem. The result was a raft of anticompetitive regulations that failed to meet the criteria normally imposed on such rules, namely, that they be proportionate to the issue at hand and carefully targeted to promote the policy objective with minimal distortions to the market.

The solution was to engage directly with the government ministries and agencies with the most influence over policies that bear on competition and try to inject greater awareness of the importance of pro-competition policies to consumers and overall economic growth. In 2012, the Competition Authority identified three government entities with considerable influence over policies affecting competition: the Presidency's legislative and legal secretariat and



technical secretariat; and the Ministry of Foreign Affairs. Virtually all important economic and trade legislation passes through one or more of these institutions; taken together, they could form an effective filter to identify potentially anticompetitive legislation and send it over to the Competition Authority for review. The Unit for Economic Analysis developed a set of guidelines to help government officials assess the impact of various policy options on competition. The team also organized workshops to help those responsible for drafting regulations and legislation better understand the key elements of pro-competition policies.

While the project is ongoing, it has already produced concrete results. In 2013, the Competition Authority issued a total of 20 opinions on various draft regulations that included pro-competition elements. The opinions went to other government departments and secretariats either for immediate implementation or further consideration. Ten of these, ranging in subject area from civil aviation to health registrations to energy efficiency and consumer protections, received favorable reviews. Five, covering such issues as public purchasing, food safety, and micro, small, and medium enterprises, were partially accepted.

Through these means, the Competition Authority was able to influence important policy changes: incumbent airlines are no longer exempt of financial guarantee requirements and scheduled flight operators can no longer block permits for charter flights. The agency also prevented a provision that would have allowed the public authority responsible for supervising the public accountants' profession to deny applicants new licenses based on a subjective and potentially discretionary evaluation of the applicant's "professional aptitude." Finally, sanitary registrations guarantee public health, but they should not constitute a barrier to competitors

entering the market and providing products at better prices. Following the agency's opinion, the acknowledgment of foreign sanitary registrations from countries with high sanitary standards was implemented, so as to increase competitive pressures on the incumbent agents in the Salvadoran market of pharmaceuticals.

"Inter-institutional cooperation was the basis for achieving greater dissemination" of pro-competition ideas, said Marlene Tobar Silva, Chief Economist in the Competition Authority. The agency's small budget and staff required a strategy that would leverage the leaders and staff of existing government organizations by informing them of key competition policy priorities and enlisting their support for pro-competition initiatives. "The endorsement of key institutions in charge of the design of regulation is fundamental before regulation drafters" begin their work, said Tobar. "It is required that officials placed in high levels of public institutions commit to the initiative in order to implement a strategy in favor of competition." ■

THEME 2

Turkey

Launched an awareness-raising campaign aimed at government officials, business and market leaders, and the general public to promote pro-competition principles and their beneficial impact on economic growth. A key challenge is ensuring that a trend toward privatization does not yield market-dominating players but rather a transparent, free, and open market.

Narrative:

Advancing competition policy begins with effective communication, to demonstrate to leaders and key government agencies, as well as private sector interests and the public at large, the benefits of economies that foster competition. The challenge is doubly daunting in countries like Turkey, where government agencies not only lack a clear understanding of the benefits of competition but—in the case of state-owned enterprises—are the direct beneficiary of anticompetitive structures.

The Turkish Competition Authority (TCA) undertook this task by assembling a team of experts to produce a detailed report seeking to increase awareness across the government of key elements of competition policy. The goal, in the words of a TCA official, was to help officials “internalize the concept of competitive neutrality and to make it clear where the regulation starts to become ‘a bad thing.’”

The resulting report was drafted to be relevant across all the key government agencies. The Competition Authority presented the report in a symposium in 2013 attended by 30 top government officials including ministers, MPs, undersecretaries and chairpersons, along with an audience of 100 public officials, businessmen and academics. The report outlines the benefits of pro-competition policies, surveys the state of play in Turkey under existing regulations, and makes recommendations on how to improve the competition culture in Turkey.

“The report points out that public involvement in important sectors such as energy, banking, and transportation are still high,” said the TCA official. “The most important negative effect this brings is surely the fact that advantages and exclusive rights granted to public enterprises distort competition in the market.”

The Competition Authority knew it had to do more than simply recommend a change in the status quo from heavy public sector involvement in the economy to a much more privatized economy. TCA understood that anticompetitive conditions can be just as insidious in the private sector, so the report warned against simply transferring monopoly rights from a state-owned enterprise to a dominant private sector player. Subsidies, protectionism, and anticompetitive regulations should be the exception rather than the rule, TCA recommended. Turkey’s ongoing efforts are having a catalytic role. In the wake of the TCA report, the Turkish Industry and Business Association commenced an effort to amend laws limiting competition. ■



In the wake of the TCA report, the Turkish Industry and Business Association commenced an effort to amend laws limiting competition.

