



**Draft Market Studies Good Practice Handbook and  
Market Studies Information Store Road-Testing:  
Report to Conference**

*Prepared by*

**ICN ADVOCACY WORKING GROUP**

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# 1 INTRODUCTION AND METHODOLOGY

## Introduction

- 1.1 Market studies are tools of competition advocacy used by many ICN members. In its review of market studies practice across the ICN membership in 2008-2009, the ICN's Advocacy Working Group (AWG) identified that at that time at least 40 ICN members were using market studies as a tool of competition advocacy.<sup>1</sup>
- 1.2 In recognition of the growing importance of the market study tool, in the ICN working year 2009-2010, the AWG produced a Draft Market Studies Good Practice Handbook and a Market Studies Information Store.<sup>2</sup> The AWG considered that it was important to road-test the Draft Handbook before working towards its adoption in final form. It also sought to “road-test” the Market Studies Information Store to find out about usefulness and usage levels. Accordingly, the AWG identified the following as among its priority projects for 2010-2011:
- Road testing the Draft Market Studies Good Practice Handbook; and
  - Updating, monitoring use of, and inviting feedback on, the Market Studies Information Store.
- 1.3 These projects were rolled together as the road-testing project. This report to conference sets out the findings of the road-testing project.

## Methodologies

- 1.4 The road-testing of the Draft Market Studies Good Practice Handbook involved the following elements:
1. A questionnaire sent to all ICN member agencies. Loosely based on an exercise that was conducted in one of the AWG breakout sessions during the 9<sup>th</sup> Annual Conference, the questionnaire identified each of the draft good practices, and asked responding authorities to score the good practices in terms of usefulness, on a scale of 1 to 5 (where 1 is not useful at all and 5 is extremely useful). Respondents were asked to explain their ratings, and asked whether they thought the good practice should be included in the ICN handbook. The questionnaire also sought additional editing comments toward improving each good practice. The questionnaire was distributed in August 2010, and responses were gathered and analysed in September to December

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<sup>1</sup> See ICN AWG's 2009 Market Studies Project Report, available at:  
<http://www.internationalcompetitionnetwork.org/uploads/library/doc363.pdf>

<sup>2</sup> This is available on the ICN AWG's web page at  
<http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf>

2010. A copy of the questionnaire is attached at Annexe 1. Thirty-two ICN members responded, and respondents are listed in Annexe 2. The findings scoring the good practices are set out in Annexe 3, and respondents' editing comments are set out in Annexe 4.

2. A teleseminar presenting the findings of the questionnaire and inviting further discussion on key issues was held on 13 January 2011. The results of the questionnaire were analysed and key points were highlighted for discussion during a teleseminar. The slides for the teleseminar are attached at Annexe 5, with teleseminar speaking notes attached at Annexe 6.

3. Individual members of the AWG working group volunteered to provide further road testing, with views encapsulated in a subsequent brief written report. The brief for the report was fairly open: it could be as long or as short as the member authority wished; it could cover some or all of the chapters of the Draft Handbook; it could relate to past, current or future market studies. There was an optional set of questions that volunteers could choose to address if they wished. These were:

- Are there specific good practices that you found very relevant, or very helpful, and why?
- Are there specific good practices that you found not relevant, or not helpful, and why?
- Which chapter[s] did you find more useful and less useful and why?
- Do you have any comments or suggestions on the structure and presentation of the document?
- Are there any areas currently covered that you think could come out and if so why?
- Are there any areas not currently covered that you think should be added in or expanded and if so why?

Five AWG members: the Chilean Fiscalía Nacional Económica (Chilean FNE), the German Bundeskartellamt, the Japanese Fair Trade Commission, the Mexican Comisión Federal de Competencia (Mexican CFC), and the Portuguese Competition Authority, produced more detailed road-testing feedback on the Draft Handbook. These are attached as Annexes 7 to 11 respectively.

4. The facility to email ad hoc queries, comments and suggestions on the Draft Handbook throughout the year to an inbox, direct from the ICN's web pages. No comments were received through the inbox.

Separately during 2010-2011, the Chilean FNE and the Mexican CFC secured funding to translate the Draft Market Studies Good Practice Handbook into Spanish. Thanks to their efforts and support the Draft Handbook has now been translated into Spanish, and will be published in the materials for the 10<sup>th</sup> Annual Conference, and on the AWG's pages on the ICN website. The AWG has resolved to ensure that any future revisions to the Draft Handbook are kept at a level that does not impose a large burden in terms of updating the Spanish version of the text.

1.5 The road-testing of the Market Studies Information Store involved the following elements:

1. Getting the Information Store up on the ICN website, and publicising the fact that it was there. The Market Studies Information Store was launched in August 2010.<sup>3</sup>
2. Monitoring the number of hits on the Information Store to check its usage levels.
3. Updating the Information Store if, on consultation with the AWG, usage levels seem to indicate that this is worthwhile. A very short report back on usage levels is at Part 4 below.
4. Providing the facility to email ad hoc comments and suggestions on the Information Store throughout the year to an inbox, direct from the ICN's web pages. No comments were received through the inbox.

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<sup>3</sup> The announcement on the ICN's Blog can be viewed here: <http://www.icnblog.org/?p=659>

## **Structure of this report**

- 1.6 The rest of this report is structured as follows:
- Part 2 draws out key themes from the results of the road-testing questionnaire in respect of the Draft Market Studies Good Practice Handbook, and the subsequent teleseminar in January.
  - Part 3 summarises themes from the more detailed road-testing of the Draft Market Studies Good Practice Handbook.
  - Part 4 reports back on usage levels for the Market Studies Information Store.
  - Part 5 pulls together key themes for finalising the Draft Market Studies Good Practice Handbook and sets out the actions that the AWG has agreed to incorporate into its future work plan in respect of the Draft Handbook and the Market Studies Information Store.

## **Thanks**

- 1.7 The Working Group is indebted to the member authorities that responded to the questionnaire and those that took part in the teleseminar, to member authorities that provided more detailed road-testing of the Draft Handbook, to the Chilean FNE and Mexican CFC for translating the Draft Handbook, and to the ICN Secretariat for their help with the Market Studies Information Store, and more generally.

## **2 ROAD-TESTING QUESTIONNAIRE AND TELESEMINAR**

### **Questionnaire respondents**

- 2.1 As noted in Part 1, a total of 32 member authorities of the ICN responded to the questionnaire. One respondent noted that market studies are not carried out in its jurisdiction, though their use is under serious consideration. Accordingly, the base for the results reported in Annexes 3 and 4 was 31 respondents.
- 2.2 To understand the broad functions of the responding authorities, the questionnaire asked authorities to state whether they are a competition and consumer body, or a competition body, whether they carry out market studies, or are planning to do so, and if they already use the market study tool, how long they have been using it.
- 2.3 The data of the 31 responding members is as follows:
- Twenty-five authorities are competition bodies, 4 authorities are competition and consumer bodies and 2 authorities describe themselves as "other".
  - Twenty-seven authorities carry out market studies and 3 authorities are planning to do so.
  - Of those that already use the market study tool 3 authorities have been using it for 2 years or less, 6 authorities have been using it for 2-5 years, 17 authorities have been using it for more than 5 years and 1 authority did not provide a timeframe.
- 2.4 In addition, respondents were asked if they would be interested in receiving assistance in their market studies or other related advocacy work through the ICN's Advocacy and Implementation Network Support Programme (AISUP). There was one request for assistance, which was passed on to AISUP.

### **Key findings from the questionnaire**

- 2.5 The average scores for each good practice in terms of its usefulness ranged from 4.8 out of 5 (within the range 'quite useful' to 'extremely useful') to 3.7 out of 5 (within the range 'indifferent' to 'quite useful') but the majority of scores were between 4 and 5: out of a total of 79 good practices, only 5 had an average score of below 4 ('quite useful'). We take this to indicate a fairly broad level of support for the Handbook as drafted, and for the proposed good practices set out in it.
- 2.6 The 5 good practices with scores below 4 were:

- Good practice 2j: 'determine how many studies will be completed in any one year by reference to the available resource, the studies' complexity and other commitments and priorities' (with a score of 3.7)
- Good practice 2m 'modify project management processes appropriately when conducting market studies that are required by the government or legislature' (with a score of 3.7)
- Good practice 4c 'review and update the stakeholder engagement strategy as necessary during the study' (with a score of 3.9).
- Good practice 4i: 'engage stakeholders in developing market study outcomes' (with a score of 3.8)
- Good practice 5b 'when authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of third parties' (with a score of 3.9).

Good practices 2j and 2m are considered further below. The remaining low scoring good practices all have some connection with engaging stakeholders during the study, or to solicit ideas or possible outcomes. Differing approaches to engaging with stakeholders were a key area of learning in this part of the project. Where stakeholders may disagree with the findings from a study there are (at least) two schools of thought. One is: the more you engage stakeholders the greater the risk that they will throw you off course in managing your work. The second is: if you want to bring stakeholders with you, you are likely to be able to do this if you engage with them transparently and openly. At this time the AWG is minded to leave these good practices in the final version of the Handbook, but to note that there are differing levels of stakeholder engagement being practiced, and different views as to how far authorities should seek to engage stakeholders in developing the outcomes of market studies.

2.7 Key points on individual good practices that were discussed during the teleseminar on 13 January are set out further below and in the materials in Annexes 5 and 6. Stakeholder engagement was a key theme of that discussion as well.

2.8 It is instructive also to look at the findings where respondents were asked whether they agreed, disagreed, or were indifferent as to the inclusion of the proposed good practice in the final Handbook. There was broad support<sup>4</sup> for inclusion of all the good practices in the final Handbook, with the exception of two good practices.

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<sup>4</sup> Scores of 20 or more out of 31 total respondents agreeing that the good practice should be included in the final version of the Handbook.



- 2.9 First, good practice 2j: 'determine how many studies will be conducted in any one year by reference to available resource, the studies' complexity and other commitments and priorities', where the score was: 16 agreeing to inclusion, 5 disagreeing and 10 indifferent. This good practice also had a low average score in column 2 of only 3.7. This was the joint lowest score of any of the good practices. The comments collected from the questionnaire suggest that this good practice was interpreted as meaning that authorities should fix the number of market studies they would do in any one year at the beginning of the year. The purpose of this good practice was just the opposite: to suggest that authorities should not set a number of studies at the outset, but should be much more flexible, determining whether or not to conduct any individual study on the basis of fluctuating priorities during the course of the year. At this time the AWG proposes to revise this good practice in the final version of the Handbook so as to clarify its meaning.
- 2.10 Second, good practice 2m: 'modify project management processes appropriately when conducting market studies that are required by the government or legislature' where 15 agreed to inclusion, 2 disagreed and 14 were indifferent. Again, this was one of the lowest scoring good practices, with a score in column 2 of only 3.7, but the reason for the low score here appears rather to be one of indifference. The comments collected here suggest that this good practice simply wasn't relevant for many responding authorities. Since the Handbook is intended to provide a full range of good practices, applicable to differently framed regimes, at this time the AWG proposes to retain this good practice in the final Handbook, and to consider adding a footnote to the effect that this good practice will be of less relevance for those authorities that cannot be required by the government or legislature to conduct market studies.
- 2.11 Aside from 2j and 2m, there was only 1 other good practice where 10 or more respondents said they were indifferent as to its inclusion in the Handbook. This was also in chapter 2 (Overview), where 9 respondents said they were indifferent as to whether good practice 2l should be included. This was a good practice on joint working, and the high levels of indifference may reflect the good practice not being relevant to those authorities that do not engage in joint working. The text associated with this good practice makes clear that it will only be relevant for those authorities that routinely consider conducting market studies jointly with other organisations. At this time the AWG proposes to leave this good practice in the final version of the Handbook.
- 2.12 Looking at the scores for disagreement as to inclusion in the Handbook, there was only one good practice in respect of which there was any substantial disagreement about inclusion in the Handbook. This was good practice 2i: 'Develop, and revise if necessary, an anticipated timeframe for conducting each market study at the outset.' Nine respondents disagreed with the inclusion of this good practice in the handbook (although 21 agreed with it). The comments on this good practice suggest that

respondents felt this was at too low a level for a good practice handbook. Some respondents may also have objected to allowing the possibility of revising timescales once they have been set. The following comment, for example, is indicative: 'It is always necessary to control timeframes in order to have a good study.' At this time the AWG proposes to leave this good practice in the final version of the Handbook, but to note the differing views.

- 2.13 There were 3 good practices in respect of which 5 respondents disagreed that they should be included in the final Handbook. Each is considered in turn below. For the remainder of the good practices 4 or fewer respondents disagreed that they should be included in the final Handbook and for around a third of the good practices only 1 or no respondents said they disagreed as to their inclusion.
- 2.14 The 3 good practices in which 5 respondents disagreed that they should be included in the final Handbook are:
- Good practice 2j: this was considered above.
  - Good practice 4d: 'communicate to stakeholders what market study outputs will be published'. The comments in column 3 of the Questionnaire suggest that having a policy of always publishing market study reports is not universal among agencies. Some agencies choose not to publish certain market studies. This point was also made during the teleseminar. At this time the AWG proposes to revise this good practice so that it recognises that there are diverse approaches among the ICN membership.
  - Good practice 4g: 'try to minimise burdens on stakeholders when making information requests'. It is unclear whether respondents thought this good practice was too obvious, or whether they actively disagreed with it. At this time the AWG proposes to leave this good practice in the final version of the Handbook, but to note the difference of views.
  - Good practice 4i: 'engage stakeholders in developing market study outcomes'. There appeared to be genuine disagreement on this proposed good practice. Some authorities do not tend to engage with stakeholders, in particular where the results are likely to be bad for those particular stakeholders. This good practice also scored one of the lowest in terms of its usefulness. Its average score was 3.8. At this time the AWG proposes to leave this good practice in the final version of the Handbook, but to note the difference of views.
  - Good practice 6p: 'where information collected does not support a hypothesis or theory, consider modifying the hypothesis or theory.' There were mixed views here: some respondents in column 3 said it might be important for an authority to defend its hypotheses in some cases. On balance, because the score was 24 in

favour of inclusion, at this time the AWG considers this good practice should be included in the final version of the Handbook.

- 2.15 In terms of scores by chapter, the average for Chapter 2 (Process Overview) was 4.2, for Chapter 3 (Project Management) was 4.4, for Chapter 4 (Stakeholder Engagement) was 4.2, for Chapter 5 (Selection of Market Studies) was 4.3, for Chapter 6 (Information Collection and Analysis) was 4.5, for Chapter 7 (Developing and Securing Outcomes) was 4.3 and for Chapter 8 (Evaluation) was 4.4. This means that the good practices in Chapter 6 on Information Collection and Analysis scored on average higher than those in other chapters.
- 2.16 As noted in Part 1, a more complete list of the scores and comments in response to columns 2, 3 and 4 of the Questionnaire on each good practice is set out in Annexe 3.
- 2.17 A number of suggested drafting comments were also provided in response to the question in the final column of the questionnaire. The full list of drafting suggestions is set out in Annexe 4.
- 2.18 Many of the good practices (44 out of 79) had no drafting suggestions at all. For those that did, key themes from these drafting suggestions are as follows:
- Consider whether certain good practices overlap with one another and could be merged
  - Comments that ask for more explanation of the good practice
  - Comments that ask for clarification of the good practice, or that suggest minor drafting changes
- 2.19 The text that follows each good practice in the Draft Handbook tends to elaborate on and explain the good practice, so some of these comments may already have been addressed. The comments and suggestions will be reviewed in detail when the AWG comes to revise the Draft Handbook.

### **Key Issues and Themes from the Teleseminar**

- 2.20 Key issues or themes from the discussion in the Teleseminar were as follows:

#### ***The Variety of Market Studies Regimes***

- 2.21 The Handbook covers a variety of Market Studies regimes, which is why ICN members need to draw from it as appropriate to suit their regime needs. There will be wording and practices in the Handbook that do not apply to some ICN members but this does not necessarily mean that those wording and practices need to be

altered or deleted given this content is relevant to other ICN members. In recognition of this paragraph 1.2 of the Draft Market Studies Handbook highlights the variety in regimes and the flexibility for ICN members to select only those good practices that suit their needs, powers and duties.

### ***Distinguishing Market Studies from Enforcement Action***

- 2.22 Good Practice 2c – ‘*Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action*’ – is one of the most contentious of the good practices. This is because there are opposite ends of the spectrum with some ICN members never using market studies for enforcement purposes whilst others commonly or always use market studies as a precursor to enforcement action. What is important here is for ICN members to make clear to their stakeholders the purpose of their market studies regimes and also to be clear about the links, if there are any, between market studies and enforcement action.

### ***Flexibility in Market Study Timeframes***

- 2.23 Given the variety in the market studies undertaken it is not possible to suggest an ideal timeframe for completion. The timeframe will need to be considered and set to suit particular needs. Authorities will need to weigh up and consider the balance between being disciplined about timings versus considering exploring issues that emerge during the course of the work that would delay the original timelines. There is also of course the risk that stakeholders may needlessly delay work.
- 2.24 There was a suggestion that a timeframe would need to be short and focussed where markets were emerging or evolving otherwise the market may have changed by the time the market study is finished thereby devaluing the usefulness of the study.
- 2.25 It was further suggested that, where markets are emerging or evolving, perhaps authorities should consider this factor at the ‘selection’ stage when considering ideas for market studies and weighing up the relevant factors pertinent to the markets concerned. It could be that it is better to wait to see how the market settles down.

### ***Stakeholder communication and input***

- 2.26 Communicating basic information at the start of a study, such as the reasons for the study, its proposed scope and the types of possible outcomes, aids transparency and encourages engagement, in market study regimes where it is common practice to inform the study by collecting information from stakeholders. Standard media forms for dissemination, such as press notices, and website statements are a useful tool here.

- 2.27 There are divergent views on whether to approach stakeholders for input and if so how. One authority reported that in the past it has not approached stakeholders for information for market studies, but rather has relied purely on publicly available information. This ties in with the theme that market study regimes vary, with different purposes, methods and uses of information (for enforcement versus non-enforcement purposes). Each authority should of course seek information in accordance with the requirements of their own regime and the purposes for which they conduct market studies.
- 2.28 There appeared to be some questioning in respect of the suggestion that the possible outcomes of a study should be relayed to stakeholders at the start of the study. The questioning related to ‘how would you know what the outcomes are going to be before you have done the work?’ To clarify, the intention here is only to relay, in a general way, the range of what the possible outcomes might be. It is not suggested that authorities try to predict or commit to the actual outcomes before the work is completed.

#### ***Soliciting Market Studies Ideas from Third Parties***

- 2.29 There is some concern that soliciting ideas from third parties will raise expectations that their ideas will be acted upon and that authorities will come under increased pressure to undertake work. On the plus side pressure to do a market study can take the pressure off bringing enforcement action in the same market, which may be useful when the enforcement evidence is seemingly not there.
- 2.30 The risk of raising third parties expectations can be mitigated by explaining how authorities will consider the market studies ideas submitted. This can include authorities explaining how they prioritise their work, as well as caveating that submission of ideas may not result in them being taken forward. One authority noted that it solicits ideas for studies from a narrow range of stakeholders, whose expectations can easily be managed.

#### ***Information Collection and Analysis***

- 2.31 A question was raised as to whether there should or could be a standard information request for market studies as there may be in some jurisdictions for elements of, or particular types of, enforcement action. This was not considered feasible given the variety in the market studies regimes and purposes for market studies, and the variety of markets that may be studied meaning that it would be extremely difficult to produce a standardised form of information request. But it was noted in relation to good practice 6e that it could be useful to treat market study information requests in the same way as enforcement information requests, in terms of clarity about the information being sought, format and timeframes to do so, consequences of not doing so, and a contact point for any queries.

### ***Carrying out a market study in parallel with an enforcement investigation***

- 2.32 One authority advised that its experience in running a market study at the same time as an enforcement action had not proved a good thing to do. Even if you are clear in relaying the different purposes of the work being undertaken and the different purposes for which information is being collected the mere fact that a market study is being run in parallel with an enforcement action can blur boundaries and impact on stakeholder relations.

### ***Consider modifying the Hypothesis or Theory if the data collected does not support it***

- 2.33 A question was asked as to whether the hypothesis or theory should be developed at the outset or developed as work progresses. This would depend on the purpose of the study, for example for a study that was purely about fact finding and starting from a low knowledge base it is unlikely an authority would already have, from the outset, a strong hypothesis or theory. One authority suggested that a preliminary report or statement of issues can be a good way to set out tentative hypotheses that will later be subjected to testing.
- 2.34 It is important to remember that this good practice only advises that authorities should ‘consider’ modifying the hypothesis or theory. It remains within their discretion not to modify if for example they think information is of insufficient quality, is biased or inaccurate. It may aid stakeholder relations and transparency if authorities explain why, where applicable, they chose not to take into account information collected.

### ***Developing and Securing Outcomes***

- 2.35 It was suggested that authorities may only need to test possible outcomes of a market study, to assess their workability and likely adoption, where there is unlikely to be resistance from stakeholders. Others felt the opposite was true and that it is actually more beneficial to test possible outcomes out in situations where you are unclear or suspect there maybe resistance on outcomes workability and adoption. This will allow authorities to consider, if necessary, amending outcomes to improve their chances of workability and adoption or to prepare to counter the resistance they know will be forthcoming.

### ***Any areas of good practice missing from the Handbook?***

- 2.36 It was queried whether:-
- there is any content currently in the Draft Handbook covering how to communicate outcomes, including the use of the media to do so

- there could be more content in the Evaluation chapter on ‘how to do Evaluation’
- there could be a facility on the AWG pages on the ICN web-site for members to post examples of good market studies
- there could be a mechanism for considering whether market study findings in one jurisdiction are transportable to other jurisdictions

2.37 It was noted that the Draft Handbook includes a large number of good practices. Over time it may emerge that some of the good practices in it are less important than others.

