

INTRODUCTION

Questionnaire Purpose: The 2008-2009 Work Plan of the International Competition Network’s Advocacy Working Group includes a project on Market Studies. The Office of Fair Trading is leading this work. The purpose of this questionnaire is to gather information about members’ experiences conducting market studies as part of their advocacy efforts. We intend to analyse and report on the results, and to consider developing a guidance document on procedure and evaluation criteria for market studies work. We would very much welcome your input.

Confidentiality Statement: For research and dissemination purposes, the Advocacy Working Group would like to be able to use and report all of the data collected on this survey. Most of the data will be reported in aggregate form, but in some cases we may want to report results in such a way that it will be possible to identify the responding agency or jurisdiction – for example we would like to be able to highlight particular areas of best practice. The report will not identify individual respondents. If there are responses in this questionnaire that you want us to report only in aggregate form, if at all, please indicate which by noting the relevant questions in the box below.

The time taken to complete this questionnaire will vary depending on how much Authorities have to say on the subject. We estimate though, based on OFT experience, that this questionnaire will take no longer than 3 hours to complete.

A. ABOUT YOUR AUTHORITY

A1. Which of the following describes your Authority?

- A competition and consumer body
- A competition body
- Other, if so please provide further detail below

A2. Are there any sectors in your country, such as utilities, transport, telecoms, which are regulated by other competition Authorities?

- Yes
- No

If so, what sectors are regulated by other Authorities? Please provide details below.

The FNE is the sole Chilean competition authority. However, there are industry-specific regulators that play a role in competition issues within their regulated sector, according to their respective statutes. In Chile, the regulated markets are the following: gas; electricity generation and distribution; telecommunications; financial; pension fund management; health compulsory insurance; public transport; fisheries and aquaculture; water and sewage services; sea, land and air ports; telecommunications; and transportation services in extreme zones.

If you do not have a function similar to the definition of market studies below you need not complete any of the remaining questions. Please go straight to G3 and complete contact details. Thank you.

B. PURPOSE OF MARKET STUDIES

B1. Draft Definition of Market Studies (discussed in the Working Group):

For the purposes of this project, market studies are distinguished from enforcement action against individual undertakings.

Market studies are research projects conducted to gain an in-depth understanding of how sectors, markets, or market practices are working.

They are conducted primarily in relation to concerns about the functioning of markets arising from one or more of the following: (i) firm behaviour; (ii) market structure; (iii) information failure; (iv) consumer conduct; (v) public sector intervention in markets (whether by way of policy or regulation, or direct participation in the supply or demand side of markets) and (vi) other factors which may give rise to consumer detriment.

The output of a market study is a report containing findings based on the research. This may find that the market is working satisfactorily or set out the problems found. Where problems are found the market study report can include: (i) recommendations for action by others, such as legislatures, government departments or agencies, regulators, and business or consumer bodies; and/or (ii) commitments by the competition (or competition and consumer) authority itself to take advocacy and/or enforcement action.

Please use the box below to comment on the above definition: in what respects is it the same as/different from the way your Authority defines market studies?

It is similar in general terms, though it differs in that the Chilean Competition Authority does not address consumer policy issues.

B2. Which of the following does your Authority consider to be the purpose(s) of market studies? Please rate your answers in order of importance, with 1 being most important and use (N/A) where this applies:

Rating	Purpose of market studies
6	To help set internal priorities for the market or sector
1	To enhance knowledge of the sector
2	To assess the state of competition in the market/sector
N/A	As a preparation for intervention in the legislative process
8	To obtain understanding of the market to take enforcement action
5	To decide which of a range of further tools to employ if a problem is found
4	To investigate suspected market failure that cannot be assigned to a specific undertaking
7	To define a market for the purposes of enforcement action

3	To assess the impact of Government policy/regulation on a market
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Any other purposes? If so please provide further detail below.