Honorable Mention

Moldova

THEME 3:

Raising awareness of private sector stakeholders and empowering consumers to deter anticompetitive behavior.

Private market players are often unaware of the anticompetitive nature of certain actions in the market, whether their own or their competitors'. Also, they are often unaware of the sanctioning power of the competition authority. Raising awareness can help deter anticompetitive behavior, increase compliance efforts within firms and trade associations and stimulate private stakeholders affected by cartels or abuses of dominance to report such behavior. Competition authorities recognize that awareness of these issues among firms, entrepreneurs, and consumers leverages their capacity to monitor behavior of market players.

Moldova

Cooperated with the telecom regulator to induce new business practices that improve transparency on prices in the market, helping consumers compare and choose between competing service providers.

Narrative:

Moldova's Competition Council has been in existence for more than seven years during which time the country has enacted legislation designed to promote competition in the business sector. The Competition Council has pursued a policy of investigation and intervention, but not necessarily sanction. Rather, it has taken a hybrid approach to achieve effective competition in the market—sanctioning specific anticompetitive behavior to deter others from engaging in illegal agreements with competitors, but using advocacy approaches to resolve other barriers to competition through cooperation with regulators to improve legislation and through negotiations with industry.

In 2011, the Competition Council began investigating complaints by consumers in Moldova that mobile Internet providers were abusing their market power by charging high fees for data service above customers' individual monthly traffic limits. No violation of the competition law was identified, but the Competition Council did not leave the matter there. Instead, it identified the need to improve the way the market was functioning: The over 1 million Moldovan mobile Internet consumers should be able to make better informed choices of their mobile Internet



2012

marks the beginning of changes in procedure by mobile Internet providers, which ensured that subscribers can compare more easily how much they will actually pay for their monthly mobile Internet services.

providers and how much to use their services. The council focused on a lack of transparency on the actual costs of the services that was limiting the incentives for competitors to make their service packages more attractive to consumers.

By partnering with the National Regulatory Agency for Electronic Communications and Information Technology (NRAECIT), the Competition Council managed to change industry practices. NRAECIT specialists determined how consumers could be informed about the effective price they would pay for data service above the limit. By the end of 2012, two of the three providers had implemented voluntary changes in procedure to ensure that subscribers received notice when they were approaching their traffic limits. These voluntary changes in procedure will become mandatory under new rules being adopted by NRAECIT. Now consumers can compare more easily how much they will actually pay for their monthly mobile Internet use and then choose the best offer on the market. ■



Honorable Mentions

Mexico and South Africa

THEME 4:

Improving the effectiveness of antitrust enforcement through advocacy with relevant public bodies.

Public officials are often unaware of their responsibility to detect and report market conduct that violates antitrust rules. For example, public procurement sectors are often dominated by harmful coordination among bidders, particularly in developing economies where tenders are seldom designed to ensure effective competition. The result is higher costs for taxpayers for important basic goods and services and lower quality of services received. Competition authorities play a key role in helping public procurement units design tenders that promote competition and in increasing the detection of bid rigging.

Mexico

Teamed with the largest public health care provider to launch effort aimed at anticompetitive practices in public tenders, achieving tangible savings for consumers.

Narrative:

The Mexican Federal Economic Competition Commission (COFECE) accomplished two things in its intervention in public procurement of pharmaceuticals and medical supplies. It saved consumers real money—an estimated \$4.5 billion between 2006 and 2011²⁰—and it got the attention of other government agencies that saw the solid gains from a more open and competitive procurement process. This approach took advocacy of pro-competition policies to a new level: advocacy not just by the drafting of reports and the staging of seminars and training sessions, but also advocacy by setting a proactive example.

The case involved the Competition Commission's engagement with the Mexican Institute of Social Security (IMSS by its Spanish acronym), an institution serving nearly half of Mexico's population and its third largest public purchaser. COFECE, an agency with experience dating back to the 1990s, began working with IMSS as part of a broader effort to take on the problem of bid rigging in public procurement. In particular, over more than five years, it worked with IMSS on its tender design and procurement processes to reduce the risk of

20. Organisation for Economic Co-operation and Development. 2012. Latin American Competition Forum, Contribution by Mexico. [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/LACF\(2012\)17&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/LACF(2012)17&docLanguage=En).



bidders secretly agreeing to eliminate competition. This practice often enables the bid winner to overcharge for goods and services at the expense of taxpayers and health care recipients. By allowing more firms to bid on a non-discriminatory basis, reducing possible interaction between firms and monitoring tenders more closely for unusual patterns, IMSS was able to make firms compete more fiercely for public contracts.