### **Key themes emerging**

2.38 Key themes emerging from the road-testing questionnaire and teleseminar were:

- Overall high levels of support for the good practices as a whole, and no clear-cut examples of individual good practices that are unsupported or wrong
- Some good practices need to be clarified – for example good practice 2j on determining the number of studies in any one year, and good practice 4e in relation to communicating the types of possible outcome from a market study
- Some good practices are only relevant to some authorities, but this does not mean they should be excluded from the final version of the Handbook
- There are some categories of good practice where there is a range of differing views and approaches. The most important category is the range of good practices on engaging stakeholders. The current proposal for handling this is to note the different approaches in the text accompanying the good practice and where possible to ensure that the good practice itself is drafted in a way that makes clear that there are different views.

### **3 SUMMARY OF DETAILED ROAD-TESTING EXERCISES**

- 3.1 As noted in Part 1, five AWG members very kindly submitted more detailed road-testing reports. This part summarises these reports and their key themes. The full text of the reports is attached at Annexes 7 to 11.

#### **Chilean FNE**

- 3.2 The Chilean FNE road-tested the good practices in the Draft Handbook in relation to two recent market studies. Its report begins with a brief introduction to the use of market studies in Chile. Three key points are made: market studies tend to be used to support other work (enforcement action – whether adversarial or non-adversarial) and formal opinions given by the head of the authority to legislators or other agencies in the state executive; until recently the FNE has tended not to publish its market studies; and the FNE does not have mandatory information gathering powers for market studies. The report then turns to the two case studies, and for each one lists the good practices that were of most importance for that study.
- 3.3 For the first market study, in the forestry sector, selected good practices in Chapters 2 (Overview), 3 (Project Management), 4 (Stakeholder Engagement), 5 (Selection) and 7 (Outcomes) were found to be particularly relevant. Good practices in Chapter 6 (Information Collection and Analysis) were not particularly relevant for that study. The forestry study was one of the first market study reports publicly disseminated by the FNE, and good practices relating to the provision of information about the study at its start and end, and effective use of media coverage were particularly relevant. It was also a study in which the FNE team worked in tandem with academics with sectoral expertise, and good practices concerning establishing teams with the right mix of skills and holding regular team meetings were thought to be particularly useful.
- 3.4 FNE had a concern around good practice 4a: 'explain the benefits that may result from stakeholder participation in market studies, both generally and in relation to specific market studies.' The concern was that if stakeholders had been actively invited to engage they might have concluded wrongly that the market study meant that there was no possibility of future enforcement action. The AWG currently considers that this concern could be addressed by authorities providing general guidance for business about their market studies regimes. The guidance could describe the range of possible outcomes of any market study, and where appropriate could make clear that enforcement action may follow a market study where the study reveals evidence of infringements. Where authorities do not have such guidance in place already, or where enforcement action is not one of the range of possible outcomes of a market study, good practice 4a could have the drawbacks highlighted by the FNE. The AWG's current proposal is to modify the text that



follows good practice 4a to explain the risks that may be relevant for some authorities.

- 3.5 For the second market study, on public procurement of construction contracts, selected good practices in Chapters 2 to 7 were found to be helpful. Again there was a team that included external consultants, so good team construction was essential. There was also a need to tightly define scope in this study (good practice 3g). The FNE collected extensive data from another public body, and some of the good practices around collection and analysis of data (Chapter 6) were relevant to this study.
- 3.6 In both case studies, FNE found the good practices relating to planning the closure of the study and follow up (3r) and the good practices in Chapter 8 on Evaluation to be less relevant because they went beyond its current practice.
- 3.7 Finally the Chilean report highlights 9 good practices that it considers to be less relevant or helpful. In some cases this is on the basis of apparent overlaps between good practices, or on the basis that the suggested good practice seems less important than others. The report comments that some of the chapters may have excessive detail. It highlights Chapter 3 in particular as being too process/project oriented and overly detailed. It suggests that case studies or examples could be introduced into the Handbook, including from the materials supplied by the detailed road-testers.

### **German Bundeskartellamt**

- 3.8 The German Bundeskartellamt (BKA) road-tested the Draft Handbook by collecting comments from staff members with current or recent experience of working on market studies. There was not time to seek to apply the good practices in the Draft Handbook methodically to a single market study as it progressed.
- 3.9 Key findings from the BKA's review were that the Draft Handbook is overall a useful tool. In some places it makes points that may seem obvious for more experienced agencies, but such points may still be useful for those new to conducting market studies.
- 3.10 Reviewers commended in particular: project planning at the outset of a market study (good practice 3h); and giving consideration to publishing interim reports for consultation (paragraph 4.44).
- 3.11 In terms of areas for possible revision, the BKA highlighted:
- That there could be more discussion of the dangers of not collecting enough, or enough good data at the beginning of the study, and of the effects that purely voluntary cooperation might have on the timeframes of inquiries and reliability of information received.

- That there could be more focus in Chapter 8 and its annexes on the internal impacts of market studies – in terms of informing other work of the authority.
- Some drafting suggestions in relation to paragraph 15 and footnote 62 of Annexe 2.

### **Japanese Fair Trade Commission**

3.12 The Japanese Fair Trade Commission road-tested the Draft Handbook in the context of its market study on the international liner shipping market. It highlighted selected good practices that were of most relevance to that market study. The good practices it highlighted were:

- Being clear about the reasons for conducting a market study before its start (good practice 2a)
- Explaining the benefits that may result from stakeholder participation in market studies (good practice 4a)
- Carefully weighing different issues that could be studied and selecting for study those issues that best meet an authority's objectives (good practice 5e)
- Consulting with authority specialists (good practice 6a)
- Recognising that successful market study outcomes take time and require well-resourced follow-up (good practice 7k)

### **Mexican CFC**

3.13 The Mexican CFC road-tested the Draft Handbook by applying it to an ongoing market study on retail banking. In Mexico, the banking industry is characterised by high levels of concentration and low penetration of banking services among the population. Accordingly it has been the focus of much CFC effort over the years, and regulatory reforms, including most recently in relation to capital requirements, transparency, switching and access to payment services, have followed suggestions made by the CFC. In 2010 the Central Bank was empowered to regulate fees, interest rates and other conditions in retail banking where competition is found to be ineffective. Following this change, the Central Bank asked CFC to provide a non-binding view on those areas of retail banking where competition is still lacking.

3.14 The resulting CFC market study (which is still ongoing) has focused on mortgages, credit cards, current accounts, savings accounts and payment card systems. Preliminary findings are:

- that there are good levels of competition in the mortgage market, but scope for more switching between providers
- in the credit card market, high income customers seem to get a good deal but in the lower income categories, interest rates can be very high, and may reflect market power rather than being driven by financial risk
- for savings accounts, in spite of recent increased market penetration of new savings products, there remains lack of access for low income savers
- for current accounts, there may be a number of distinct, quite concentrated, local geographic markets
- for payment card systems, the study supports previous CFC findings concerning barriers to entry, and closer oversight of the settlement of interchange fees may be needed in future.

3.15 The CFC's road-testing of the Draft Handbook highlighted the following key points:

- Good practices 3f 'ensure that the scope of a market study is focused and manageable' and 3g 'retain flexibility for later variations in scope if possible' and the text that follows them (paragraphs 3.11 to 3.13 of the Draft Handbook) were of particular relevance to the CFC's market study: the scope of the study was narrowed over time, and certain areas were focused on in greater depth, where they looked likely to yield useful results.
- All the good practices were considered to be useful and relevant
- Chapters 3 on Project Management, and 4 on Stakeholder Engagement were found to be particularly useful. Chapter 3 because a market study, unlike an enforcement case, has no fixed process or time frame, so good project management is an essential way to control the process and ensure efficient and timely delivery. Chapter 4 is important because authorities often rely on stakeholders as the source of information, advice, or to advocate for implementation of recommended outcomes.
- It may be helpful to re-label the 'horizontal' chapters, Chapters 3 and 4, to make it clearer that they concern the whole market studies process.
- The CFC suggested: adding to paragraph 3.7 (review of literature and other data) the option of reviewing other authorities' decisions and studies in the same market; adding a description of some of the benefits of market studies – including using market studies as a low-risk way to explore new tools and

approaches; adding text to cover ways to handle disagreements where authorities work jointly or collaboratively with another authority or body.

### **Portuguese Competition Authority**

- 3.16 The Portuguese Competition Authority (PCA) road-tested in particular Chapter 8 of the Draft Handbook, on Evaluation, applying parts of the evaluation model described at paragraph 8.10 of that chapter to its market study on Liquid Fuels and Bottled Gas Markets in Portugal. This was a significant market study that attracted a great deal of interest in Portugal due to its importance to consumers. It resulted in recommendations being made to government for legislative change. The study was also presented to the legislature and this helped to raise the profile of competition policy as an essential policy area for parliament.
- 3.17 The PCA's road-testing report concludes that the evaluation model described in Chapter 8 of the Draft Handbook was useful in terms of enabling it to evaluate the internal and immediate outcomes of the market study – although there were no readily measurable indicators to facilitate evaluation of longer term outcomes on consumer welfare. The report recommends that materials on evaluation that are contained in Annex 2 of the Draft Handbook should be moved into Chapter 8 to give them more prominence.
- 3.18 The road-testing report also looked at the wider set of good practices in the Draft Handbook it concluded that a number of good practices were particularly helpful. These were:
- Good practices in Chapter 2 relating to stakeholder engagement, establishing professional teams, allowing flexibility in timeframes, and deciding how many studies to run in a year by reference to policies etc.
  - Good practices in Chapter 3 on establishing clear roles and responsibilities for team members and holding regular team meetings;
  - Good practices in Chapter 4 concerning taking stakeholders' views into account, and engaging with policy makers
  - Good practices in Chapter 5 concerning selection of market studies on a case by case basis, without overarching commitment to a particular number of studies in any one study
  - Good practices in Chapter 6 concerning methodologies for research, stakeholder comment informing findings, and handling of confidential information

- Good practices in Chapter 7 concerning costs and benefits of outcomes, engaging third parties where they must implement, media coverage, time and follow up.
  - A good practice in Chapter 8 that provides for authorities to consider evaluating.
- 3.19 The PCA's report does not find any good practices to be irrelevant or unhelpful. It concludes that overall chapters 2 (Overview), 4 (Stakeholder Engagement) and 7 (Developing and Securing Outcomes) are the most useful – but that there is no case to remove other parts of the Handbook.

#### **Themes from detailed road-testing**

- 3.20 It is difficult to pick out themes from the detailed road-testing work because the reports take different approaches and illustrate different viewpoints. Some of the comments reflected themes that emerged from the Questionnaire and teleseminar. More than one detailed road-tester considered that it was useful to retain all the good practices even though there are a large number of them. Some road-testers indicated a ranking of particular chapters as more important. However, there was no clear consensus on which chapters were the most important. This bears out the broad findings of support for the Handbook in its current form from the Questionnaire results. Road-testers made many useful individual comments and suggestions, which the AWG will consider and take forward if appropriate.

## **4 MARKET STUDIES INFORMATION STORE**

- 4.1 This Part reports back on usage levels of the Market Studies Information Store. The Secretariat measured number of hits per page between August 2010 when the Information Store was launched and April 2011 when this report was compiled.
- 4.2 There had been 74 page views for the information store document.
- 4.3 These usage rates appear quite low, and tend to suggest that the ICN membership may not be sufficiently aware of the existence of this resource to make full use of it.
- 4.4 The AWG believes that the Information Store could be a very useful tool, if it were more extensively used. Further work is necessary to establish whether, with time, and more publicity, usage rates would increase sufficiently to make it worthwhile updating the Information Store on an annual basis.

## **5 KEY ACTIONS FOR THE FUTURE**

5.1 This Part summarises key actions for the future.

5.2 In terms of key themes for finalising the Draft Market Studies Good Practice Handbook, the following are emerging:

- Overall high levels of support for the good practices as a whole, and no clear-cut examples of individual good practices that are unsupported or wrong
- Some good practices need to be clarified – for example good practice 2j on determining the number of studies in any one year, and good practice 4e in relation to communicating the types of possible outcome from a market study
- Some good practices are only relevant to some authorities, but this does not mean they should be excluded from the final version of the Handbook
- There are some categories of good practice where there is a range of differing views and approaches. The most important category is the range of good practices on engaging stakeholders. The current proposal for handling this is to note the different approaches in the text accompanying the good practice and where possible to ensure that the good practice itself is drafted in a way that makes clear that there are different views.
- There are a number of detailed drafting suggestions and comments for the AWG to follow up on, as set out in Annexe 4.
- One area for possible further exploration is whether the final Handbook should include examples of specific studies, or whether examples would rapidly become out of date and could be included instead in the Advocacy Postings facility and/or the Market Studies Information Store.

5.3 The AWG's Work Plan for 2011 to 2012 includes an action to: 'consider what changes need to be made to the Draft Market Studies Good Practice Handbook following the road-testing in 2011-12, and finalize the Handbook in the light of the road-testing'.

5.4 As noted in Part 1, given the work that has already been done to translate the Draft Handbook into Spanish, the AWG is keen that any future revisions be kept to a manageable level so as to ensure that changes can readily be incorporated into the Spanish version. The work plan includes identification of a project group and two rounds of drafting and comment on the revised Handbook, followed by presentation of a finalised Handbook to conference in 2012.

- 5.5 In terms of the Market Studies Information Store, usage rates to date suggest that the ICN membership may not be sufficiently aware of the existence of this resource. The AWG believes that the Information Store could be a very useful tool, if it were more extensively used. Further work is necessary to establish whether, with time, and more publicity, usage rates would increase sufficiently to make it worthwhile updating the Information Store on an annual basis.
- 5.6 Accordingly, the AWG decided to survey members during 2011-12 to test the usefulness of the Market Studies Information Store, before deciding whether to update it. If feedback, including survey results, indicates sufficient support for the Information Store, the AWG intends that the information store will be updated during 2011 to 2012 and then annually. These actions are recorded in the AWG's Work Plan for 2011 to 2012.





## ANNEXE 1

### ICN DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK QUESTIONNAIRE

#### INTRODUCTION

**Questionnaire Purpose:** In April 2010 the International Competition Network's Advocacy Working Group presented a draft Market Studies Good Practice Handbook at the ICN's 9<sup>th</sup> Annual Conference in Istanbul. The 2010-2011 Work Plan of the Advocacy Working Group includes testing the draft Market Studies Good Practice Handbook to consider whether it can be adopted in final form, or whether it should be revised before it is finalised. The purpose of this questionnaire is to capture headline views from the broad ICN membership on the draft good practices outlined in the draft Market Studies Good Practice Handbook: do members broadly agree with the proposed good practices; do they think the proposed good practices are sufficiently important to include in the final Handbook; do they have comments on the drafting of the proposed good practices; and are there any areas of good practice that are missed?

**Assistance Required:** We are very much hoping to secure input from across the spectrum of ICN member authorities, and would be very grateful if you could spend some time, estimated to be under an hour, in completing this questionnaire.

**Use of Questionnaire Results:** We intend to analyse the results of this questionnaire and to report on them during a conference call later this year. We will publicise the date of the conference call to the entire ICN membership, and invite participation in the call from those who have completed the questionnaire. We will also draw on the results of this questionnaire when considering, in the light of the feedback received, whether and how to revise the draft Handbook, during the ICN work year 2011-2012. In doing so we will bear in mind that market studies law and practice varies quite considerably across the ICN membership. The aim of the final Market Studies Good Practice Handbook will be to provide a range of good practices from which member authorities can choose, in accordance with their market studies regimes.

**Structure of Questionnaire:** The questionnaire is in three parts as follows:-

- Part A asks some general questions about your authority and your use or likely use of market studies and the draft Market Studies Good Practice Handbook;
- Part B shows all the proposed good practices, by chapter theme, detailed in the draft Market Studies Good Practice Handbook and asks you to:

- Rate, using a score of 1 (low) to 5 (high), how useful your authority finds the good practice. Your answer should be based on your authority's experience of market studies. If your authority does not carry out market studies, please answer based on the practices you would expect to follow in any future market studies regime;
  - say whether your authority agrees, disagrees or is indifferent as to whether each good practice should be included in the final version of the Market Studies Good Practice Handbook.
- Part C allows you to suggest any areas of good practice that have been missed and to provide further comments on the proposed good practices. It also asks for your contact details.

**Confidentiality Statement:** For research and dissemination purposes, the Advocacy Working Group may wish to use and report the data collected from this questionnaire. Any reporting is likely to be in aggregate form, but in some cases we may want to refer to results in such a way that it will be possible to identify the responding authority or jurisdiction. Individual respondents will not be identified. If there are responses in this questionnaire that you want us to refer to only in aggregate form, if at all, please indicate which by noting the relevant questions in the box below.

**Please return completed questionnaires by Monday 13 September 2010.**

If you have any questions relating to this questionnaire or the draft Market Studies Good Practice Handbook you can contact:  
[icn.mshandbook@oft.gsi.gov.uk](mailto:icn.mshandbook@oft.gsi.gov.uk)

You can download a full copy of the draft Market Studies Good Practice Handbook from the ICN's website here:  
<http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf>

**YOU DO NOT NEED TO READ THE DRAFT HANDBOOK IN ORDER TO ANSWER THIS QUESTIONNAIRE.**

By way of background, in 2009, the ICN's Advocacy Working Group published a comparative report on market studies purpose, powers and practice across the ICN membership. The report can also be downloaded from the ICN's Advocacy Working Group homepage at the address above. The report included, at paragraph 4.3, the following working definition of market studies:

'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 function 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.'

1. [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

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A2. Does your authority carry out market studies?

- ☐ Yes
- ☐ No (proceed to question A4)

A3. If yes – how long has your authority been carrying out market studies?

- ☐ For two years or less
- ☐ For two to five years
- ☐ For more than five years

A4. If no – is your authority planning to start carrying out market studies?

- ☐ Yes
- ☐ No (proceed to question A6)

**A5. If yes – when does your authority envisage starting to do market studies work?**

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**A6. Please indicate below whether your authority would be interested in receiving specific assistance regarding its market studies practice or other related advocacy work, through the ICN's Advocacy and Implementation Network Support Programme (AISUP). If possible, specify what kind of support your authority would be interested in.**

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(For further information about AISUP, please see the description of the programme on the ICN's website here:  
<http://www.internationalcompetitionnetwork.org/working-groups/vice-chair/advocacy-implementation/aisup.aspx>)

**B. ABOUT THE PROPOSED GOOD PRACTICES IN THE DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK**

There is a wide range of market studies practice across the ICN membership. Member authorities conduct market studies for different purposes using different legal powers and following different procedures. Accordingly the proposed good practices in the Draft Market Studies Good Practice Handbook are intended (when they are in final form) as suggestions only. Authorities will be able to choose to follow them or not, as they wish and in accordance with their market studies regimes.

For each of the following proposed good practices, as detailed in the Draft Market Studies Good Practice Handbook:

- In column 2, please rate on a scale of 1 to 5, where 1 = not useful at all and 5 = extremely useful, how useful you find the good practice based on your authority's experience of conducting market studies, or (if your authority does not currently conduct market studies) how useful you think it would be for your authority in the future if and when your authority starts to conduct market studies.
- In column 3, give any explanation for your rating in column 2. THIS COLUMN IS OPTIONAL.
- In column 4, please say whether your authority agrees, disagrees or is indifferent as to whether each good practice should be included in the final version of the Market Studies Good Practice Handbook.
- In column 5, provide any comments you have on the drafting of the proposed good practice. THIS COLUMN IS OPTIONAL.

As you answer the questionnaire please bear in mind that even though the proposed good practice may not be relevant to your authority, it may be of relevance to other authorities. Therefore although your authority may not find a proposed good practice useful, it may consider that it is important to include that good practice in the final Handbook because it will be of relevance to other authorities.