- Recommendations for corrective measures (undertakings, regulatory agencies, legislative, executive),
- Advocacy/ promotion of competition or law enforcement.
- The market surveys can also provide a ground for launching an ex – officio investigation whenever their outcomes suggest that in a market, a certain feature, structure or condition, or combination of them, prevent, restrict or distort competition. An ex officio investigation occurs when no complaint or request by a third party has been made to the FNE to open an investigation, but it has been rather the FNE itself that has detected, mostly through the active assessment of markets, i.e. a market studies, signals that may indicate the existence of an anticompetitive conduct. Although, in practice most of the market studies carried out by the FNE have been part of an investigation, that is not always the case, as they may well be a precedent or tool that serves to trigger the opening of such investigations. The initial evidence prompting the FNE to initiate an investigation may come from different sources, such as whistleblowers, observations made by consumers, sector enquires or market studies.

C. SELECTION

C1. How does your Authority gather ideas for market studies? Please mark whichever apply:

- Feedback from consumers/consumer groups
- Consumer complaints/concerns
- Business complaints/concerns
- Consultation with Other Government Departments
- Own research
- By asking for the submission of idea on your web-site
- Other, if so please provide further detail below

- those economic sectors which have not been discussed or investigated before and with high impact on economic agents;
- those markets with high entry barriers;
- those markets with few players;
- potentially conflictive, based on the number of complaints or public notoriousness;
- the likelihood of mergers;
- where previous studies suggest the convenience of further inquires, and those that for any other reason need to be studied in greater depth

C2. Does your Authority choose which markets to study?

- Always
- Usually
- Occasionally
- No

C3. Can others instruct your Authority which markets to study?

- Yes (please proceed to question C4)
 No (please proceed to question C6)

C4. Please detail below who can instruct your Authority and in what circumstances

C5. Has your Authority been instructed to carry out markets studies? Please mark whichever applies:

- Always
 Usually
 Occasionally
 No

C6. Do others ask your Authority to voluntarily carry out market studies? For example, organisations representing consumers or businesses.

- Yes
 No

If so, please provide details below of who the “others” are.

C7. If your Authority chooses the studies, what factors can influence selection of a particular market study? Please mark whichever apply:

- Value of market
 Size of detriment
 Type of detriment
 Market importance
 Likelihood of mergers
 Unusual market events
 Likelihood of a successful outcome
 Impact on consumers
 Entry barriers
 Degree of concentration
 Market structure
 Political interest/attention
 Degree of product differentiation
 Product Life Cycle
 Level/type of consumer complaints/concerns
 Level/type of business complaints/concerns
 Profile of affected consumers e.g. vulnerable through age/disability
 Desire to obtain knowledge about the market
 Desire to obtain evidence for enforcement purposes
 Other, if so please provide further detail below

- Impact on economic agents, consumers and suppliers (rather than impact on consumers, our approach considers all market players).
 - Profile of affected economic agents, consumers and suppliers, e.g.

vulnerable.

C8. Of the options you have marked in response to question C7, please detail below the 5 most important factors that influence your Authority’s selection choices.

1	Impact on economic agents.
2	Market structure.
3	Desire to obtain knowledge about the market.
4	Profile of affected economic agents.
5	Likelihood of mergers

D. PROCESS

D1. Does your Authority have formal powers to carry out market studies?

- Yes
 No

If so, what form do these powers take? Please provide detail below.

Within the context of an ongoing investigation, the FNE may request any public officer and any private party to provide the information it deems necessary for the purpose of the investigation, which may include data required for the completion of market studies. The bill currently under discussion in the congress would introduce more clarity regarding the circumstances in which the competition authority may compel the supply of information for conducting market studies for purposes other than investigations.

The FNE’s current policy is not to compel stakeholders or other market participants to provide data for market studies, unless it is required in the context of an ongoing investigation. Thus, it is the general case that information for market studies comes both from those who are willing to provide it and from public sources —other agencies and market agents, seminars, publications, institutional Web sites, or other public source. In some cases, the data is obtained from private providers; consultants, research and information companies and other firms. The FNE can also resort to information elaborated in previous cases, provided it does not violate due confidentiality or affect the informant or related third parties.

D2. Does your Authority have formal powers to compel the supply of information for market study purposes?

- Yes
 Sometimes
 No (please proceed to question D4)

D3. What form do these powers take, is their use subject to any constraints and what sanctions exist to deal with non compliance? Please provide detail below.

As stated above, the FNE may compel the submission of information within the context of an ongoing investigation. Failure to comply with a request of information

in relation to an ongoing investigation may result in imprisonment for up to 15 days.