More specifically, the Competition Commission's approach combined enforcement actions with advocacy. Through enforcement, COFECE seeks "to send the clear message to the market that engaging in bid-rigging activities will have an important cost for the infringers," explained Carlos Mena, Head of the COFECE's Investigative Authority. Through advocacy, COFECE "is seeking the reform of public procurement legislation to enhance competitive processes and reduce companies' incentives to engage in collusive conduct."

In 2013, IMSS, along with five other health care institutions and five state governments, undertook a historic effort in public procurement through the consolidation of public sector purchases of medical supplies, the largest in Mexican history, which saved a total of \$285 million. This result is perhaps the most visible in terms of achieving substantial savings for the public and thus contributing to consumer welfare.

The successful intervention at IMSS triggered other public entities, such as the Federal Electricity Commission and the government of Nuevo León state, to seek counsel on how to be more vigilant about competition in their procurement processes.

COFECE also entered into interagency collaboration agreements with the Organization for Economic Co-operation and Development and the Mexican Institute for Competitiveness to support the Electricity Commission and Nuevo León's



\$285 million

was saved by Mexico's government through the consolidation of public sector purchases of medical supplies and competition advocacy.

government with their procurement processes. These agreements provide for COFECE to act in favor of the public entities by outlining specific recommendations on legislative, regulatory, and procurement measures and developing capabilities through training of public servants responsible for procurement processes.

The overall endeavor in the public procurement sector that represents about 6 to 10 percent of gross domestic product is "considered a landmark intervention that resulted in savings of millions of pesos of taxpayer money," said Mena. ■

THEME 4

South Africa

Developed a competition advocacy program that educated, trained, and empowered procurement officers across the government, enabling them to detect and take action to thwart collusive practices such as bid rigging.

Narrative:

South Africa has been engaged in a long-running effort to stop collusive practices among a few well-positioned businesses and to redirect a business culture that tolerated anticompetitive practices. The Competition Commission of South Africa (CCSA), established 15 years ago, became increasingly aware of the pervasive practice of bid rigging in public procurement tenders. CCSA pointed out that since much of the government spending subject to these questionable practices was intended to reduce economic inequality and provide job and investment opportunities, illegal coordination of prices and other factors in tenders was undermining one of the key purposes of the public investment. A CCSA study on savings from prosecution of the cement cartel revealed that by avoiding the average overcharges of 17 percent, public authorities can purchase 9.7 percent more essential goods and services. The problem drew intensive public focus when a 2009 investigation disclosed bid-rigging practices in connection with construction of the World Cup stadiums, which cost the government \$2.3 billion.

In response, the Competition Commission developed and fielded a bid-rigging detection program as part of an advocacy strategy to broaden support for pro-competition policies. The strategy consisted of three pillars: raising awareness, particularly among government

procurement officials; institutionalizing bid-rigging detection by introducing a Certificate of Independent Bid Determination; and ensuring that the new policies would be sustained by developing mandatory training programs. In a stunning surprise for CCSA officials, procurement officers enrolled in the training programs said they had seen these bid-rigging practices for years, but they had not fully appreciated that the practices were illegal and had no tools or strategy in place to stop them. Another problem the Competition Commission discovered was that government departments were sometimes more focused on spending down their budgets before the end of a fiscal year than on ensuring the competitive conditions in the assignment of public funds.

A CCSA survey of South African procurement officers conducted in 2012 drew overwhelmingly positive feedback on the training and detection program. The majority of the 700 public officials trained said they felt empowered to detect and thwart collusive behavior. Greater awareness of the harm done by collusive behavior at procurement units of government departments, municipalities, and state-owned enterprises has sparked an influx of reports of alleged bid rigging to the Competition Commission for further investigation. Overall, the program has already saved an estimated \$22,000 in two years. In one case, the National Treasury uncovered evidence of suspicious bidding patterns for government purchase of around \$9.2 million in HIV test kits.²¹ The Commission referred the case to the Competition Tribunal, and in 2013, two companies paid administrative penalties. The price of the HIV kits in the next round of bidding declined by 26 percent. ■

21. These kits are distributed by the government to public hospitals to test for the human immunodeficiency virus.



As a result of the Competition Commission's investigation of collusive behavior in government tenders, the cost of HIV kits declined by

26%



THE COMPETITION POLICY ADVOCACY AWARDS

Related Resources

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