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
<b>B1</b>	<b>Draft Overview Chapter (Chapter 2)</b>				
2a	Be clear about the reasons for a market study from the outset	<a href="#">click here</a>		<a href="#">click here</a>	
2b	Be clear about the possible outcomes of a market study from the outset	<a href="#">click here</a>		<a href="#">click here</a>	
2c	Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action.	<a href="#">click here</a>		<a href="#">click here</a>	
2d	Develop a process for carrying out and implementing market studies. This may cover one or more of the following six steps: 1. Identifying and selecting a market to study 2. Scoping and planning a market study project 3. Information collection and analysis 4. Developing and securing outcomes 5. Publication of the report and recommendations and conducting any follow up	<a href="#">click here</a>		<a href="#">click here</a>	



No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
	6. Evaluating the success of one or more studies				
2e	Carefully manage the process and outcomes of market studies.	<a href="#">click here</a>		<a href="#">click here</a>	
2f	Solicit stakeholder engagement during market studies.	<a href="#">click here</a>		<a href="#">click here</a>	
2g	Ensure, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.	<a href="#">click here</a>		<a href="#">click here</a>	
2h	Allow flexibility in determining the timeframe for completing market studies.	<a href="#">click here</a>		<a href="#">click here</a>	
2i	Develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset	<a href="#">click here</a>		<a href="#">click here</a>	
2j	Determine how many studies will be conducted in any one year by reference to available resource, the studies' complexity and other commitments and priorities.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
2k	Consider carefully the pros and cons of conducting a study jointly with another organisation.	<a href="#">click here</a>		<a href="#">click here</a>	
2l	Where a joint study is undertaken be mindful of the parameters of the study and the respective roles and responsibilities of each participating organisation.	<a href="#">click here</a>		<a href="#">click here</a>	
2m	Modify project management processes appropriately when conducting market studies that are required by the government or legislature.	<a href="#">click here</a>		<a href="#">click here</a>	
<b>B2</b>	<b>Draft Project Management Chapter (Chapter 3)</b>				
3a	Establish a core market study team at the outset of a study, unless there are already dedicated resources in place, or the authority intends to contract the work out to third parties.	<a href="#">click here</a>		<a href="#">click here</a>	
3b	Consider conflicts of interest for market study staff.	<a href="#">click here</a>		<a href="#">click here</a>	
3c	Establish clear roles and responsibilities for	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
	market study team members at the outset of the study.				
3d	Hold regular team meetings to monitor and review project plans and risks and test and debate ideas and findings with colleagues.	click here		click here	
3e	Early on: <ul style="list-style-type: none"> <li>• identify and make contact with the other authority staff who will need to be engaged, consulted or involved in the work</li> <li>• provide such staff with advance notice of the likely timing and timescales for their engagement/input.</li> </ul>	click here		click here	
3f	Early on, identify other public bodies that may be working on the same issues and, where appropriate, consider whether and how to engage them in the context of the market study.	click here		click here	
3g	Ensure that the scope of a market study is focused and manageable.	click here		click here	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
3h	Retain flexibility for later variations in scope if possible.	<a href="#">click here</a>		<a href="#">click here</a>	
3i	Once scope is settled, prepare a detailed plan that includes anticipated actions, responsibilities, key deliverables and milestones.	<a href="#">click here</a>		<a href="#">click here</a>	
3j	When a market study is launched publicly, provide basic information about the scope of the study and contact points for further information.	<a href="#">click here</a>		<a href="#">click here</a>	
3k	Keep under review the study's project plan.	<a href="#">click here</a>		<a href="#">click here</a>	
3l	Report progress where needed or where this is required by the authority's governance processes.	<a href="#">click here</a>		<a href="#">click here</a>	
3m	Actively consider and manage the risks relating to a market study.	<a href="#">click here</a>		<a href="#">click here</a>	
3n	Put in place a quality assurance process for the market study	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
3o	Consider the outcomes of a study and ensure that these are approved according to the authority's approval process.	<a href="#">click here</a>		<a href="#">click here</a>	
3p	Ensure that the documentary outputs of a market study are in a format that reflects their purpose and the needs of the target audience.	<a href="#">click here</a>		<a href="#">click here</a>	
3q	Before a market study is completed, consider whether to release findings, and if so to plan for their release.	<a href="#">click here</a>		<a href="#">click here</a>	
3r	Have a plan for closing a market study that addresses outstanding issues such as any further follow up work and capturing institutional learning.	<a href="#">click here</a>		<a href="#">click here</a>	
<b>B3</b>	<b>Draft Stakeholder Engagement Chapter (Chapter 4)</b>				
4a	Explain the benefits that may result from stakeholder participation in market studies, both generally, and in relation to specific market studies.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
4b	Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them.	<a href="#">click here</a>		<a href="#">click here</a>	
4c	Review and update the stakeholder engagement strategy as necessary during the study.	<a href="#">click here</a>		<a href="#">click here</a>	
4d	Communicate to stakeholders what market study outputs will be published.	<a href="#">click here</a>		<a href="#">click here</a>	
4e	Communicate to stakeholders basic information about a study, such as the reasons for the study, its proposed scope, and the types of possible outcomes. Authorities can also consider making public key milestones of and/or indicative timeframes for studies.	<a href="#">click here</a>		<a href="#">click here</a>	
4f	Seek input on a market study from stakeholders.	<a href="#">click here</a>		<a href="#">click here</a>	
4g	Try to minimise burdens on stakeholders when making information requests.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
4h	Take stakeholder information and views into account to inform the market study.	<a href="#">click here</a>		<a href="#">click here</a>	
4i	Engage stakeholders in developing market study outcomes.	<a href="#">click here</a>		<a href="#">click here</a>	
4j	Engage with policy makers to: <ul style="list-style-type: none"> <li>reinforce policy and regulation that are working well</li> <li>raise the profile of competition issues generally, and/or</li> </ul> advocate for specific recommended changes to policy and/or regulations.	<a href="#">click here</a>		<a href="#">click here</a>	
<b>B4</b>	<b>Draft Selection Chapter (Chapter 5)</b>				
5a	When authorities can be required to conduct market studies by government and legislators, wherever possible engage in dialogue prior to any requirement being imposed.	<a href="#">click here</a>		<a href="#">click here</a>	
5b	When authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
	third parties.				
5c	When authorities have discretion to make their own selection of markets to study, consider issues for study from a wide range of internal sources.	click here		click here	
5d	When authorities have discretion to make their own selection of markets to study, consider ways to collect issues for market study.	click here		click here	
5e	When authorities have discretion to make their own selection of markets to study, carefully weigh different issues that could be studied and only select those issues that best meet their objectives.	click here		click here	
5f	When authorities have discretion to make their own selection of markets to study, consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study.	click here		click here	
<b>B5</b>	<b>Draft Information Collection and Analysis Chapter (Chapter 6)</b>				



No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
6a	Before seeking any information, prepare by: <ul style="list-style-type: none"> <li>• considering what information is needed for the purposes of the market study</li> <li>• consulting with any authority specialists</li> <li>• considering the time that will be required for information collection/analysis.</li> </ul>	<a href="#">click here</a>		<a href="#">click here</a>	
6b	Make use of any publicly available information.	<a href="#">click here</a>		<a href="#">click here</a>	
6c	Consider carefully how to conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive.	<a href="#">click here</a>		<a href="#">click here</a>	
6d	Consider carefully the sources of information for the market study, including from which stakeholders information needs to be sought, taking into account the wide range of potential sources, and the potential merits of each.	<a href="#">click here</a>		<a href="#">click here</a>	
6e	When making an information request for a market study, make clear, as applicable: <ul style="list-style-type: none"> <li>• what information is being sought</li> <li>• how information is to be submitted – that</li> </ul>	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
	<p>is, the required format (if any)</p> <ul style="list-style-type: none"> <li>the timescales for submission</li> <li>the consequences of not supplying the information – these could be legal or more general such as missing the opportunity to inform the study and its outcomes</li> <li>a contact point for questions about the information request.</li> </ul>				
6f	When seeking information explain how the information might be used.	<a href="#">click here</a>		<a href="#">click here</a>	
6g	With a view to minimising burdens, consider consulting informally with stakeholders on the scope and range of information requests, the proposed timeframes for responding and the format in which information is to be supplied.	<a href="#">click here</a>		<a href="#">click here</a>	
6h	Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first.	<a href="#">click here</a>		<a href="#">click here</a>	
6i	If authorities run a market study in parallel with an enforcement investigation in the same	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
	market, consider carefully any interaction or duplication between the gathering and use of information in the different contexts.				
6j	Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, study findings should be supported by empirical data where possible.	<a href="#">click here</a>		<a href="#">click here</a>	
6k	There are a range of methodologies for collecting information for market studies - select among them, using more than one methodology where appropriate, and consider the benefits and disadvantages, and the costs of each.	<a href="#">click here</a>		<a href="#">click here</a>	
6l	Where a third party is going to be used to carry out external research, consider the role and responsibilities of the third party.	<a href="#">click here</a>		<a href="#">click here</a>	
6m	Consider how to manage information gathered, including the receipt, review and organisation of information and logging of any confidentiality requirements.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
6n	Use stakeholder comments and insights to inform the market study analysis.	<a href="#">click here</a>		<a href="#">click here</a>	
6o	When analysing information received, consider how it fits with the understanding of the market.	<a href="#">click here</a>		<a href="#">click here</a>	
6p	Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory.	<a href="#">click here</a>		<a href="#">click here</a>	
6q	Keep in mind that stakeholders' information may not present a complete or unbiased view, but consider the information and its appropriate context nevertheless.	<a href="#">click here</a>		<a href="#">click here</a>	
6r	Cite safeguards for sensitive or confidential information when requesting information for a market study.	<a href="#">click here</a>		<a href="#">click here</a>	
6s	Ensure that appropriate internal procedures are in place to safeguard the confidentiality of information once it is received.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
<b>B6</b>	<b>Draft Outcomes Chapter (Chapter 7)</b>				
7a	Develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes.	<a href="#">click here</a>		<a href="#">click here</a>	
7b	When developing market study outcome options: <ul style="list-style-type: none"> <li>• keep the options under review throughout the course of the study</li> <li>• test the support, where applicable, for recommendations and actions</li> </ul>	<a href="#">click here</a>		<a href="#">click here</a>	
7c	Assess the costs and benefits of proposed market study outcomes.	<a href="#">click here</a>		<a href="#">click here</a>	
7d	Consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
7e	Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change.	<a href="#">click here</a>		<a href="#">click here</a>	
7f	Engage early with industry where voluntary action is a desired outcome.	<a href="#">click here</a>		<a href="#">click here</a>	
7g	Secure necessary internal buy-in to further work before announcing any outcomes that involve the authority itself taking action.	<a href="#">click here</a>		<a href="#">click here</a>	
7h	Where outcomes depend on third parties taking action, engage with the parties concerned throughout to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies.	<a href="#">click here</a>		<a href="#">click here</a>	
7i	Include stakeholder engagement in advocacy efforts to support market study outcomes.	<a href="#">click here</a>		<a href="#">click here</a>	
7j	Recognise the potential effect of media coverage on market study outcomes.	<a href="#">click here</a>		<a href="#">click here</a>	

No.	1.Draft ICN Market Studies Handbook – Draft Good Practices	2. How useful do you find this good practice?	3. Please explain your answer in column 2 [OPTIONAL QUESTION]	4. Do you think it is important to include this good practice in the final handbook?	5. Any suggested edits to wording of practice or handbook? [OPTIONAL QUESTION]
7k	Recognise that successful market study outcomes may take time and require well-resourced follow-up.	<a href="#">click here</a>		<a href="#">click here</a>	
<b>B7</b>	<b>Draft Evaluation Chapter (Chapter 8)</b>				
8a	Consider evaluating the effectiveness of market studies.	<a href="#">click here</a>		<a href="#">click here</a>	
8b	When deciding how to approach evaluating market studies, take into account: <ul style="list-style-type: none"> <li>the purpose of the evaluation</li> <li>the scope of the evaluation</li> <li>available resources</li> </ul>	<a href="#">click here</a>		<a href="#">click here</a>	

**C. FINALLY**

**C1. Please use the box below to tell us about any areas of good practice that your authority considers are missing from the list of proposed good practices above.**

**C2. Please use the box below if you wish to add any other comments or information.**

**C3. Please provide your contact details below.**

**Authority name and address:**

**Contact Name:**

**Telephone:**

**E-mail:**

Thank you very much for completing this questionnaire.



## ICN MEMBERS THAT RESPONDED TO THE QUESTIONNAIRE

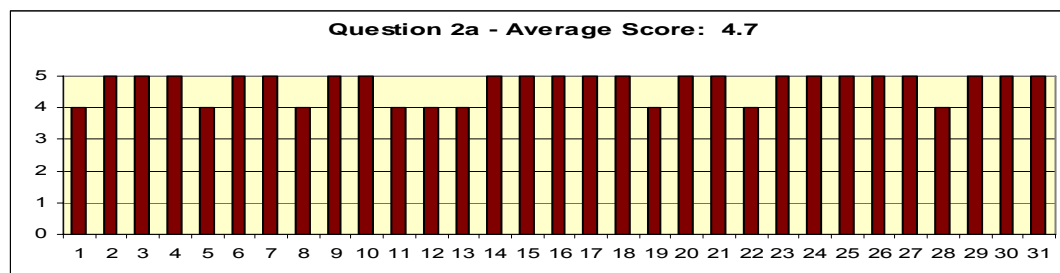
**Belgium** – Belgian Competition Authority (Directorate General)  
**Brazil** - Brazilian Council for Economic Defense - CADE  
**Bulgaria** - Commission on Protection of Competition  
**Chile** - Fiscalía Nacional Económica  
**Croatia** – Croatian Competition Agency  
**Cyprus** - Commission for the Protection of Competition  
**Czech Republic** - Office for the Protection of Competition  
**Denmark** - Danish Competition and Consumer Authority  
**El Salvador** - Superintendencia de Competencia. El Salvador  
**Estonia** - Estonian Competition Authority  
**Finland** - Finnish Competition Authority  
**France** - Autorité de la concurrence  
**Honduras** - Commission for the Defense and Promotion of Competition  
**Hungary** - Hungarian Competition Authority  
**Israel** - Israel Antitrust Authority  
**Italy** - Autorita' Garante Della Concorrenza E Del Mercato  
**Japan** - Japan Fair Trade Commission (JFTC)  
**Jordan** - Ministry of Industry and Trade/Competition Directorate  
**Latvia** - Latvian Competition Council  
**Mauritius** - Competition Commission of Mauritius  
**Mexico** – Comisión Federal de Competencia  
**Netherlands** - Netherlands Competition Authority  
**Norway** - Norwegian Competition Authority  
**Slovak Republic** - Antimonopoly Office of the Slovak Republic  
**South Africa** - The Competition Commission  
**Spain** – Comisión Nacional de la Competencia  
**Sweden** - Swedish Competition Authority  
**Switzerland** - Competition Commission  
**Taiwan** - Fair Trade Commission  
**Tanzania** - Fair Competition Commission  
**USA FTC** - US Federal Trade Commission  
**Zambia** - Zambia Competition Commission

## FINDINGS OF THE QUESTIONNAIRE SCORING THE GOOD PRACTICES

Authorities were asked to rate, using a score of 1 (low) to 5 (high), how useful their authority finds the good practices highlighted and underlined below and to explain their rating.

### 2a Be clear about the reasons for a market study from the outset

#### Marks awarded



#### Comments received

Clear picture of the market, rather than a case by case analysis.

It's very important that Authorities have a clear comprehension about the reasons behind market studies and the expected outcomes to avoid outcomes which do not satisfy expectations.

To ensure that the information submitted through market studies could be used for an enforcement action.

It is important to be transparent about these with stakeholders to ensure their cooperation throughout all the phases of the market study.

It is important to have a complete picture about market competitiveness to ensure the most suitable actions are taken, if any.

Since this differs from an investigation this cannot lead to an enforcement action but it can lead to advice to government. This would also help in identifying areas to address for our advocacy functions.

Important to direct/focus the study and aids the credibility and Authority of the study.

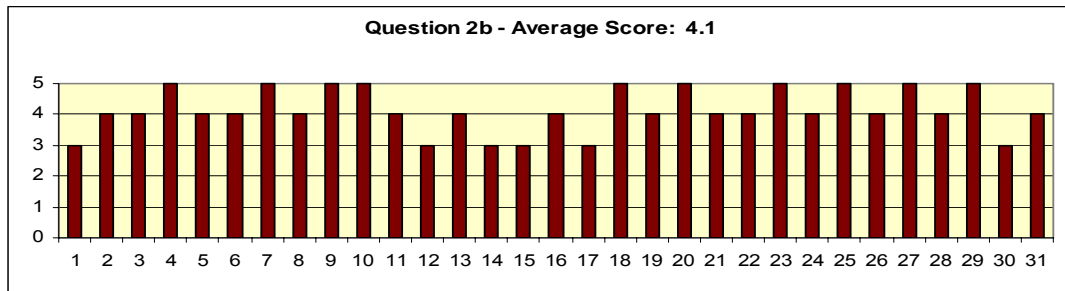
It makes it easier to collect information from other stakeholders.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 30 agreed, 0 disagreed and 1 were indifferent.

**2b Be clear about the possible outcomes of a market study from the outset**

**Marks awarded**



**Comments received**

It will facilitate the organisation of the working process and concentrate the analysis in a particular direction. Nevertheless the Authority must always be open to other options.

It is good practice to explain to the stakeholders why the market study is being conducted and what possible outcome can be expected.

Specially connected with explanation of the dynamics and the market structure.

At the outset one cannot know the precise outcome of the sector inquiry so flexibility is also important.

It is difficult to understand "possible outcomes" without specific examples.

This may either lead to an investigation depending on the outcome or advice to government.

Important for resource allocation and planning.

Often not possible to foresee all outcomes.

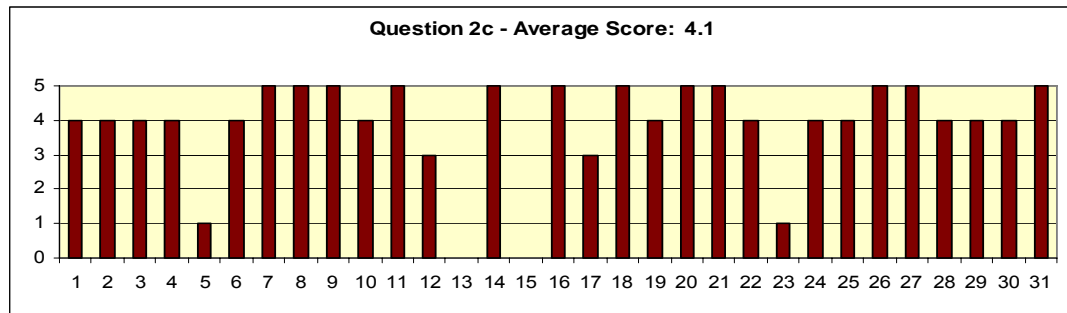
Outcomes in some cases are not predictable.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

**2c**     **Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action**

**Marks awarded**



**Comments received**

It is important for market participants to know that they are not under investigation as they will give more detailed information and express their view more freely.

In our own experience, Authorities are not always clear enough about the market studies' role and its separation between advocacy and enforcement efforts (especially when new staff are appointed and they come mainly from the private bar and litigation world). Sometimes, they believe that enforcement activities are more profitable in the short term for the Authority's aims as opposed to trying to get outcomes from the market studies that they can use to initiate an ex officio investigation over a market. From this perspective, the Market Study Handbook which states that role separation is a good practice can help the officials working with competition advocacy to make market studies work better understood.

Very often market studies serve as a basis for enforcement action when competition concerns are revealed. Hence, we would strongly advise that both roles of the market studies, as a competition advocacy and enforcement tool are kept.

Could change the perception of the undertakings concerning the market study and lead to better co-operation during the collecting and evaluating of information.

Just to avoid having any early idea of practice or conduct that is anti-competitive in the market.

Adequately separated: no, since eg information collected in the sector inquiry may be used in a subsequent enforcement action.

Market studies may sometimes lead to enforcement action.

Powers relating to enforcement as a result of its outcomes differ. No remedies will be applicable for a market study unless it is properly converted into an investigation.

This helps in getting co-operation from stakeholders especially private sector.

Market studies actually constitute (a part) of the foundation for enforcement action.

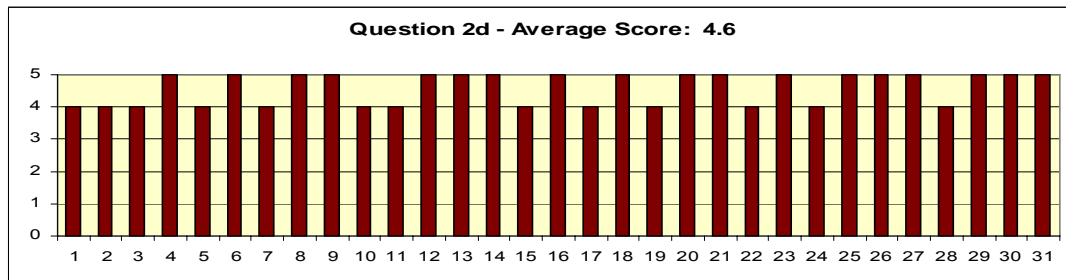
This helps in getting co-operation from stakeholders especially from the private sector.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 3 disagreed and 4 were indifferent.

## 2d Develop a process for carrying out and implementing market studies

### Marks awarded



### Comments received

This Authority has built its own approach to carry out market studies in more or less the steps proposed. Nevertheless the proposed scheme would be a useful recommendation.

Having a standardised process for carrying out market studies can help to ensure efficiency and can also minimise the burdens on stakeholders, because it helps their understanding on how market studies are conducted. The standardised process also increases Authority transparency.

Market studies require a lot of resources so it is very important for Authorities to know best practices in order to make the process efficient and effective.

For a good market study, to complete those six steps is crucial.

A developed process will facilitate delivery as market studies are less statutory – but this involves costs in terms of allocation of resources, therefore proper planning is necessary.

Particularly useful for an Authority like ours which is about to start using the market study tool.

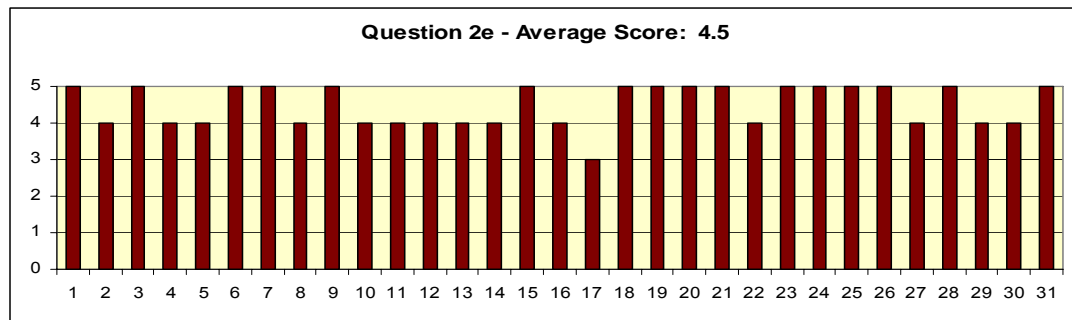
This helps make the actions of the Authority predictable making future studies easier to undertake.

### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 31 agreed, 0 disagreed and 0 were indifferent.

## 2e Carefully manage the process and outcomes of market studies

### Marks awarded



### Comments received

These suggestions are always welcome.

A study which is carefully managed to completion can have a positive impact on the sector.

Helps to ensure a serious environment and objectivity in the process.

Without specifying what kind of processes and outcomes are envisaged, it is difficult to determine the usefulness of the practice.

Helps in terms of time management and creating an impact. If this is not properly managed there is a risk of failure in terms of desired outcome.

Builds credibility of the Authority.

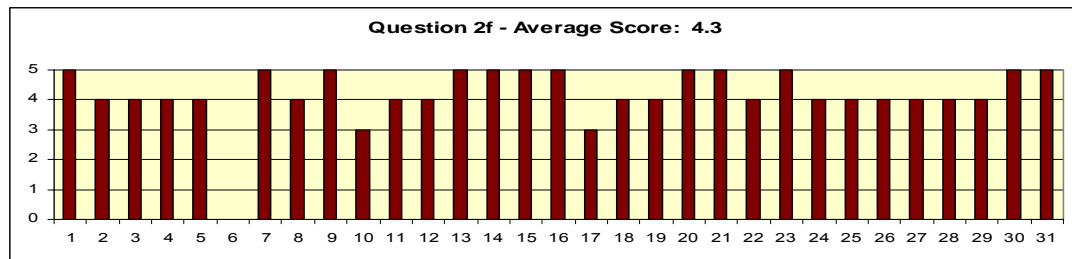
### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 28 agreed, 0 disagreed and 3 were indifferent.