D4. For market studies purposes, is it better to have formal powers to compel the supply of information?

- Yes (please proceed to question D4.1)
 No (please proceed to question D4.2)

D4.1. Please explain why it is better to have formal powers and identify what, if any, additional powers your Authority would like. Please proceed to question D5.

D4.2. Please explain below why it is not better to have formal powers.

We consider having formal powers for general market studies not to be necessary. The main goal of market studies is to enhance our knowledge of a given market. This is achievable by accessing public sources and by a healthy cooperative relationship with the private agents involved.

D5. Using a scale of 1 (very dissatisfied) to 6 (very satisfied), please rate below how satisfied your Authority is with its powers.

- 1 2 3 4 5 6

D5.1 Please explain your rating below and identify whether, and if so how, you consider the powers you have to be excessive and what, if any, additional powers your Authority would like and why.

For market studies purposes, we consider our powers sufficient to accomplish our goals. We must note that this is not the case for investigations, for instance on hard core cartels, where the lack of investigative powers is a notorious impediment to fully achieve our goals in that area of work.

D6. Information gathering: the following questions are about the information your Authority uses when undertaking market studies.

D6.1. Does your Authority collect anecdotal evidence?

- Yes
 No

D6.2. Does your Authority collect empirical evidence?

- Yes
 No

D6.3. Who does your Authority collect evidence from? Please mark whichever apply:

- Consumers
 Businesses
 Other domestic Government Departments
 Business organisations
 Consumer organisations
 International stakeholders

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- Other, if so please provide further detail below

D6.4. Does your Authority use any of the following. Please mark whichever apply:

- Existing market research
 Administrative data¹

Qualitative research:

- Questionnaires to small numbers of respondents (less than 50 respondents)
 Focus groups
 In-depth interviews

Quantitative research:

- Large statistical surveys
 Mystery shopping²

D6.5. Does your Authority ever undertake external research by contacting third parties for information?

- Always
 Usually
 Occasionally
 No (please proceed to question D7)

D6.6. How is your external research undertaken? Please mark whichever apply:

- You undertake it yourselves
 Through external contractors (for example, market research agencies, academics, economic consultants)

(We do both internal research, carried out by ourselves, and external research, carried out by contractors).

D6.7. How often is external research undertaken as part of your Authority's market studies work?

- Always
 Usually
 Occasionally
 Never

D7. Can your Authority use evidence obtained during a market study for enforcement actions?

- Yes
 No

D8. Has your Authority used evidence obtained during a market study to help take forward enforcement work?

- Yes

¹ Administrative data is information already held by the Authority perhaps as a result of case work, enquiries etc.

² Mystery shopping is when external contractors, or an Authority's own staff, pose as customers making enquiries about a purchase in order to see how they are dealt with by businesses.

No

D9. Stakeholder³ information/engagement: the following questions are about how your Authority communicates with stakeholders when undertaking market studies.

D9.1. Does your Authority communicate with stakeholders on any of the following. Please mark whichever apply:

- Reasoning behind the selection of the market
- Purpose of the study
- Scope of the study
- Stages involved
- Timescale
- Reasoning behind recommendations
- Progress updates
- Market study staff names
- Market study contact details

D9.2. How do you communicate/engage with stakeholders. Please mark whichever apply:

- Issue press releases
- Put information on your web-site
- Hold private meetings with stakeholders
- Hold public meetings with stakeholders
- Hold workshops/seminars
- Issue questionnaires
- Issue public consultations before publishing final study
- Other, if so please provide further detail below

D9.3. At the end of the market study does your Authority publish a final report?

- Always
- Usually
- Occasionally
- No

D9.4. Does your Authority publish anything else at the end of a market study. Please mark whichever apply:

- Associated research
- Feedback from stakeholders
- Evidence obtained
- Results of any consultations
- Other, if so please provide further detail below

These market enquires have lead to internal working papers and data bases, so their results and main conclusions are treated as internal information and

³ Stakeholders are those with an interest in the work being undertaken because of the potential impact it has or could have on them.

knowledge within the FNE; nevertheless, these studies can and have been made public in the context of cases or reports submitted to the Competition Court. Thus, these market studies feed the enforcement units professionals work. They may also serve as an input for technical reports to the Competition Court, for the National Economic Prosecutor's founded opinions when responding consultations by Legislators, and other advocacy actions.