## 2f Solicit stakeholder engagement during market studies

### Marks awarded



### Comments received

The main concern should be focused on collecting information and professional opinion from stakeholders. However, caution must be exercised when co-operation is very close as this could compromise the findings.

It is quite useful for getting the data, providing the stakeholders are willing to co-operate.

Stakeholders inputs can have a positive impact on the study.

This is vital for supporting the results of the study in terms of conducting an effective follow-up job and promoting the remedies identified to increase competition.

To create conditions for collaboration and belonging of the study.

Without specifying the type of stakeholder engagement, it is difficult to determine the usefulness of the practice. It is generally useful to ask stakeholders to co-operate with interviews and questionnaires.

Unlike enforcement investigations, we have no power to compel the submission of information, therefore engaging stakeholders becomes of prime importance.

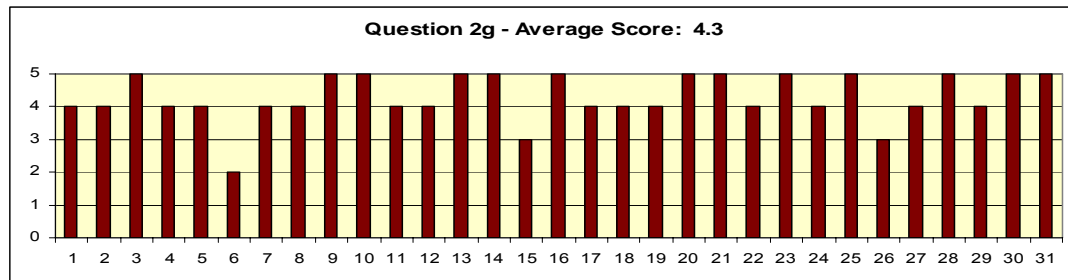
Helps build ownership of the study and study report.

### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 1 disagreed and 5 were indifferent.

**2g**     **Ensure, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge**

**Marks awarded**



**Comments received**

Although the deadlines to terminate a market study cannot be precisely defined, determining the timeframe is extremely useful. This creates an incentive for the team to work more effectively and encourages stakeholders and other Authorities to provide information in a short time.

If the Authority has sufficient capacity.

The market study teams usually include lawyers and economists.

Depending on the resources available this can be procured, and whenever it is not possible, appropriate research and interviews with experts can be conducted.

It is ideal to have both profiles, but it is not always possible.

This makes the study easier to undertake.

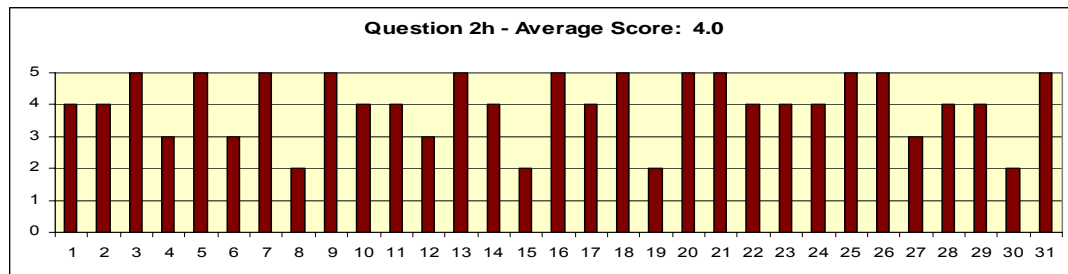
It's very important to obtain professional and expert advice in the market being studied.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

## 2h Allow flexibility in determining the timeframe for completing market studies

### Marks awarded



### Comments received

But this should be no excuse for lack of efficiency!

We think this is pretty obvious to Authorities and is less important than other practices suggested in the handbook.

During the market studies certain market conditions might change and this could result in additional market study work.

Setting a standard length of time for a market study is difficult, because market studies vary case by case.

One of the problems in progressing a market study is the deliberate slowness of companies in providing information.

Timeframe is extremely important when managing market studies.

Relates to, the regular planning process.

Depending on the specifics or collaboration or non-collaboration of stakeholders, timeframe may change.

A hard deadline can be beneficial.

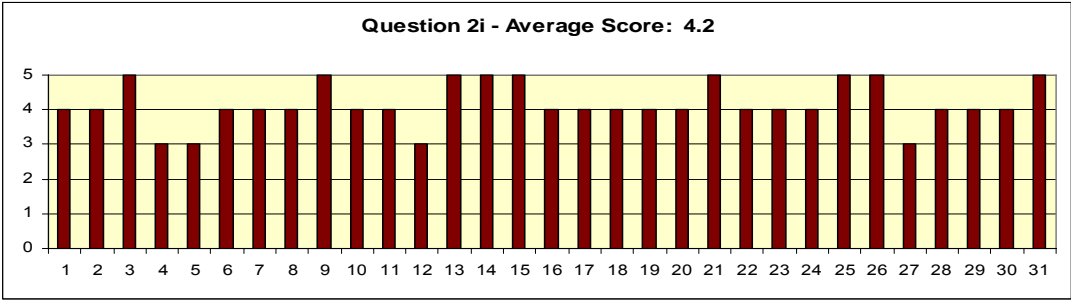
Helps manage costs and also helps to expedite the study.

### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 23 agreed, 2 disagreed and 6 were indifferent.

**2i     Develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset**

**Marks awarded**



**Comments received**

Although we recognise it as a good practice, we believe this is a practical issue that the Authorities can easily face by themselves and has a lower level of importance than other practices considered in the handbook.

Could improve transparency and help manage undertakings' expectations.

It is always necessary to control timeframes in order to have a good study.

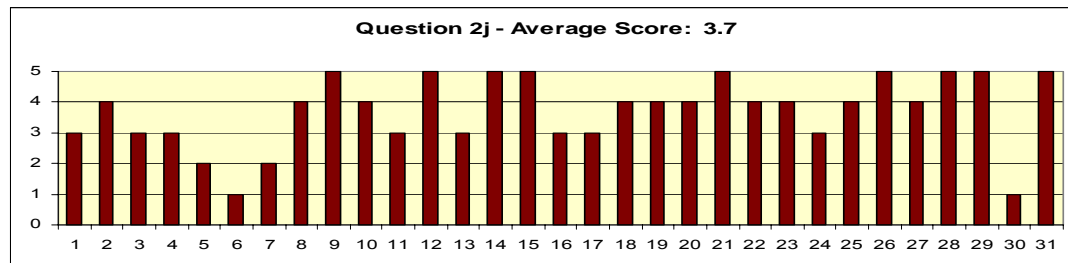
This helps keep the budget on track and also ensures that the study is concluded in time and that study results are not over taken by events.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 21 agreed, 9 disagreed and 1 were indifferent.

**2j Determine how many studies will be conducted in any one year by reference to available resource, the studies' complexity and other commitments and priorities**

**Marks awarded**



**Comments received**

Initiating market studies is a specific activity depending on many factors, some of which cannot be predicted in advance. Preliminary planning of a number of market studies may lead to the initiation of a study which may not be actually necessary. Conversely recent events may lead to a conclusion that a market study should be carried out. This is rather a question of the general planning policy of the Authority.

Even if it is important to have in mind both the complexity and the resources needed to perform a market study - facts that have a huge impact on the number of studies an Authority can conduct simultaneously, we believe that these restraints will be clear with or without it being mentioned in the handbook.

It is very difficult to know one year in advance how many studies should be conducted. It could be too limiting or restraining.

It is almost impossible to determine the number of studies per year. It could be influenced by the issues that arise during the year, complexity of studies, the resources and priorities of the Authority.

Based on other commitments and priorities of the Authority, two studies in one year would be enough.

Need to reconcile/link this good practice with good practice (1m).

At our Authority the question arises differently, first we have the problem (lack of knowledge about a sector where some competition concerns may exist) and then we check whether there are sufficient resources to initiate a market study or sector inquiry.

Set realistic goals and meet them.

In view of the small size of our Authority and limited resources, this allows proper planning.

Useful from a resource allocation viewpoint, especially when there is not a dedicated market studies team.

As market studies are normally very resource consuming, it is important to identify which studies should be conducted - but avoid a fixed number.

Enforcement action takes priority for us.

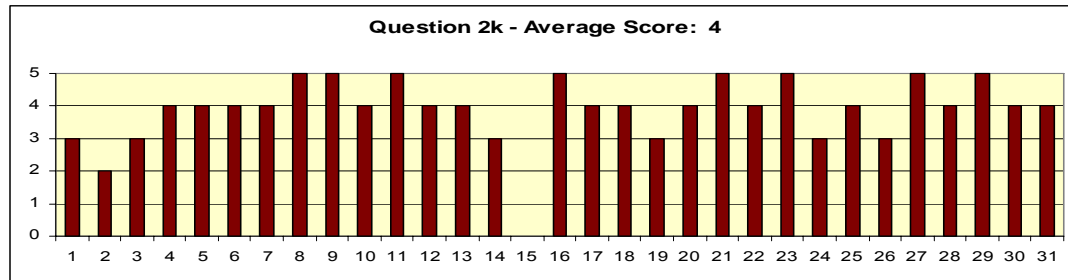
This helps in determining budgets.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 16 agreed, 5 disagreed and 10 were indifferent.

**2k Consider carefully the pros and cons of conducting a study jointly with another organisation**

**Marks awarded**



**Comments received**

This practice is probably important for Authorities who can be required by others to conduct market studies.

Despite the fact that most of the cons could be specific for each jurisdiction, it is good to remind Authorities that not all the partnerships are as good as it seems e.g, when some level of conflict of interest could arise. We believe this is especially true in the relationship between Authorities and some regulators, which pursue distinct objectives.

This could be useful for instance, in very technical sectors, such as energy or telecoms where input from other organisations which have the specific technical knowledge could help Authorities.

We were running a study recently in conjunction with a firm, another option could be working jointly with a university.

This good practice is not applicable to this Authority.

This would need a regular planning process.

Useful since the involvement of outside parties and different objectives, and work culture may affect the smooth running of a market study.

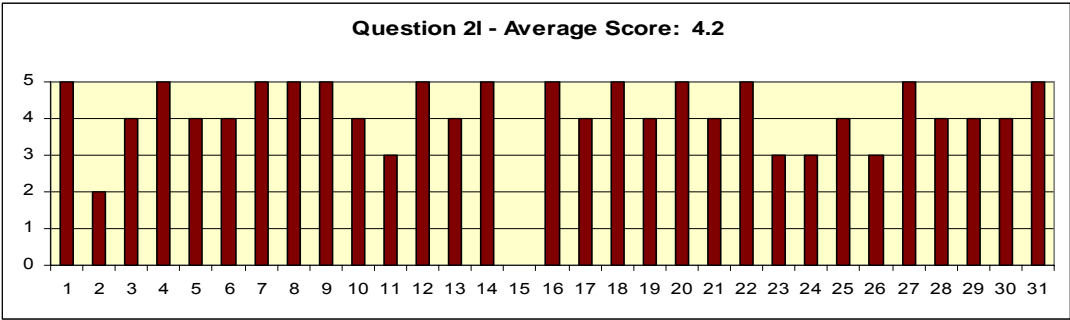
This can help in cases where resources are scarce.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 1 disagreed and 6 were indifferent.

21 **Where a joint study is undertaken be mindful of the parameters of the study and the respective roles and responsibilities of each participating organisation**

**Marks awarded**



**Comments received**

To be sure that the roles and responsibilities of each participant are not overlapping  
This good practice is not applicable to this Authority.

It would be important to have an agreement on the extent of collaboration and  
respective roles and responsibilities.

The Authority should not compromise the results it anticipates from the study nor  
should the other participating organizations.

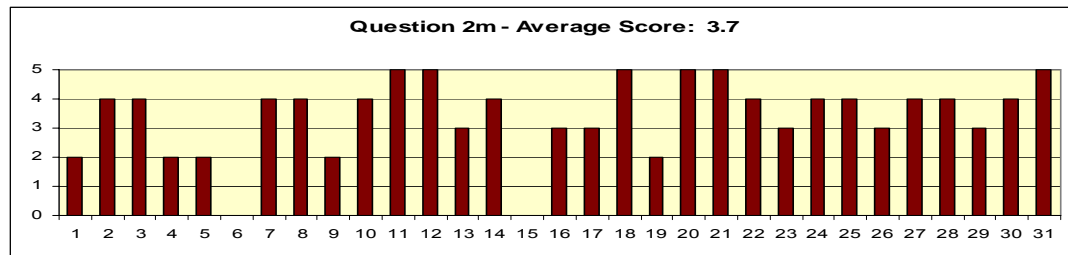
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is  
important to include this good practice in the final version of the handbook:- of the 31  
that responded, 21 agreed, 1 disagreed and 9 were indifferent.



**2m Modify project management processes appropriately when conducting market studies that are required by the government or legislature**

**Marks awarded**



**Comments received**

We strongly believe that if the handbook states clearly that some things need to change when you are performing a market study at the request or order of the government or the legislature then that is enough. No details are needed because this kind of relationship is very sensitive to different jurisdictions (for instance, whether the Authority is independent or not from the Executive branch), legislative process and even local culture. Thus it is difficult that best practices could be easily applied for most of the Authorities (they are not generalised recommendations).

Not applicable. So far market studies have never been done on the request of the government or parliament.

The market studies that are required by the government or legislature can differ from the market studies that are self-initiated.

Some aspects of the management may vary for the purpose of mutual co-operation, although not to the detriment of the independence of the Authority, in order to secure an objective analysis in the study.

This good practice is not applicable to this Authority.

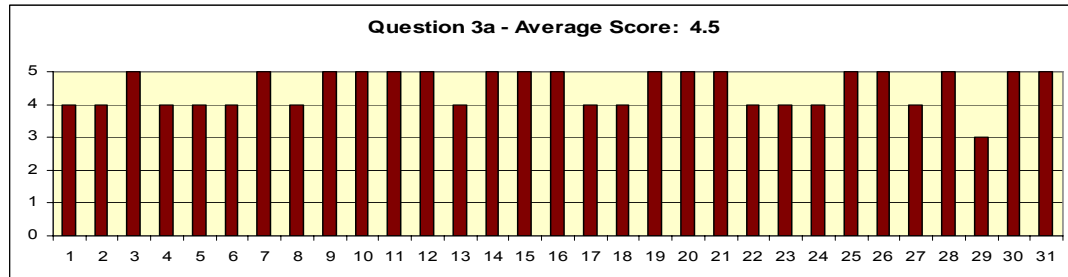
Market studies of this Authority cannot be mandated by the legislature. Any market study, depending on its purpose and nature, may require modifications.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 15 agreed, 2 disagreed and 14 were indifferent.

**3a Establish a core market study team at the outset of a study, unless there are already dedicated resources in place, or the authority intends to contact the work out to third parties**

**Marks awarded**



**Comments received**

It's ok but, in real life, most of the time the defined market study team also have different tasks at the Authority, and/or some case handlers have experience or expertise in some markets, and unless you have a mixed team composition you will be losing some relevant internal knowledge.

This could be very useful but in the smaller Authorities with lack of human resources it would be difficult to implement.

Could ensure the focused and planned market study.

Enables better planning.

Our Authority does not have a dedicated market study team, so identifying a core team upfront is essential for planning and resource allocation.

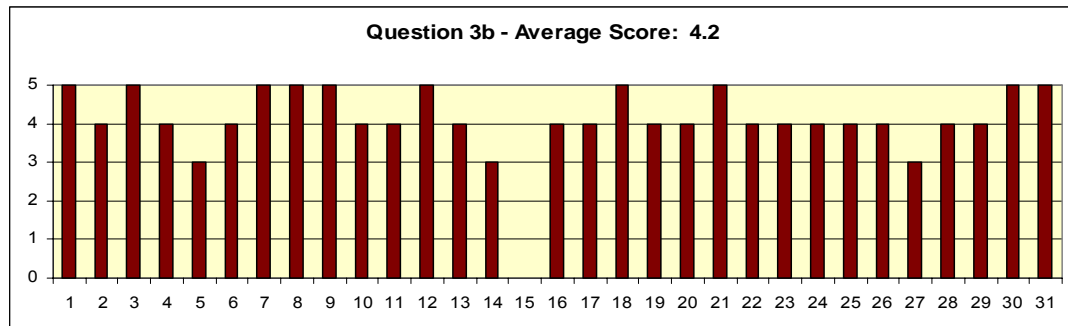
Very useful as it focuses the team on the work to be undertaken.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 3 disagreed and 1 were indifferent.

**3b Consider conflicts of interest for market study staff**

**Marks awarded**



**Comments received**

Conflicts of interest could undercut the legitimacy of a market study.

This applies not only to market studies but also to enforcement situations.

The issue of conflict of interests is regulated by law.

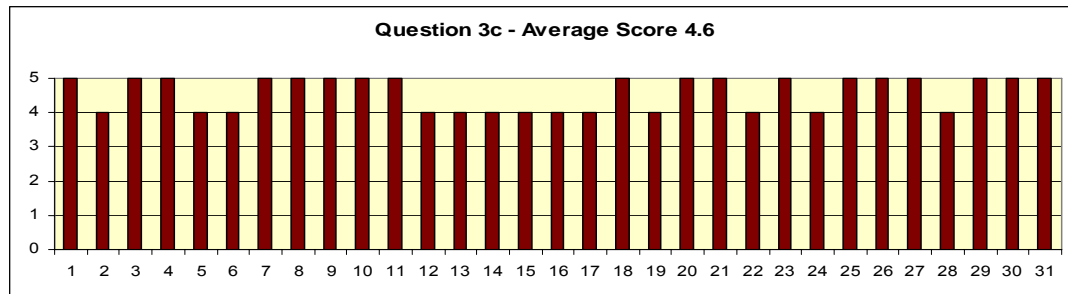
This is also a statutory requirement under our Competition Act.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 2 disagreed and 2 were indifferent.

**3c Establish clear roles and responsibilities for market study team members at the outset of the study**

**Marks awarded**



**Comments received**

Especially important for having a balanced assignment of the available human resources, which also helps to finish different tasks according to what was previously defined.

Establishing clear roles and responsibilities for team members can avoid conflicts.

A certain level of flexibility has to be maintained.

But allow flexibility according to workload.

Would allow better planning and would avoid duplication of work.

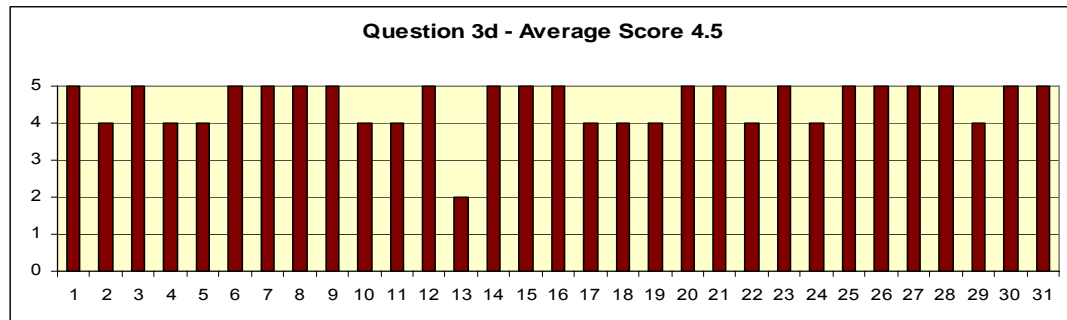
Crucial to ensure timely output, quality control, smooth workflow etc.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 1 disagreed and 1 were indifferent.

**3d Hold regular team meetings to monitor and review project plans and risks and test and debate ideas and findings with colleagues**

**Marks awarded**



**Comments received**

Although this is a good practice, we believe that most Authorities will, from their own practical experience, do this anyway; and so, from our perspective, it is a less useful best practice than others mentioned in the handbook.

This could be very useful but in the smaller Authorities with lack of human resources it would be difficult to implement.

Regular team meetings are a good way to inform the team members about the work progress.

Without regular monitoring and progress updates, it is easy for the study to take a back seat to investigations, given that the same staff will be working on both, useful to reassess criteria as a team if market situation changes/new information comes to light.

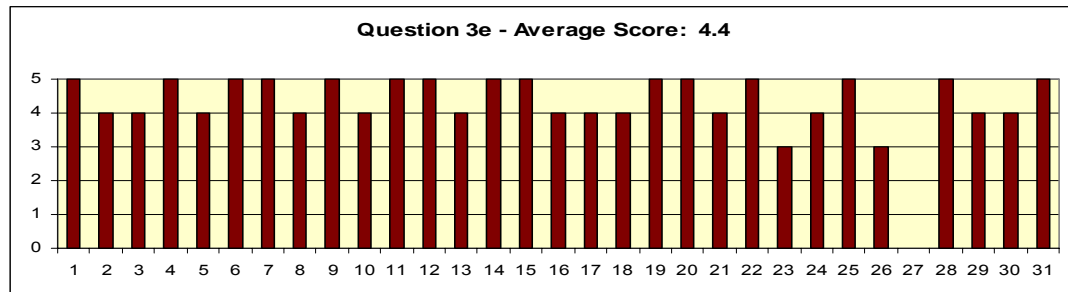
Helps members of the team to "pace" themselves and meet set deadlines. Helps put the study on a good time frame.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 3 disagreed and 3 were indifferent.

**3e Early on – identify and make contact with other authority staff, provide such staff with advance notice of timing/timescales**

**Marks awarded**



**Comments received**

We do not have the practice to carry out joint market studies. But in other cases it would be useful.

Can help to avoid delays, overlap and other problems.

Enables better planning.

Helps to ensure that the team working on the study are all committed and are able to provide feedback when necessary.

We are, however, under the competition rules very restricted in the extent to which we can share information.

Such co-operation would save unnecessary efforts and would allow us to concentrate resources on less studied problems. Moreover, co-operation with other sectoral regulators will ensure a professional discussion of the problem and co-ordination of efforts to carry out a common policy in the sector.

To avoid parallel work at the same time.

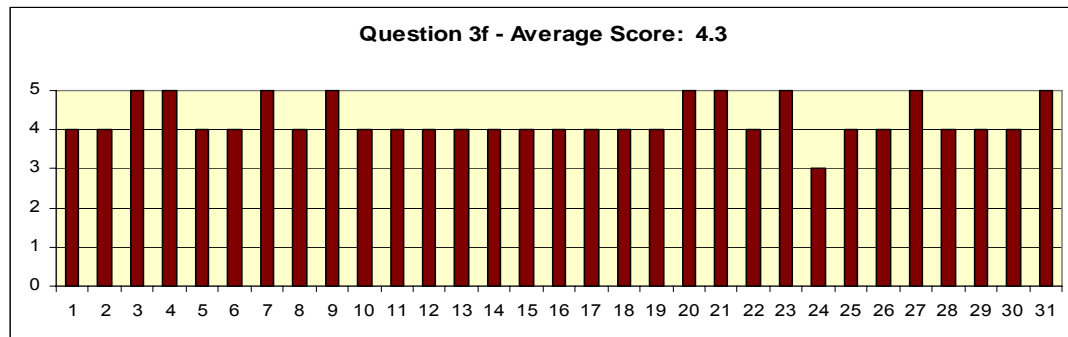
Avoids duplication but also allows the possibility of benefiting from expert input. This helps save resources both human and financial.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 2 disagreed and 3 were indifferent.

**3f Early on, identify other public bodies that may be working on the same issues**

**Marks awarded**



**Comments received**

We are, however, under the competition rules very restricted in the extent to which we can share information.

Such co-operation would save unnecessary efforts and would allow us to concentrate resources on less studied problems. Moreover, co-operation with other sectoral regulators will ensure a professional discussion of the problem and co-ordination of efforts to carry out a common policy in the sector.

To avoid parallel work at the same time.

Avoids duplication but also allows the possibility of benefiting from expert input.

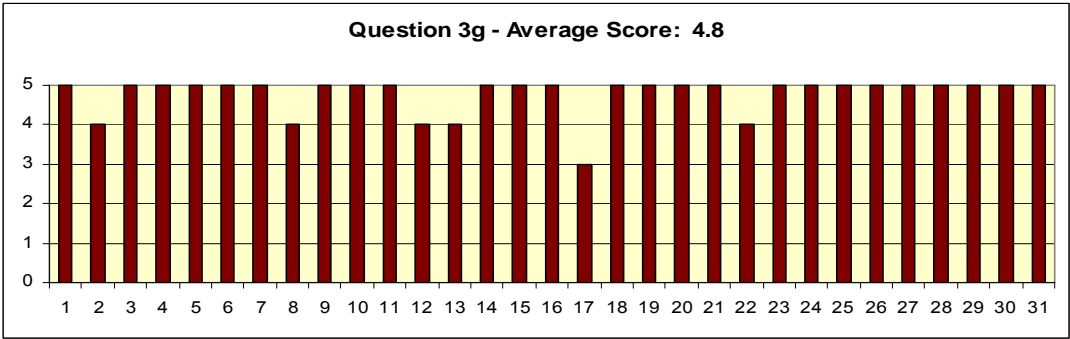
This helps save resources both human and financial.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 2 disagreed and 2 were indifferent.

**3g     Ensure that the scope of a market study is focused and manageable**

**Marks awarded**



**Comments received**

It is difficult to determine the usefulness of the practice without more explanation.

This allows us to get the desired result.

May result in a waste of resources and confidence in the Authority.

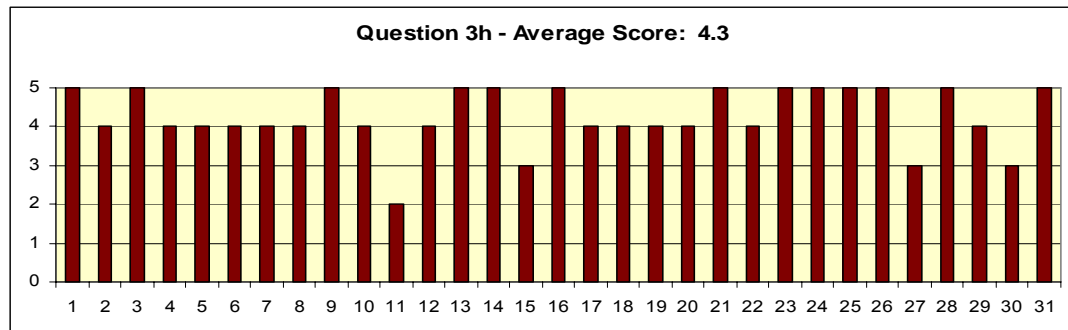
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 30 agreed, 1 disagreed and 0 were indifferent.



### 3h Retain flexibility for later variations in scope if possible

#### Marks awarded



#### Comments received

Flexibility in scope must be exercised with caution for it can be a slippery slope.

Some flexibility may help, but too much can let the focus stray.

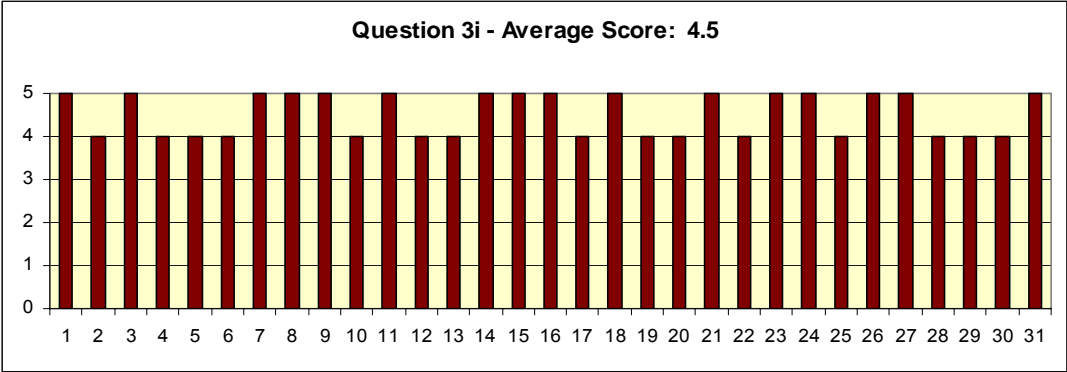
With scarce resources a study should focus on the particular issue of greatest concern.

#### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 4 disagreed and 3 were indifferent.

**3i      Once scope is settled, prepare a detailed plan that includes anticipated actions, responsibilities, key deliverables and milestones**

**Marks awarded**



**Comments received**

Very important!

Necessary to keep the study focused.

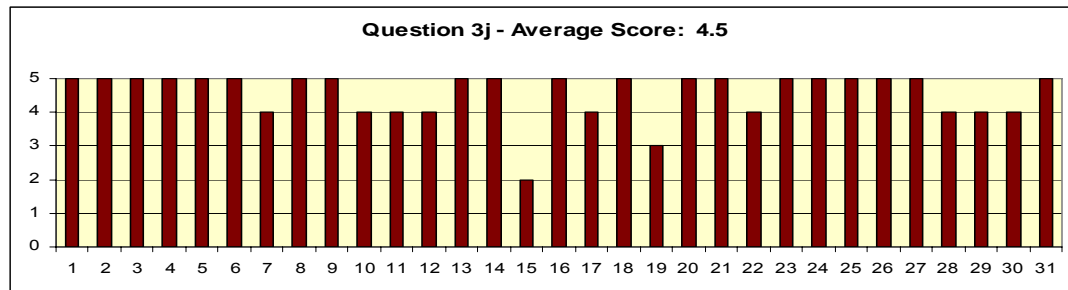
Useful way of ensuring that the study is on track - i.e. budget, time and activities.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 1 disagreed and 1 were indifferent.

**3j When a market study is launched publicly, provide basic information about the scope of the study and contact points for further information**

**Marks awarded**



**Comments received**

As our market studies are always made public, the communication of contact points is extremely useful for the collection of any additional information or opinion.

We have made the mistake of launching a market study without providing basic information and the context, resulting in having to give many last minute explanations.

Increase transparency and predictability of the Authority.

To give a chance to stakeholders to provide information related to the market.

Matter of course.

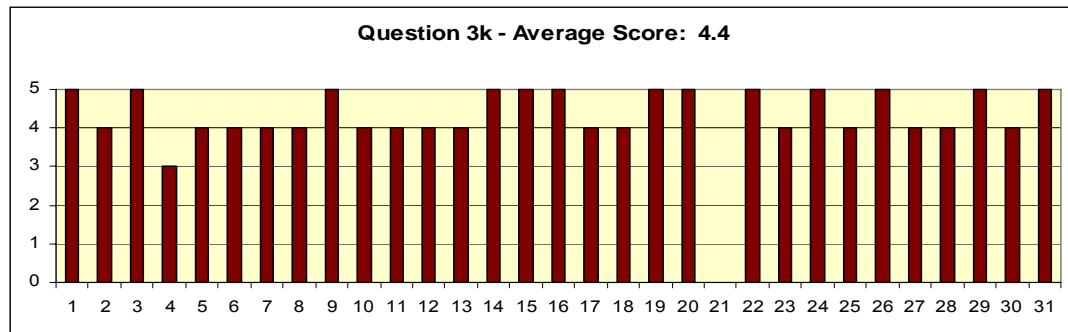
This enables the public or other stakeholders to participate in the study.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 28 agreed, 1 disagreed and 2 were indifferent.

### 3k Keep under review the study's project plan

#### Marks awarded



#### Comments received

Review of the study's project plan ensures active monitoring of the study and also enables us to make changes if necessary.

This acts as an early warning system when relevant.

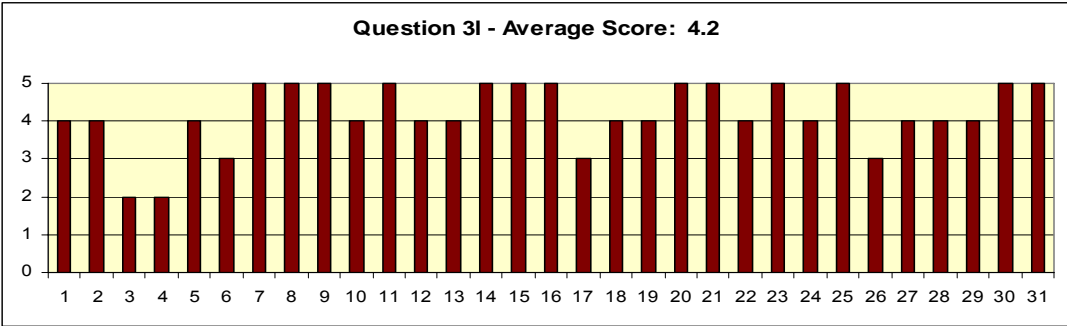
During the study markets change or the hypothesis may be wrong, leading to a need to review.

#### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 1 disagreed and 3 were indifferent.

31 **Report progress where needed or where this is required by the authority's governance processes**

**Marks awarded**



**Comments received**

Somewhat strange recommended practice - when needed or required you have no option.

Controlling the study process and updating the project plan is enough.

Any other complexity and formalisation of the process would be unnecessary.

We believe this is pretty obvious.

It is a good practice and a necessity to keep Authority staff informed.

To validate the findings of the study.

This enables us to better determine the next step.

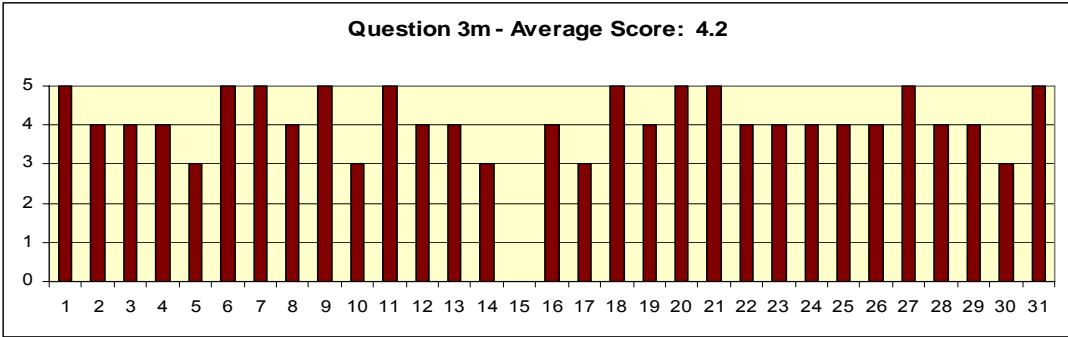
Credibility.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 3 disagreed and 2 were indifferent.

**3m     Actively consider and manage the risks relating to a market study**

**Marks awarded**



**Comments received**

The identification of risks helps give a better chance of solving the problems.

Validation of data is part of the market study.

This gives us a better chance for a successful outcome.

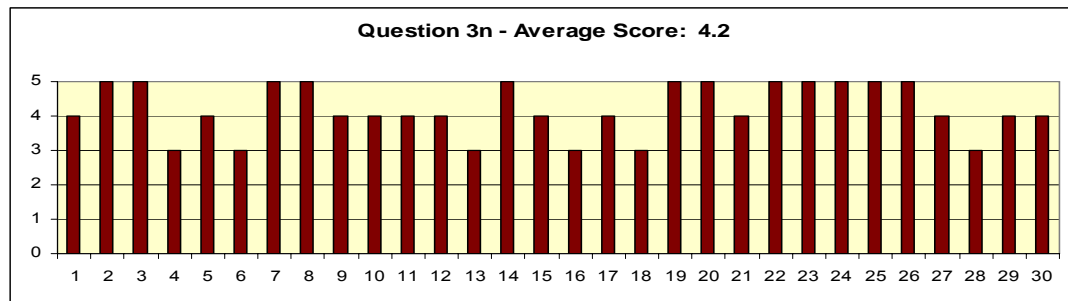
Important for credibility issues.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 1 disagreed and 4 were indifferent.

### 3n Put in place a quality assurance process for the market study

#### Marks awarded



#### Comments received

What do you mean by "assurance"?

It is difficult to understand what the quality assurance process is without specific explanation.

This will be useful to withstand possible challenges.

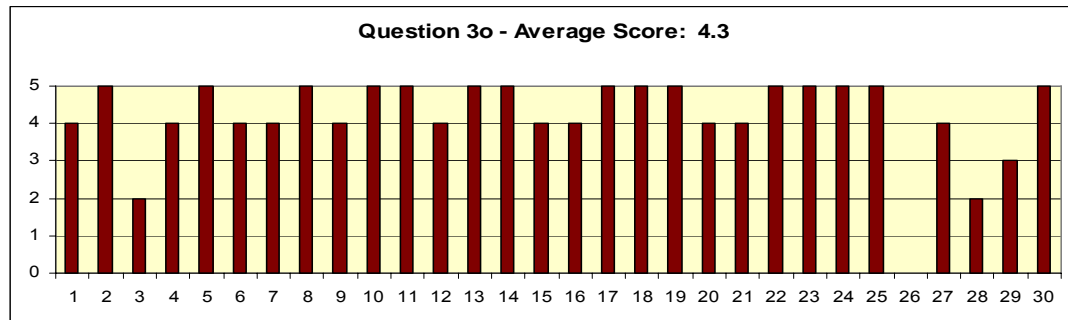
Resources may not always allow for this but if available it is useful.

#### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 0 disagreed and 5 were indifferent.

**30**     **Consider the outcomes of a study and ensure that these are approved according to the authority's approval process**

**Marks awarded**



**Comments received**

Again: one has no option!

We are not sure that most of the Authorities have clear processes (or any process at all) for outcome approval, because as far as we know, the "project" conception hasn't been disseminated enough amongst Authorities, especially the new ones.

Could help to identify further actions.

Not sure what this means: perhaps too obvious – hard to imagine a study without approval processes.

Authority's approval process must be transparent at all times.

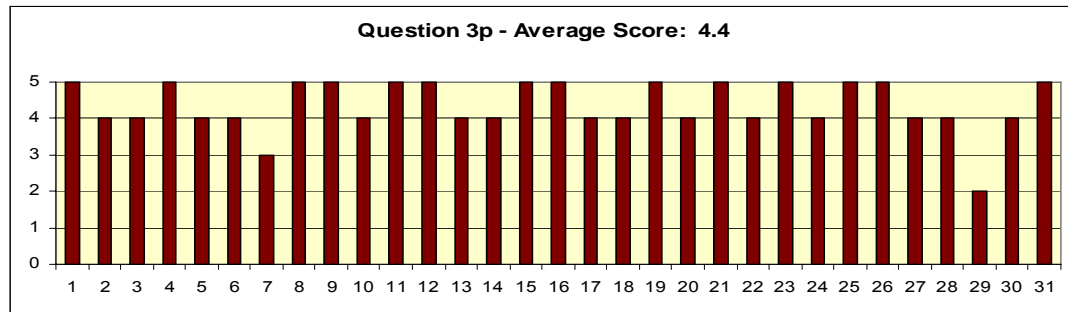
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 23 agreed, 4 disagreed and 4 were indifferent.



**3p**     **Ensure that the documentary outputs of a market study are in a format that reflects their purpose and the needs of the target audience**

**Marks awarded**



**Comments received**

More important than the format is the content of the document.

Related costs have also to be contemplated.

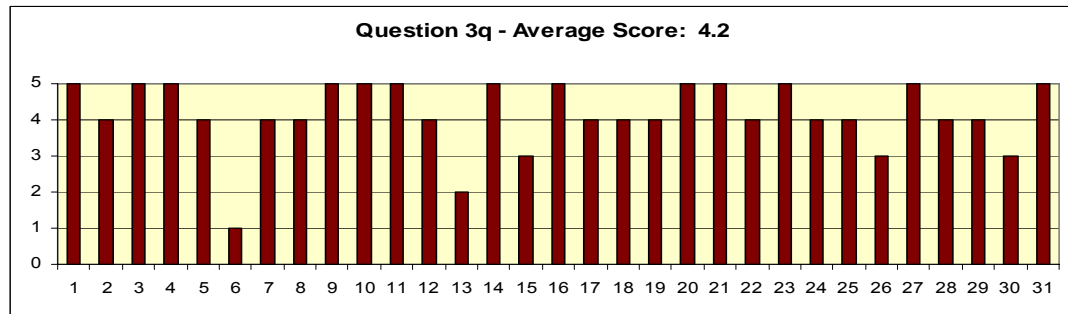
Important that the findings are well articulated and correctly understood.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 4 disagreed and 1 were indifferent.

**3q Before a market study is completed, consider whether to release findings, and if so t plan for their release**

**Marks awarded**



**Comments received**

Before publishing the market study report it is useful to obtain feedback from the stakeholders.

It is important to always release findings, but also to discuss the manner in which they will be released to achieve the desired impact with the target audiences.

It is necessary to validate findings with stakeholders before releasing them.

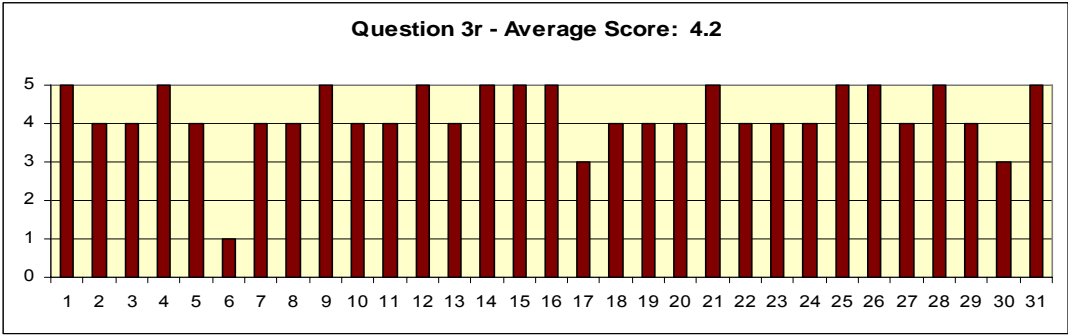
We do it for transparency purposes and also consider this as an important aspect of advocacy as it engages the media and also the public in general.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 3 disagreed and 3 were indifferent.

**3r     Have a plan for closing a market study that addresses outstanding issues such as any further follow-up work and capturing institutional learning**

**Marks awarded**



**Comments received**

This enables us to embark on an investigation if the study shows that some enforcement actions are needed in that specific market.

Enforcement in terms of remedies and penalties are only possible when there has been an investigation and not a market study.

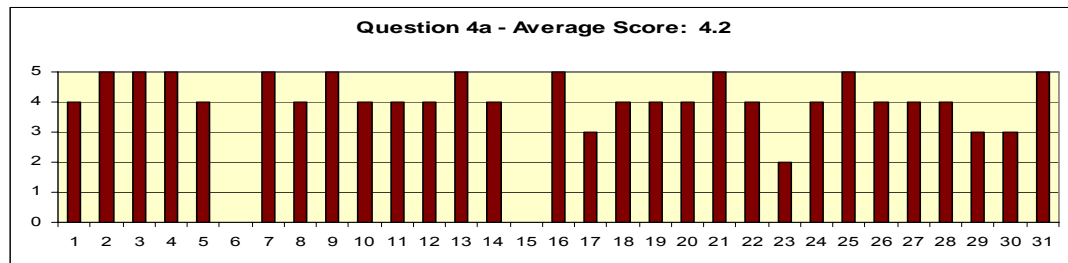
Very important to show that all issues will be considered in due course.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 28 agreed, 1 disagreed and 2 were indifferent.

**4a Explain the benefits that may result from stakeholder participation in market studies, both generally, and in relation to specific market studies**

**Marks awarded**



**Comments received**

Despite the fact that there is no clear consensus on this point in our Authority, we still believe that stakeholder engagement is relevant, but following in our own experience the feasibility of its implementation would be sensitive to the Authorities' opinion, especially in new Authorities or Authorities where role separation between advocacy efforts and enforcement efforts are not totally profiled.