D9.5. What are the pros and cons of your Authority's approach to engaging/communicating with stakeholders?

The FNE has a friendly approach towards companies and other private agents involved in a market which is being studied. We have found to be the general case that they want us to know better what they do and why they do so. Besides, willingness to collaborate is often a sign of a "healthy" market, and thus already provides some useful information. Our flaw is, in our view, the lack of disclosure of the studies, which is due to the actual risk of our conclusions being considered as binding for further FNE's actions, something we expect to overcome in the near future.

D9.6. Is your Authority required to make any or all information public or is it left to your discretion what information to disclose? Please answer below.

At the moment, it is discretionary. From April 2009 a new law on active transparency of public services will be in place, and some changes may apply on this point. The way of implementing the eventual changes in publication policies is currently being discussed within the organisation.

D9.7. Does your Authority have a process for the handling of sensitive or confidential information obtained from stakeholders during a market study? For example do you give assurances or are you under any legal obligations to protect the information supplied?

- Yes
 No (please proceed to question D10)

If so, please provide detail below.

First, the agency has a general procedure for the treatment of confidential information. Moreover, any FNE's officer is bond to keep secrecy over any information, facts or data that has come to his knowledge during the discharge of his duties, and particularly the information obtained by virtue of the power to compel the submission of such information in the course of an investigation. It is important to underline the fact that in April 2009 a new statute on Public Sector Transparency will enter into force. This new statute limits the active transparency principle applicable to all public entities' information, and exempts from the public access principle the information that may affect third parties' rights and the information that may hinder the prevention, investigation and prosecution of a crime or offence, or that deals with evidence needed for judicial defence. Likewise, the information or deliberations that take place previous to the adoption of a resolution, measure or policy are also exempted from this transparency principle. Yet, we do not normally receive confidential information for market studies.

D9.8. What, if any, are the legal consequences if your Authority fails to protect sensitive or confidential information? For example could your staff be prosecuted? Please provide detail below.

Any FNE's officer is bound to keep secrecy over any information, facts or data that has come to his knowledge during the discharge of his duties, and particularly the information obtained by virtue of the power to compel the submission of such information in the course of an investigation. Fail to protect this information is a criminal offence.

D10. Do your Authority's market studies have to be carried out within a statutory timeframe?

- Yes
 No

If so, what is the timeframe?

D11. If there is no statutory timeframe, does your Authority set its own defined timeframe and milestones?

- Yes
 No (please proceed to question D15)

D12. Are the timeframes published?

- Yes
 No

D13. Are the defined milestones published?

- Yes
 No

D14. Can the timeframe/defined milestones subsequently be altered?

- Yes
 No

D15. On average what is the length of your Authority's market studies?

The completion of Market studies takes between six to ten months.

D16. Does your Authority ever commission third parties to undertake its market studies work?

- Yes
 No (please go to question D19)

D17. How frequently does your Authority commission third parties?

- Always
 Usually
 Occasionally
 Never

D18. Under what circumstances would you commission a third party to carry out a study on your Authority's behalf? Please explain below.

- When there is a need of a particular expertise that the NEPO's professionals lack.
- When the objectives exceed the capabilities of the NEPO team.
- When the external expertise is deemed necessary in order to complement the NEPO's internal work.

D19. Does your Authority have a standardised internal process on how to carry out market studies?

- Yes
 No (please proceed to question D20)

If so, please describe the process below.

We are now developing a guide on market studies' elaboration procedures.

D20. Does your Authority have guidance for external stakeholders about its market studies work?

- Yes
 No (please proceed to question D22)

D21. What areas does this guidance cover? Please mark whichever apply:

- Purpose of market studies
 Selection
 Process
 Outcomes
 Other, if so please provide further detail below

D22. What do you consider to be the top three areas of procedural best practice in your Authority's market studies work? What is the reasoning behind your choices? Please insert detail below.

1	Existence of formal criteria as guidance to decide in which markets to conduct studies.
2	Implementation of a collaborative friendly approach with stakeholders to access information.
3	Establishment of strategic partnership agreements and cooperation with other agencies and sectorial regulators.