It is important to communicate with stakeholders before the market study is conducted as it helps to promote stakeholders engagement in market studies.

It would be useful if this good practice refers to the explanation of the purpose of the study to the stakeholders for requesting co-operation.

Opportunity to engage in voluntary compliance.

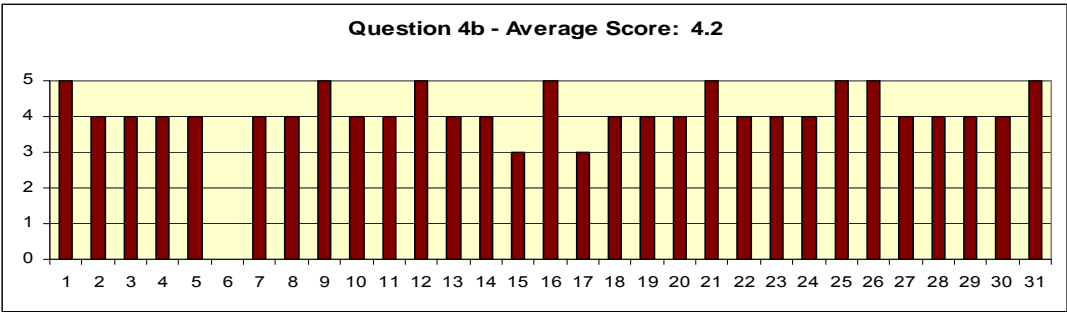
May face resistance in carrying out the study if stakeholders misunderstand the purpose of the study.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 2 disagreed and 5 were indifferent.

**4b     Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them**

**Marks awarded**



**Comments received**

We impose penalties on persons who fail to submit requested information.  
Nevertheless any efforts in activities designed to encourage stakeholders to provide information voluntarily is useful.

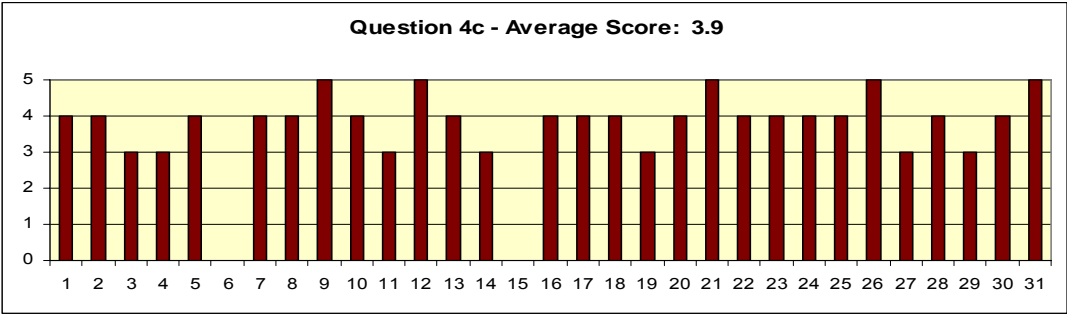
During the market study it is important to update the strategy

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

4c **Review and update the stakeholder engagement strategy as necessary during the study**

**Marks awarded**



**Comments received**

This Authority has formal legal power to require additional information from stakeholders at any stage of the market study backed up with penalties for non-compliance.

Too much detail.

The practice is useful if it includes the timing of interviews, etc. in the stakeholder engagement strategy.

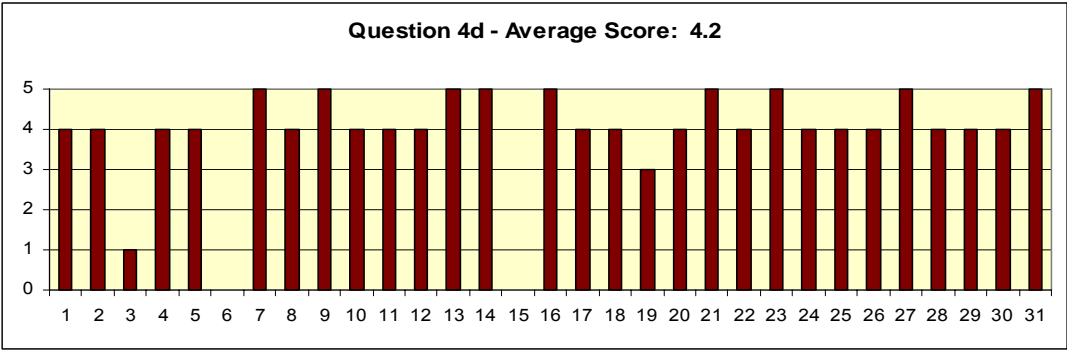
Important especially if stakeholders have not responded well.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 20 agreed, 3 disagreed and 8 were indifferent.

**4d      Communicate to stakeholders what market study outputs will be published**

**Marks awarded**



**Comments received**

Final findings and conclusions of the market study are entirely and only made by the Authority.

In due time only...

We think the practice is useful when you need to verify the report contents with stakeholders.

Depends on the market study.

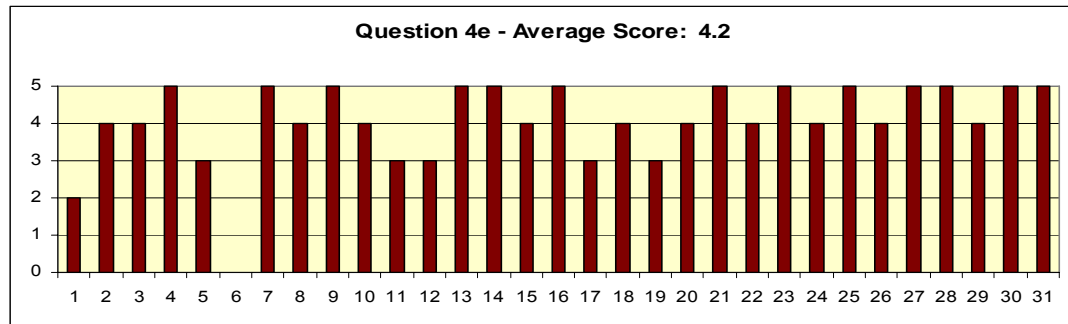
Provides stakeholders with confidence that information will be kept confidential.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 23 agreed, 5 disagreed and 3 were indifferent.

- 4e **Communication to stakeholders basic information about a study, such as the reasons for the study, its proposed scope, and the types of possible outcomes. Authorities can also consider making key milestones of and/or indicative timeframes for studies**

**Marks awarded**



### **Comments received**

It is appropriate only in certain cases. In other cases, when the market study is expected to lead to the discovery of evidence of infringement communicating the details of the study should be avoided.

Increase transparency.

Depends on market study, useful if there are significant problems identified already at the starting stage.

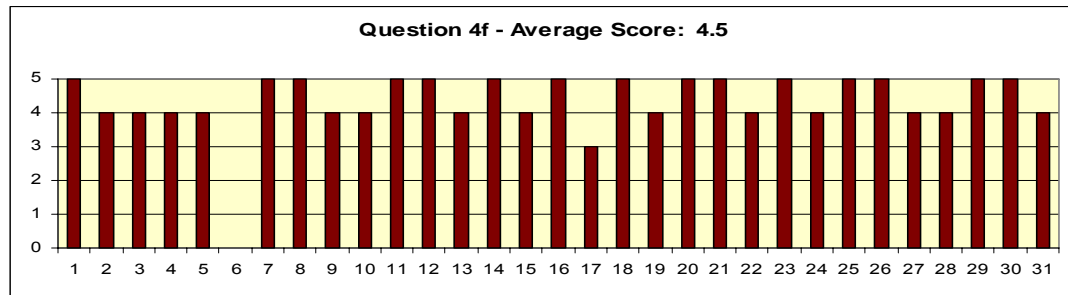
### **Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 22 agreed, 4 disagreed and 5 were indifferent.



#### 4f Seek input on a market study from stakeholders

##### Marks awarded



##### Comments received

Assistance from stakeholders always increases effectiveness of the study.

As an Authority, we don't follow this good practice. Our relationship with the stakeholders for market studies is not clear, because our powers don't include that stakeholders must give us information for something different than enforcement activities (investigations), so if we would like to use their information then they have to provide it voluntarily. It is believed by some that asking for information could be interpreted wrongly as a way for our Authority to desist from future enforcement activities. It is crucial in cases when the Authority needs co-operation with stakeholders to collect the information.

It is important to procure that such inputs will not bias the outcome of the market study.

It is better to explain the input from stakeholders more specifically. If the practice means to ask for co-operation in completing questionnaires and interviews, it would be useful.

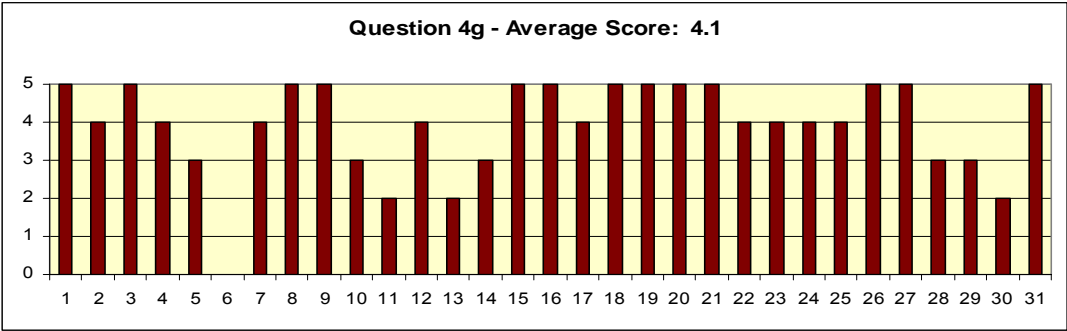
This facilitates the work of the Commission.

##### **Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 28 agreed, 1 disagreed and 2 were indifferent.

**4g     Try to minimise burdens on stakeholders when making information requests**

**Marks awarded**



**Comments received**

Asking inappropriate questions and the request of redundancy may in some cases defeat the collection of information.

It would depend on the specific market and data needed.

It helps to maintain a fruitful relationship with the stakeholders.

It is essentially the duty of the Authority.

As this would trespass on their day to day work, stakeholders may not be willing to collaborate if it becomes a burden on them.

Burden needs to be balanced against need for information, not minimised.

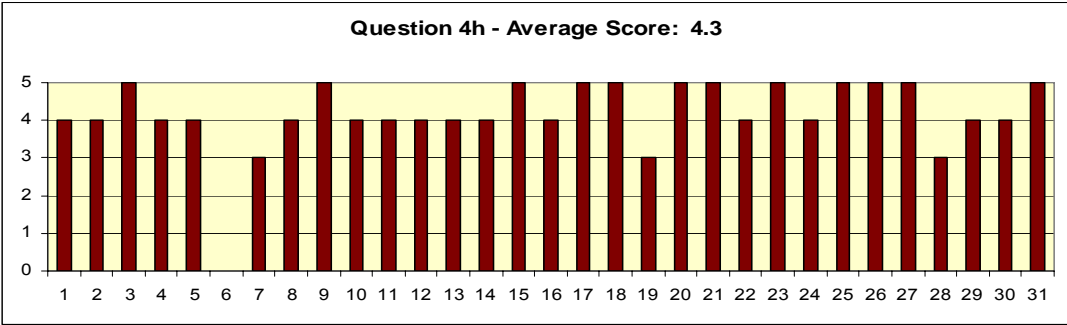
Better success obtaining responses if the information requests are reasonable.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 21 agreed, 5 disagreed and 5 were indifferent.

**4h     Take stakeholder information and views into account to inform the market study**

**Marks awarded**



**Comments received**

Any information and views received from stakeholders must be taken into account and should be discussed. In cases where the Authority does not accept their views it is required to substantiate such an opinion.

We found it more useful to allow stakeholders to comment on the draft of the report on market study.

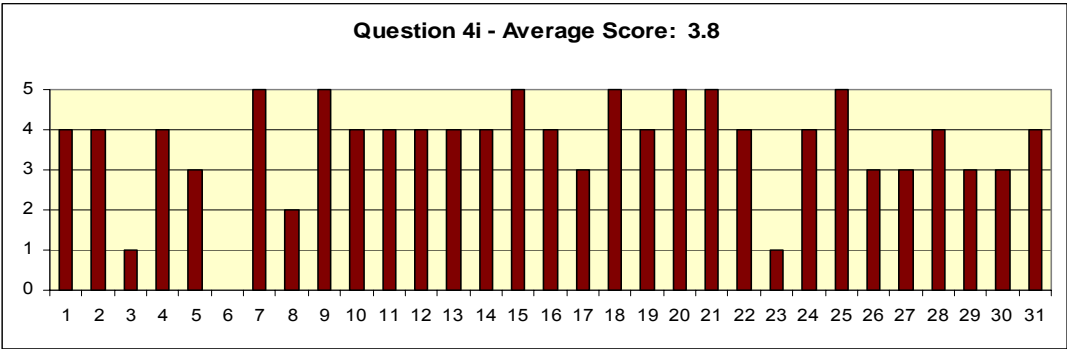
This gives a fair and balanced finding.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 3 disagreed and 3 were indifferent.

**4i      Engage stakeholders in developing market study outcomes**

**Marks awarded**



**Comments received**

Final findings and outcome are entirely and only made by the Authority.

It all depends on the level of preparedness of stakeholders to co-operate and to be engaged.

When the results are unfavourable to stakeholders, there are cases when it is inappropriate to engage them in the process.

Especially when some improvements in the situation analysed are necessary.

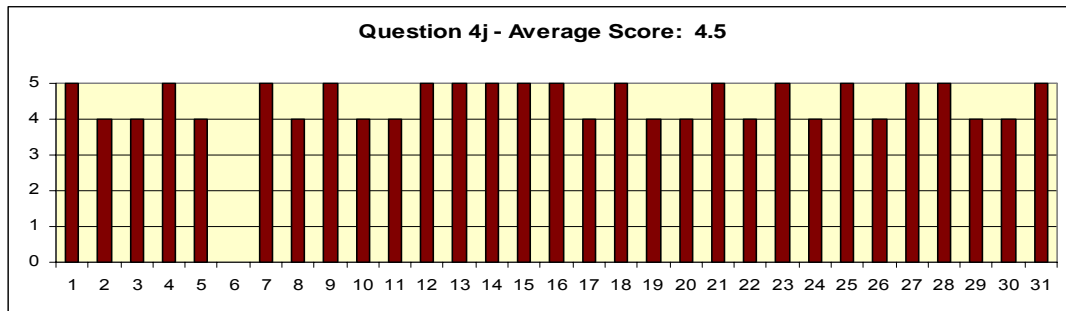
This contributes towards a non-contested agreement on the outcomes.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 21 agreed, 2 disagreed and 8 were indifferent.

#### 4j Engage with policy makers

##### Marks awarded



##### Comments received

We would like to do this, but it is not just up to us because it is also a decision of the policy makers.

However, this is one of the goals of competition advocacy, from our perspective.

It is useful to reflect outcomes of the market study in policy planning.

Policy and regulatory changes will become possible.

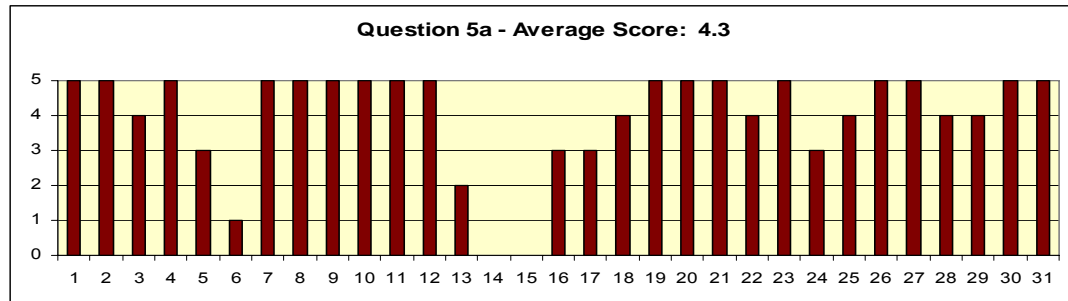
Very important for advocacy purposes.

##### Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

**5a When authorities can be required to conduct market studies by government and legislators, wherever possible engage in dialogue prior to any requirement being imposed**

**Marks awarded**



**Comments received**

It would help in clarifying the precise scope of the market study. The preliminary discussion will help to distinguish in advance the pure competition problems in the particular sector from those which have a different character.  
There has never been a situation like this in our practice.

In order to avoid populist requirements.

The law does not provide for government or legislators to require us to conduct a market study. This Authority is empowered to do so on its own volition or on the basis of a complaint in certain sectors. This does not mean that the government cannot refer a matter to us - but they cannot compel us to carry out the said enquiry.

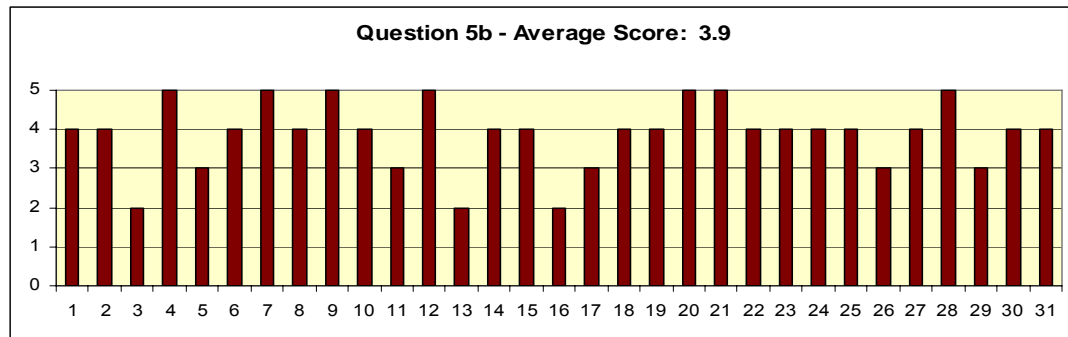
Helps Authority to plan its activities.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 23 agreed, 2 disagreed and 6 were indifferent.

**5b When authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of third parties**

**Marks awarded**



**Comments received**

Before deciding to launch a market study the Authority is free to collect information from all sources it deems appropriate. However, the final assessment should be independent and discretionary not under pressure (of course when the Authority is competent to initiate market studies). Political or business pressure from interested groups is not a good reason to initiate a market study.

The Authorities should retain their discretion to choose markets for their studies.

It is useful to communicate especially with consumer associations, business associations, chambers, media and other experts.

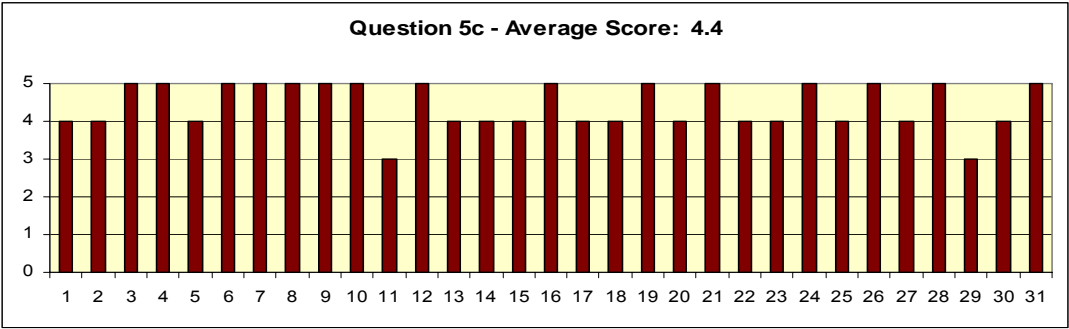
This is presently our case and therefore this is very useful.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 22 agreed, 1 disagreed and 8 were indifferent.

**5c      When authorities have discretion to make their own selection of markets to study, consider issues for study from a wide range of internal sources**

**Marks awarded**



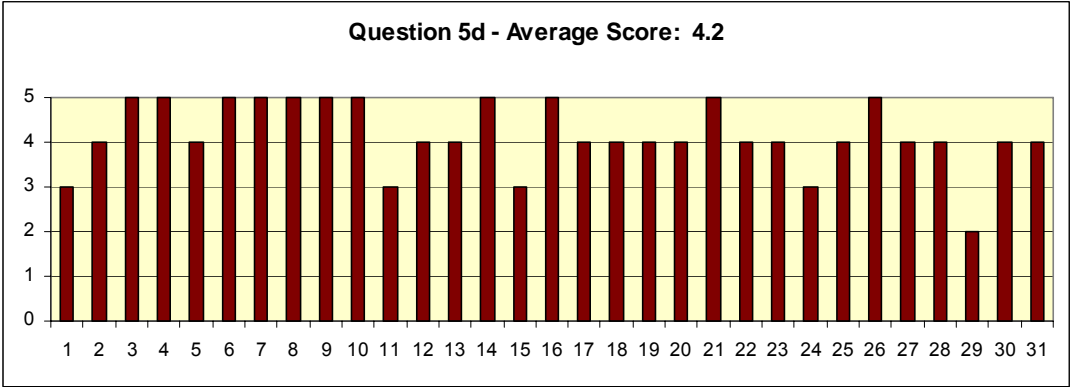
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 2 disagreed and 5 were indifferent.



**5d      When authorities have discretion to make their own selection of markets to study, consider ways to collect issues for market study**

**Marks awarded**

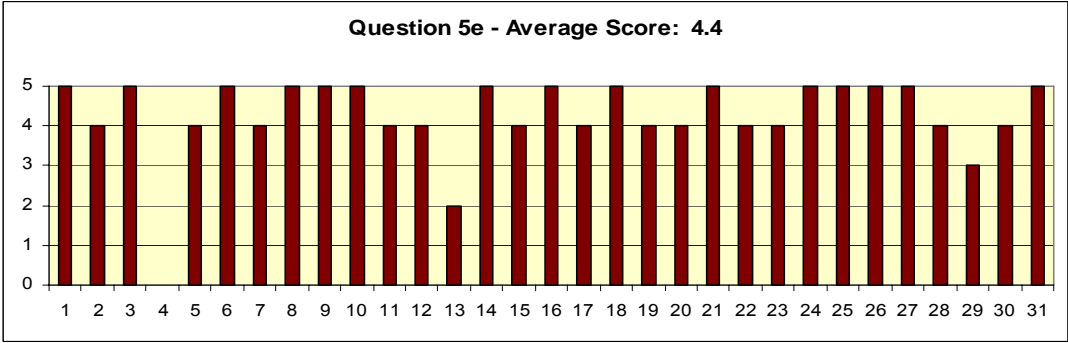


**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 21 agreed, 3 disagreed and 7 were indifferent.

**5e     When authorities have discretion to make their own selection of markets to study, carefully weigh different issues that could be studies and only select those issues that best meet their objectives**

**Marks awarded**



**Comments received**

We have drafted a 'prioritisation rule' for consultation and investigation and will apply this to market studies with the necessary modifications and adaptations.

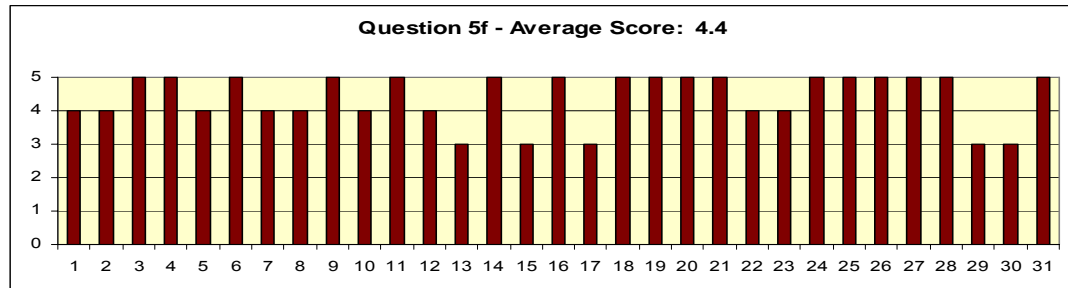
Linked to an Authority's prioritisation criteria.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 2 disagreed and 3 were indifferent.

**5f** **When authorities have discretion to make their own selection of markets to study, consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study**

**Marks awarded**



**Comments received**

It is not easy to develop a set of prioritisation principles.

We have drafted a 'prioritisation rule' for consultation and investigation and will apply this to market studies with the necessary modifications and adaptations.

Useful to link this to the Authority's overall prioritisation criteria.

Some sectors are particularly important for overall economic activity.

Studies on these sectors will allow an improved functioning of the economy.

Transparency.

Studies on these sectors will allow an improved functioning of the economy.

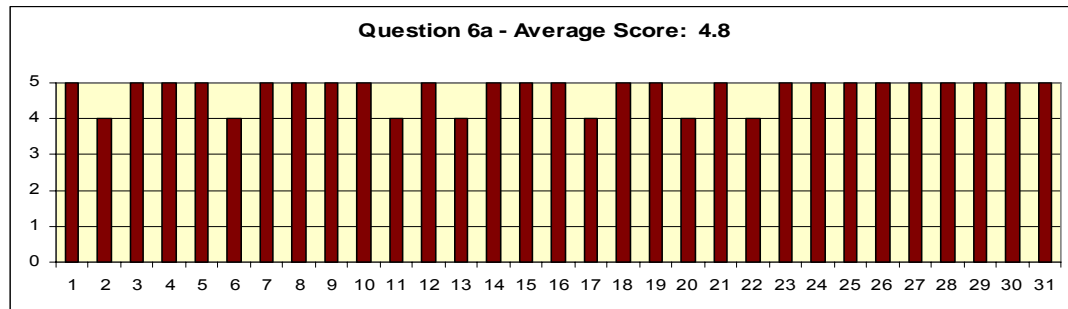
Transparency.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 23 agreed, 1 disagreed and 7 were indifferent.

- 6a **Before seeking any information, for the market study team to prepare by: (a) considering what information they need for the purposes of the market study; (b) consulting with any authority specialists; (c) considering the time that will be required for information collection and analysis. It is good practice for authorities to make use of any publicly available information**

**Marks awarded**



**Comments received**

Could increase efficiency of the work.

This is presently being done.

Useful to focus the information gathering process and to avoid too many follow-up information requests.

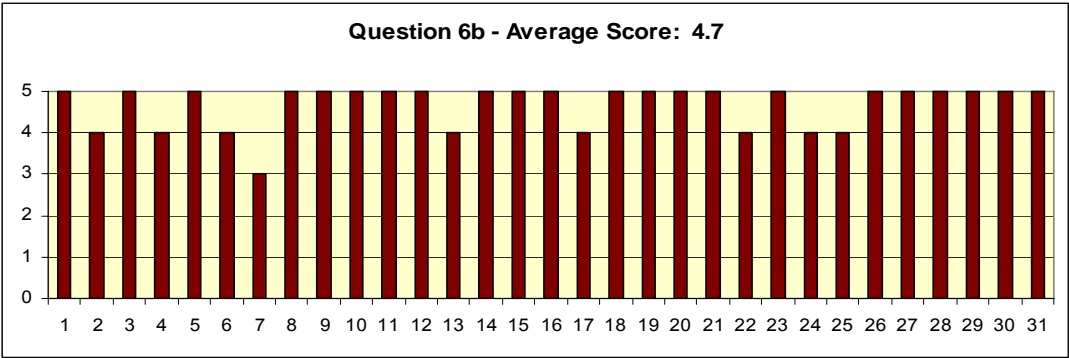
Reduce unwanted data, reduce cost of collecting information both for the Authority and providers of the information.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 30 agreed, 1 disagreed and 0 were indifferent.

**6b     Make use of any publicly available information**

**Marks awarded**



**Comments received**

Is it not pretty obvious?

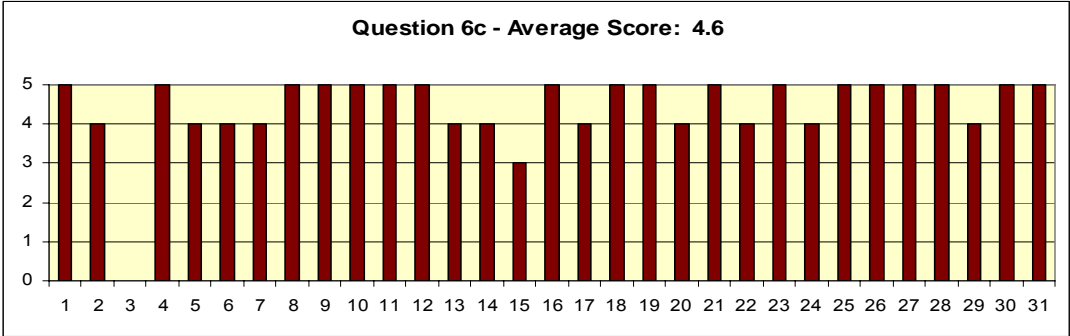
Important to reduce cost of doing business.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 1 disagreed and 1 were indifferent.

**6c     Consider carefully how to conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive**

**Marks awarded**



**Comments received**

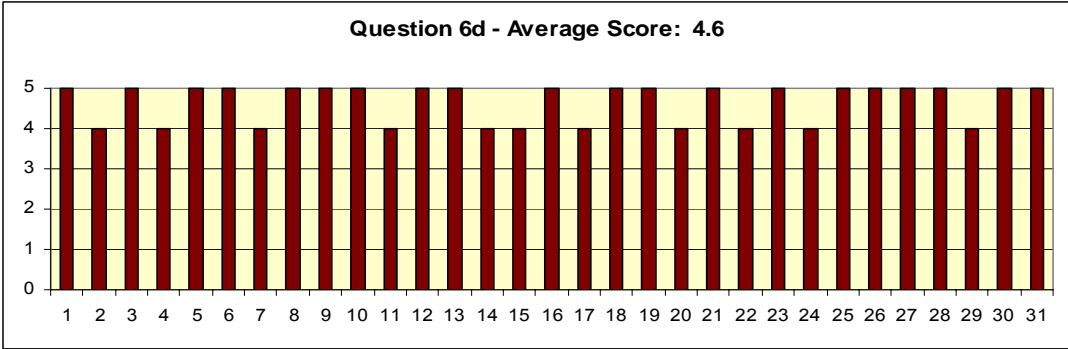
- Sometimes it is difficult to identify the value of information.
- It is difficult to predict. During the market study, alternative routes may be evaluated.
- Authority has to be accountable in spending taxpayers' funds.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 1 disagreed and 1 were indifferent.

**6d**     **Consider carefully the sources of information for the market study, including from which stakeholders information need to be sought, taking into account the wide range of potential sources, and the potential merits of each**

**Marks awarded**



**Comments received**

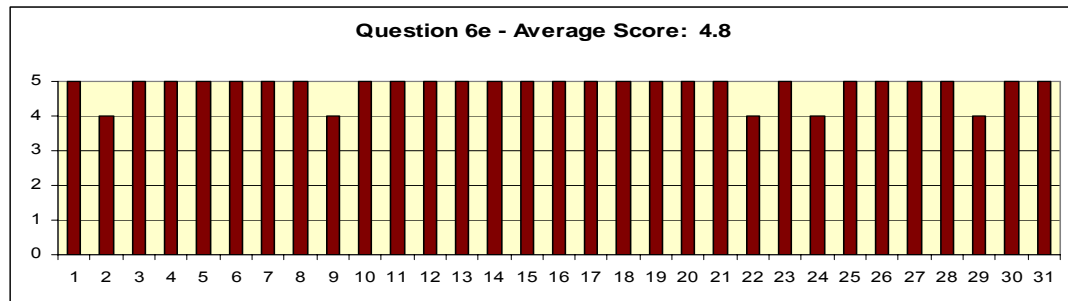
It may be useful to seek efficient use of information from alternative sources.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 30 agreed, 0 disagreed and 1 were indifferent.

**6e When making an information request for a market study, make clear, as applicable what information is being sought, how it should be submitted, timescales for submission, consequences of not supplying it, and a contact point for questions**

**Marks awarded**



**Comments received**

It can help to gain relevant information in a good format and in the required time.

About the consequences it might be more appropriate to make them specifically clear if the stakeholder has not complied with the timeframe to provide the information.

The law does not empower us to compel information when doing a market study therefore this is very useful in terms of explaining to people the missed opportunity to inform the study.

Crucial to focus the study, meeting deadlines etc.

Very important because information is stored in different formats and information must be provided in the set timeframe.

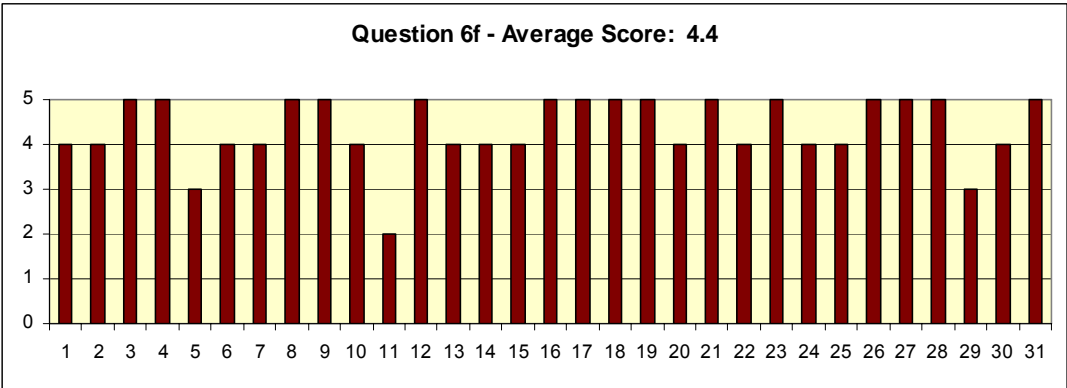
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 30 agreed, 1 disagreed and 0 were indifferent.



**6f      When seeking information explain how the information might be used**

**Marks awarded**



**Comments received**

It is good practice to explain the purpose of the information requested.

Explaining the use of the information may motivate the stakeholder to assist the Authority even further than originally asked.

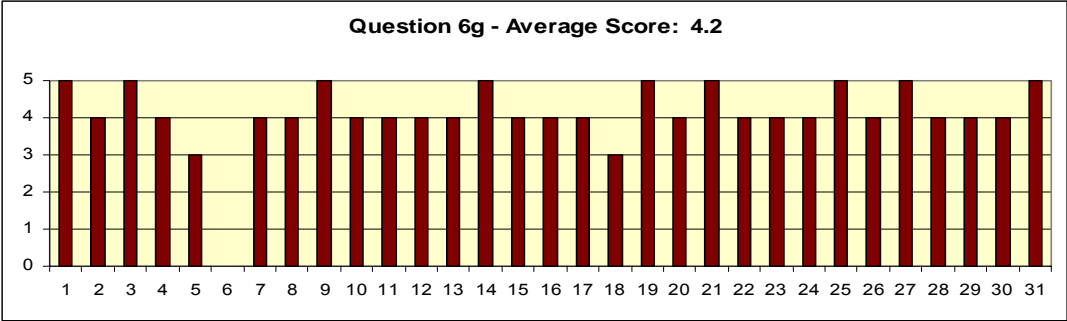
There is a requirement under the law to keep business sensitive information confidential and therefore explaining this gives the necessary comfort to whoever giving that information to the Authority.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 3 disagreed and 4 were indifferent.

**6g**     **With a view to minimising burdens, consider consulting informally with stakeholders on the scope and range of information requests, the proposed timeframes for responding and the format in which information is to be supplied**

**Marks awarded**



**Comments received**

It is good practice which helps to maintain constructive relationship with stakeholders.

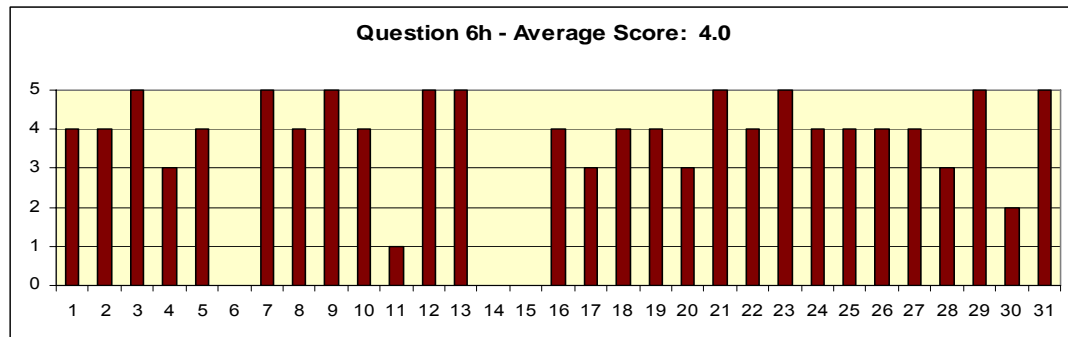
Helps to break the ice and makes it easier to get information.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 2 disagreed and 5 were indifferent.

**6h** **Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first**

**Marks awarded**



**Comments received**

It builds co-operation with stakeholders and separates the market studies and enforcement actions.

There is no possibility to request information by our Authority on a voluntary basis.

Voluntary co-operation may assist in addition to information given under obligation.

We do not have such powers.

We do not have such powers.

Sometimes voluntarily submitted information is seen as less credible.

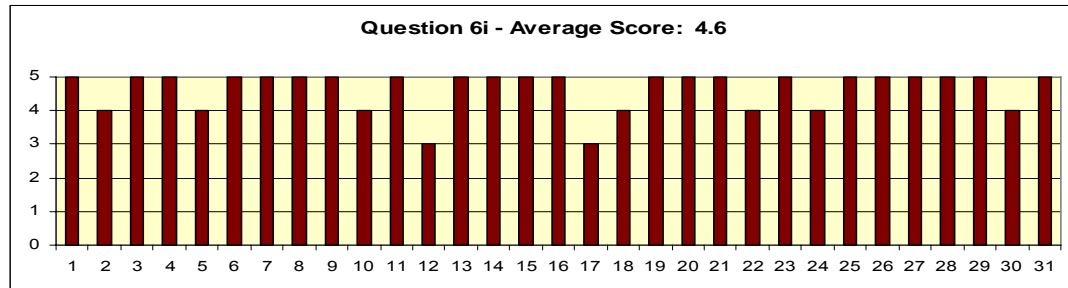
This can be an ice breaker and also increase confidence of stakeholders that the Authority means well (is acting in good faith).

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 21 agreed, 3 disagreed and 7 were indifferent.

**6i** **If authorities run a market study in parallel with an enforcement investigation in the same market, consider carefully any interaction or duplication between the gathering and use of information in the different contexts**

**Marks awarded**



**Comments received**

We would wait for the results before deciding to commit our own scarce resources.  
It avoids duplications.

We normally co-ordinate with other divisions in advance so as not to run a market study in parallel with an enforcement investigation.

Extremely useful as presently we are conducting both an investigation in view of enforcement action and a market study in the cement industry.

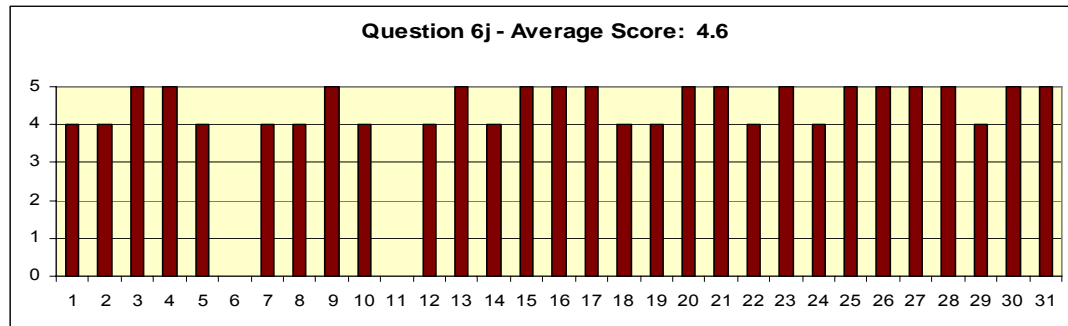
It can easily be misunderstood to be harassment.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 2 disagreed and 2 were indifferent.

- 6j **Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, study findings should be supported by empirical data where possible**

**Marks awarded**



**Comments received**

All categories of data are useful.

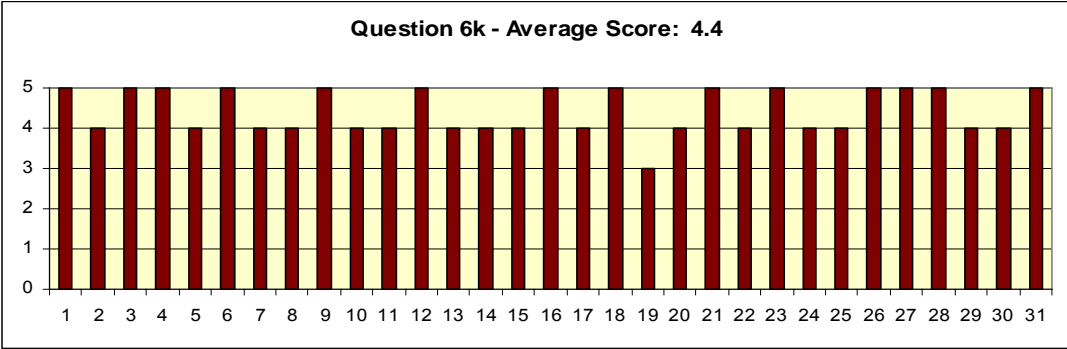
It is useful to support study findings by verifiable evidence such as empirical data.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 1 disagreed and 1 were indifferent.

**6k**     **There are a range of methodologies for collecting information for market studies – select among them, using more than one methodology where appropriate, and consider the benefits and disadvantage, and the cost of each**

**Marks awarded**



**Comments received**

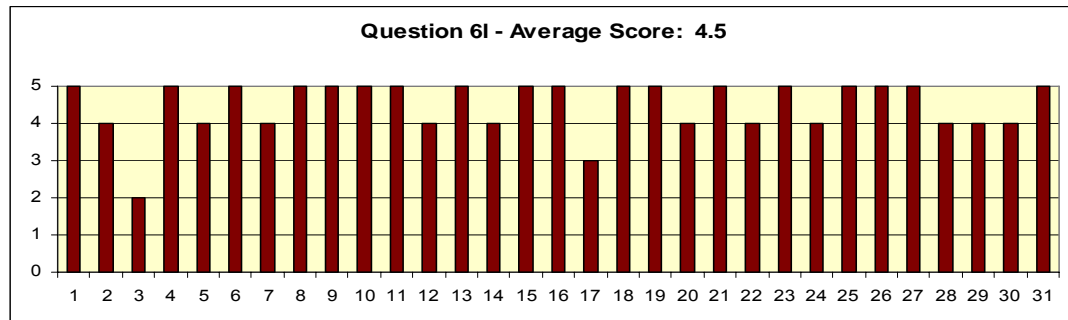
Important to be flexible when collecting information.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 28 agreed, 1 disagreed and 2 were indifferent.

**61**     **Where a third party is going to be used to carry out external research, consider the role and responsibilities of the third party**

**Marks awarded**



**Comments received**

When the market study is carried out it must be kept in-house. If the study is complex and includes some specific issues we may use specialised external expertise but only in relation to these issues.

The overall analysis and conclusion would be drawn by the Authority.

It avoids duplication.

We do not use third parties.

This should take place as a matter of course.