D23. What do you consider to be the biggest three procedural challenges/problems for your Authority's market studies work? What is the reasoning behind your choices? Please insert detail below.

1	Lack of certainty about the resources specifically allocated to market studies.
2	Lack of a mechanism for monitoring and evaluating the impact of market studies.
3	Lack of publicity of the final results.

D24. How many studies does your Authority typically do in a twelve month period? Please insert detail below.

Four years ago, the typical number of market studies carried out per year was two; however, over the last years this number has tripled, and therefore we may say that, on average, we perform 4 market studies per year. Yet, we now expect to perform no less than six studies per year.

D25. On average, how many people (Full Time Equivalents) at your Authority typically work on a particular market study? Please answer below and provide details relating to whether these people are specialists such as competition lawyers, economists, consumer lawyers, financial analysts etc.

Between three and six professionals, with varying degrees of commitment.

D26. How many people (Full Time Equivalents) does your Authority have allocated to working on market studies at any one time? Please answer below.

Between three and four people (Full Time Equivalents).

D27. Does your Authority have dedicated teams who only do market studies work?

- Yes (please proceed to question D29)
 No (please proceed to question D28)

D28. If you do not have dedicated teams, what is your Authority's process for creating a market study team? Please describe below.

D29. Using a scale of 1 (not satisfied) to 6 (very satisfied), please rate below how satisfied your Authority is with its process for carrying out market studies work.

- 1 2 3 4 5 6

Please explain your rating below.

We are focusing on this subject since last year. For this purpose we have created a small specialised team and we have focused on their training and access to information and analytical tools. So far the results have shown to be very satisfying, although we are aware that there is much room for improvement.

E. OUTCOMES

E1. Before deciding on a study's recommendations is it standard procedure for your Authority to take into account whether the benefits will exceed any additional costs to for example business or others?

- Yes
 No

Please use the box below if you wish to comment on your answer.

E2. Can your studies result in any of the following recommendations and/or actions (i.e. which of these outcomes are possible)? Please mark whichever apply:

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- Competition Enforcement
- Consumer Enforcement
- Consumer Education
- Business Education
- Voluntary business compliance
- Voluntary business action
- Recommendations to business on self regulation
- Recommendations to Government for changes in the law
- Recommendations to Government to change market structure
- Recommendations for changes to Government policy
- Referral to third parties for action
- Other, if so please provide further detail below

E3. Have your studies actually resulted in any of the following recommendations and/or actions? Please mark whichever apply:

- Competition Enforcement
- Consumer Enforcement
- Consumer Education
- Business Education
- Voluntary business compliance
- Voluntary business action
- Recommendations to business on self regulation
- Recommendations to Government for changes in the law
- Recommendations to Government to change market structure
- Recommendations for changes to Government policy
- Referral to third parties for action
- Other, if so please provide further detail in the box below. Please also use this box if you wish to comment further on your answers to this question.

E4. Do your Authority's recommendations to Government have to be responded to?

- Yes
- No (please go to question E6)

E5. Does the Government response have to be submitted within a certain timescale?

- Yes
- No

If so please provide details below.

E6. Is your Government under a legal obligation, or has it given a policy commitment, to act upon your Authority's recommendations?

- Yes
- No

E7. Is Business under a legal obligation to act upon your Authority's recommendations?

- Yes
 No

E8. Using a scale of 1 (not often) to 6 (very often), please rate below how often your Authority's recommendations have been implemented by Government and/or Business.

- 1 2 3 4 5 6

Please explain your rating below.

Competition Enforcement: The Chilean supermarket industry has become increasingly concentrated over the last decade, due to both the organic growth of the main actors and to mergers that have reduced the number of firms in the former. This has affected the relationship between supermarkets and their trading partners, both 'upstream' (suppliers) and 'down-stream' (customers). The study analyzed the relationship among participants upon the base of publicly available empirical evidence, and it results were one of the elements considered in the recent actions of the Competition authorities in this market.

Recommendations to Government for changes in the legislation: Mobile telephony market. There are two studies on this particular matter, one of them was internally produced, and the second one, by external advisors. Both of them are complementary and help to explain how the mobile telephony market operate and interact with other connected markets (as local telephony and long distance carriers) and facilities. Both studies contributed to identify competition issues and imperfections, and were used as a basis for the National Economic Prosecutor's opinion in the congressional discussions concerning new legislation on this market.

Recommendations for changes to Government policy: Third generation technology in mobile telephony (3G). These studies focused on how the bidding procedures of new radio spectrum to be awarded to enhance 3G services affect the mobile telephony market, and to a lesser extent, the new mobile Internet services market. Besides, as a result of these studies, the FNE presented recommendations for the design of further bidding auctions of the radio spectrum, as requested by the TDLC in a consultation filed by the telecom regulator.

E9. Using a scale of 1 (not satisfied) to 6 (very satisfied), please rate below how satisfied your Authority has been with the level of implementation in respect of its recommendations?

- 1 2 3 4 5 6

Please explain your rating below

E10. What does your Authority do to try and ensure recommendations are adopted? Please mark whichever apply:

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- Dedicate a team to take forward follow up work
- Issue press notices
- Hold press conferences
- Utilise public speaking opportunities
- Make use of third party advocates
- Use advocacy within Government
- Other, if so please provide further detail below or use this box to comment further

E11. Has your Authority ever worked collaboratively with third parties to help achieve your desired outcomes? For example working with consumer groups on a consumer education campaign or business or business groups on voluntary action?

- Yes
- Sometimes
- No (please proceed to question F1)

E12. Please explain briefly how you have worked with third parties in the past to help achieve your desired outcomes.

F. EVALUATION

F1. What are your Authority’s most successful market studies? Please list up to three examples and say why you consider them to be successful.

	Market Study	Most successful why?
1	<input type="checkbox"/> The Chilean supermarket industry	<u>Competition Enforcement:</u> its results were one of the elements considered in the recent actions of the Competition authorities in this market.
2	Mobile telephony market	<u>Recommendations to Government for changes in the legislation:</u> basis for the National Economic Prosecutor’s opinion in the congressional discussions concerning new legislation on this market.
3	Mobile telephony market: Third generation technology in mobile telephony	<u>Recommendations for changes to Government policy:</u> recommendations for the design of further bidding auctions of the radio spectrum, as requested by the TDLC in a consultation filed by the telecom regulator.

F2. What are your Authority’s least successful market studies? Please list up to three examples and say why you consider them to have been unsuccessful.

	Market Study	Least successful why?
1	Health Compulsory Insurance	There were no expected results.
2	Pension Fund	There were no expected results.

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	Management	
3	Banking	There were no expected results.

F3. What does your Authority see as the top three benefits of market studies? Please insert detail and explain your answer below.

1	We have developed internal knowledge on specific markets
2	We have developed good relationships with sectorial regulators
3	We have gained trust from economic agents

F4. Does your Authority look back and reflect on the effect of its market studies work?

- Yes
 No

F5. Does your Authority measure the impact⁴ of its market studies work?

- Yes
 No (please go to question F11)

F6. Does your Authority have published criteria for measuring impact?

- Yes
 No

F7. What aspects of cost/benefit does your Authority take into account when measuring the impact of its market studies work? Please explain below.

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F8. How does your Authority measure the impact of its market studies work? Please mark whichever apply:

- Contract third parties to carry out independent evaluations of your work
 Conduct your own evaluations
 Publish the results of evaluations
 Other - if so please provide further detail below

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F9. Does your Authority have a dedicated team to measure impact?

- Yes
 No

F10. Please describe below the pros and cons of your Authority's process for measuring impact.

Pros	
Cons	

⁴ By impact we mean measuring the changes in market outcomes following your market studies work.

F11. Have stakeholders expressed opinions about how your Authority conducts market studies?

- Yes
 No

If so, please briefly outline the main issues raised.

Following the issuance of some market studies, in the context of judicial processes, we have received good feedback from sectorial regulators and economic agents about the good quality of our analyses and reports.

G. FINALLY

G1. Please use the box below if you wish to provide any additional information or comments not covered by the questions.

G2. Would you please complete the attached annexe, as far as you are able, so that we have a summary table of the market studies work undertaken by your Authority over the last three years.

G3. Please provide your contact details below.

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E-mail:	internacional@fne.gov.cl
Date:	2009-01-12

Thank you for completing this questionnaire.