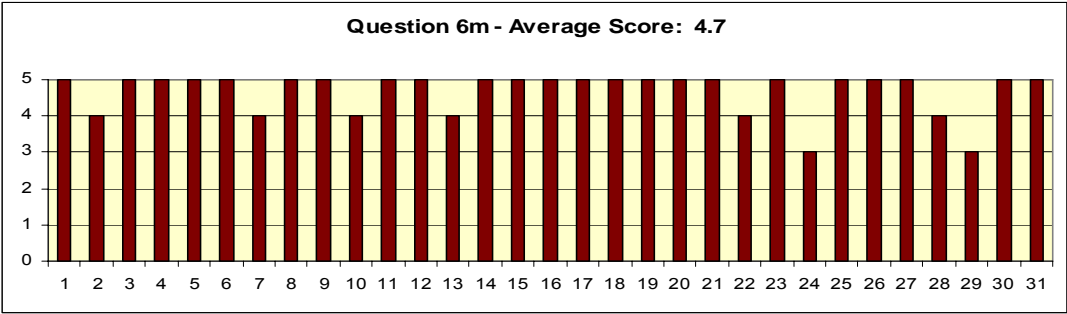
Third parties may over-extend their 'powers' while representing the Authority.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 1 disagreed and 3 were indifferent.

**6m**     **Consider how to manage information gathered, including the receipt, review and organisation of information and logging of any confidentiality requirements**

**Marks awarded**



**Comments received**

In our case, this is a mandatory requirement (by our Transparency Law).

Since protection of business sensitive information is a statutory requirement for this Authority.

This helps avoid litigation for disclosure of confidential information - helps also to logically process information.

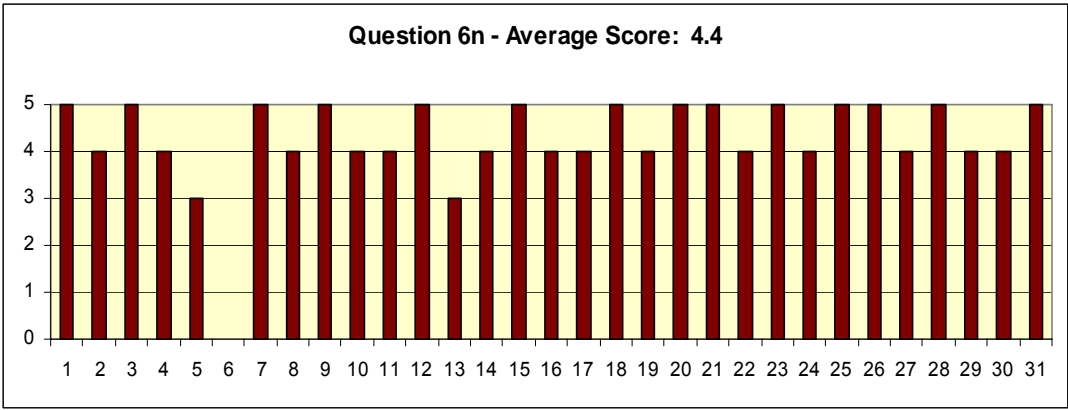
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 0 disagreed and 2 were indifferent.



**6n     Use stakeholder comments and insights to inform the market study analysis**

**Marks awarded**



**Comments received**

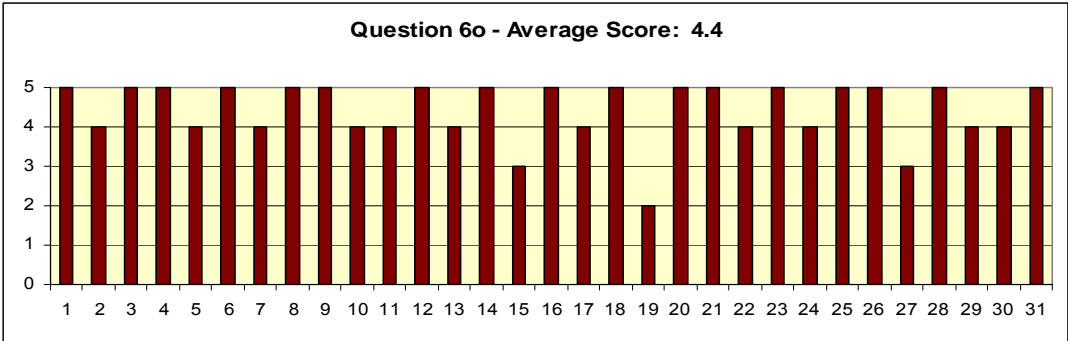
Stakeholders are experts in the market and do provide useful insight of the market.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 1 disagreed and 5 were indifferent.

**60     When analysing information received, consider how it fits with the understanding of the market**

**Marks awarded**



**Comments received**

Usually, understanding of the market is based on information received.

Self-evidently.

This allows us to distinguish between disseminating directly relevant information and non-relevant information.

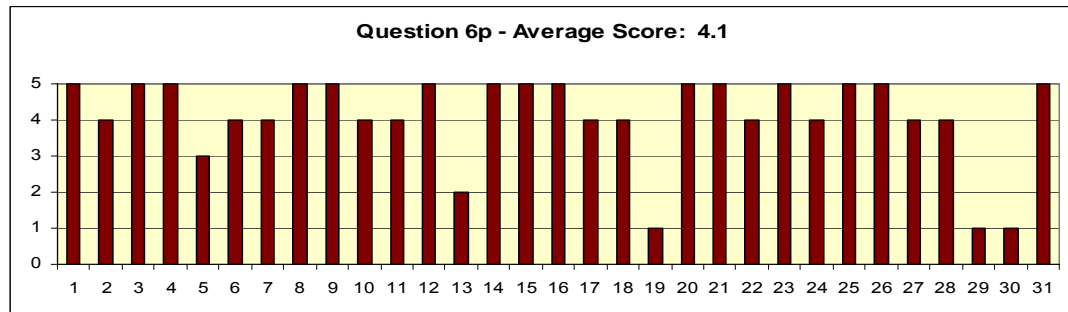
Different markets have different dynamics and it's important to recognise these.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

**6p** **Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory**

**Marks awarded**



**Comments received**

This practice is particularly important and it should be developed very carefully. In some cases it is difficult to assess whether the Authority should defend its hypothesis (for example where the information submitted is inaccurate or the standpoints of the stakeholders are unbiased or one-sided) and when it should accept it was wrong and therefore modify its preliminary hypothesis or theory.

This will avoid later unnecessary work.

The hypothesis should not necessarily be modified, the report should say the data contradicted it.

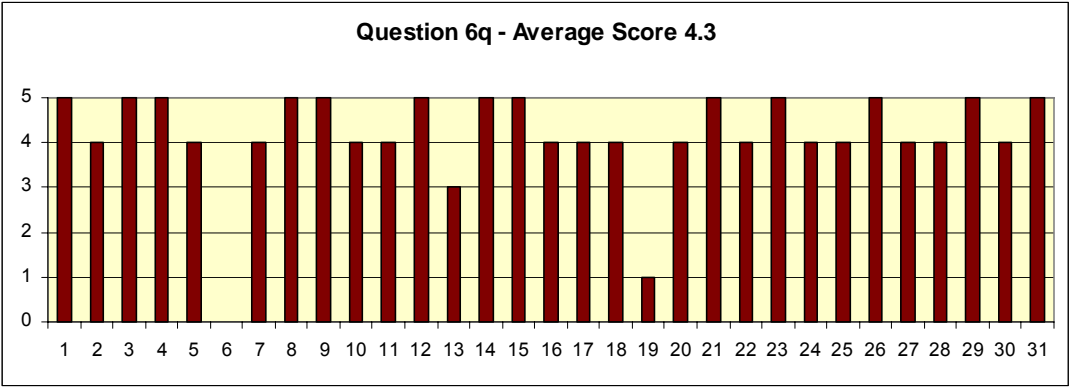
This ensures the study remains relevant. It shows that the Authority had the wrong perception of the market but still issues of concern may be there.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 5 disagreed and 2 were indifferent.

6q Keep in mind that stakeholders' information may not present a complete or unbiased view, but consider the information and its appropriate context nevertheless

Marks awarded



Comments received

Self-evident.

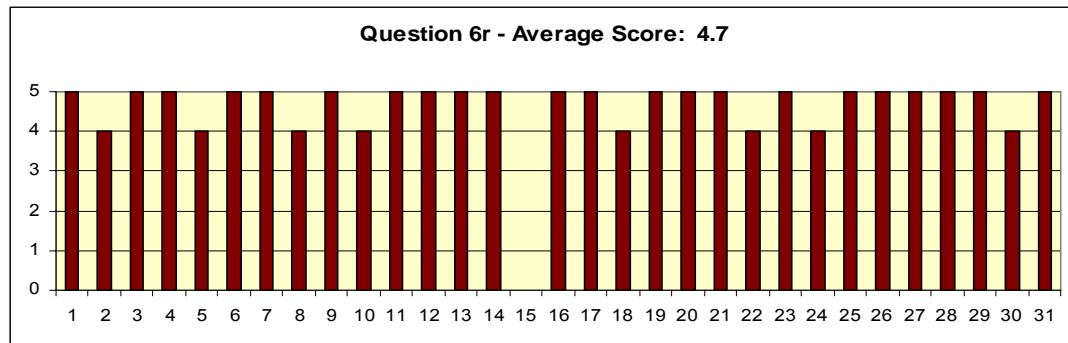
Stakeholders will champion their cause: be mindful of this.

Should this good practice be included in the final handbook?

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 24 agreed, 1 disagreed and 6 were indifferent.

**6r**     **Cite safeguards for sensitive or confidential information when requesting information for a market study**

**Marks awarded**



**Comments received**

In our case, this is a mandatory requirement (by our Transparency Law).

The issue is regulated by law.

Because this is a statutory obligation not to disclose sensitive or confidential information.

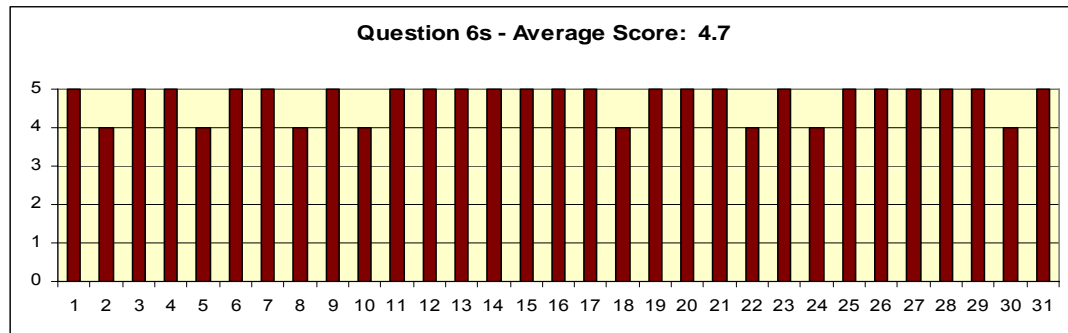
Assures the stakeholders that the Authority is responsible and can be held accountable.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 2 disagreed and 2 were indifferent.

**6s**     **Ensure that appropriate internal procedures are in place to safeguard the confidentiality of information once it is received**

**Marks awarded**



**Comments received**

This is a critical issue.

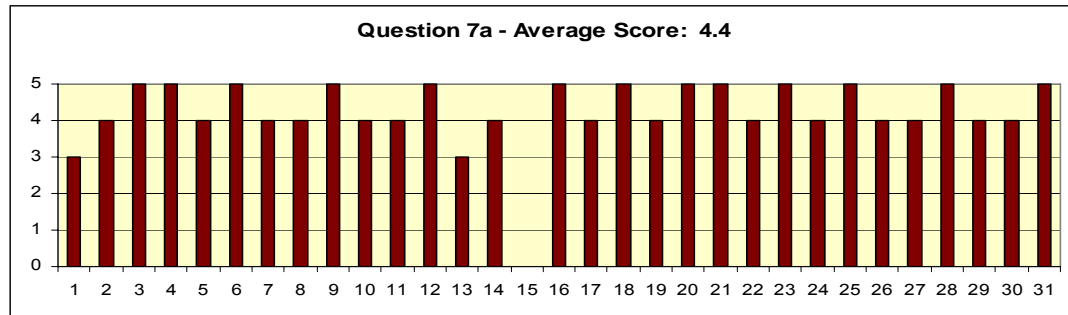
Because this is a statutory obligation not to disclose sensitive or confidential information.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 3 disagreed and 1 were indifferent.

**7a Develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes**

**Marks awarded**



**Comments received**

One should consider any outcomes whether or not in the context of the purpose but always in the context of the findings.

We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

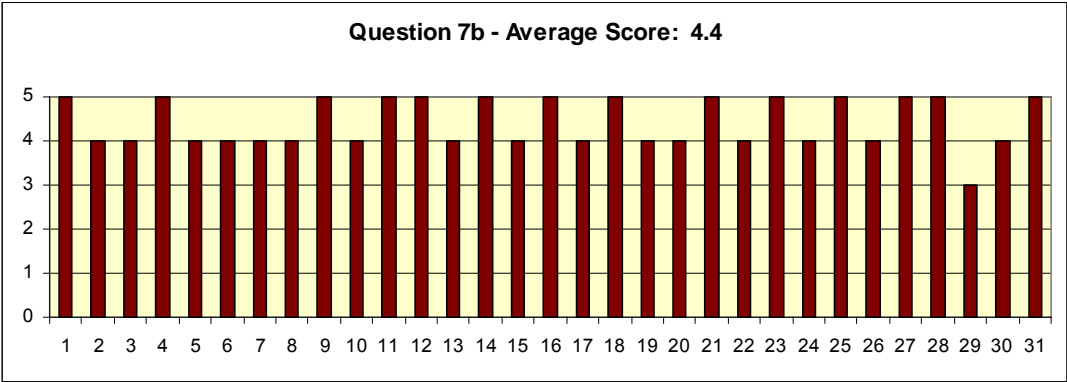
Important for advocacy and for stakeholder participation.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 0 disagreed and 5 were indifferent.

**7b     When developing market study outcomes, keep options under review, and test support for any recommendations and actions**

**Marks awarded**



**Comments received**

We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

Important for advocacy and for stakeholder participation.

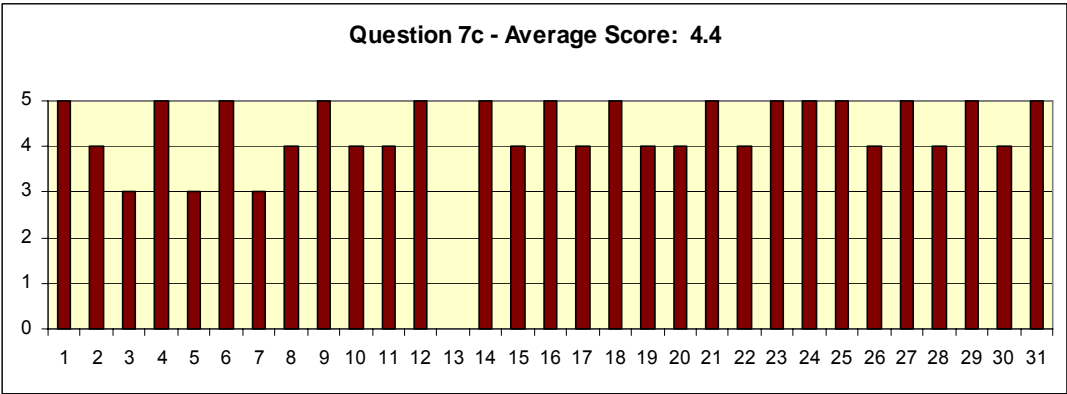
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 29 agreed, 0 disagreed and 2 were indifferent.



**7c Assess the costs and benefits of proposed market study outcomes**

**Marks awarded**



**Comments received**

It depends on whether the Authority's market studies are focused only on fact finding or recommendations to remove the restriction on competition.

We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

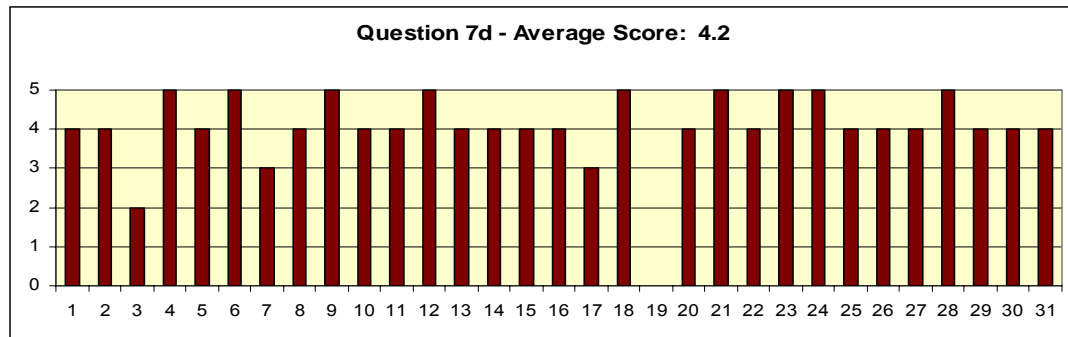
Important for advocacy and for stakeholder participation.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 0 disagreed and 5 were indifferent.

**7d Consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted**

**Marks awarded**



**Comments received**

Appropriate only in certain cases. In other cases, the recommendations envisaged by the Authority to eliminate the competition problem are likely to encounter serious resistance from market participants (stakeholders). Such reluctance, however, should not be a reason for the Authority to refuse to express its competent concerns on the matter.

It depends on the purpose of the market study, should be evaluated case by case.

This is essential good practice, but in this jurisdiction the test is made by the addressee of the recommendations.

We consider it is not easy to assess the workability and the likelihood of possible outcomes in advance.

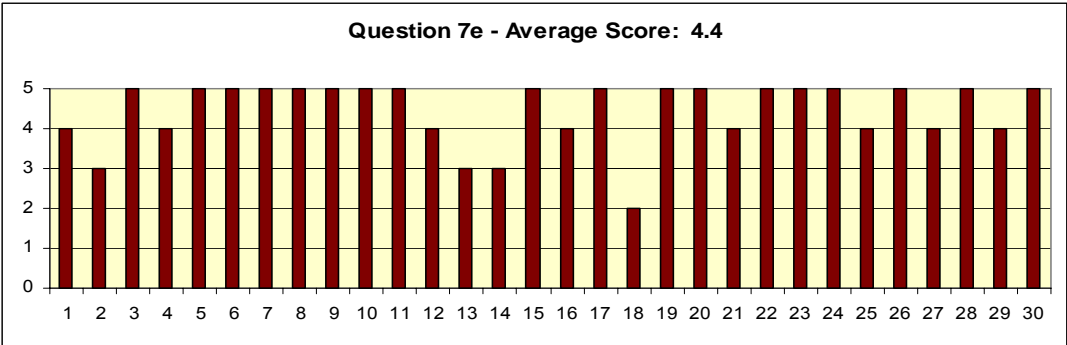
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 0 disagreed and 6 were indifferent.

**7e     Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change**

**Marks awarded**



**Comments received**

But we guess rarely feasible.

Sometimes this issue is out of the scope of the market study team and the Authorities.

Important good practice, but in the case of advocacy in our practice it is the responsibility of the addressee to plan how to use the recommendation and our possibilities are quite limited in this respect.

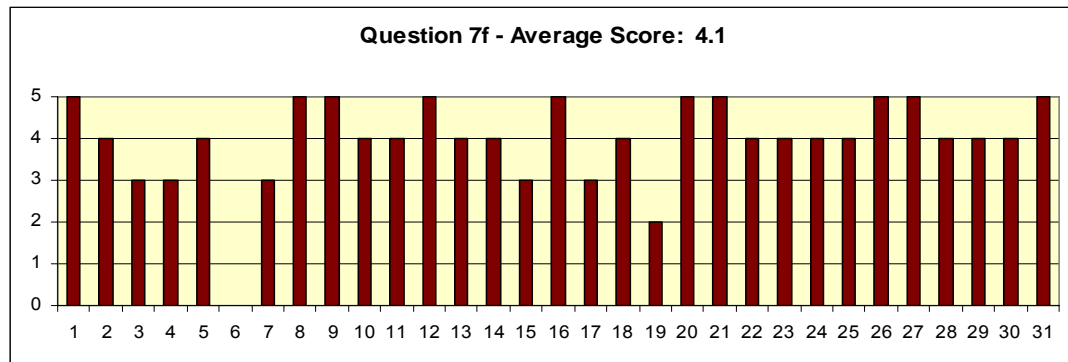
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**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 1 disagreed and 4 were indifferent.

**7f Engage early with industry where voluntary action is a desired outcome**

**Marks awarded**



**Comments received**

It helps to find the interest of the industry and may help to build co-operation.  
Not 'early', but rather in due time.

As it depends on the objectives and the contents of the study, it is not necessarily the case that we can engage industries early.

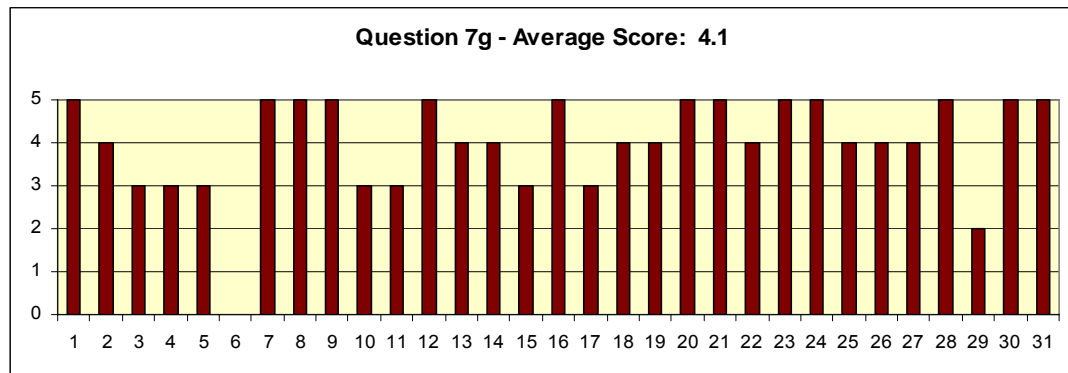
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 0 disagreed and 6 were indifferent.

**7g**     **Secure necessary internal buy-in to further work before announcing any outcomes that involve the authority itself taking action**

**Marks awarded**



**Comments received**

This should probably be left to the internal procedures of each Authority.

It is difficult to understand the situation where an Authority takes action without internal buy-in.

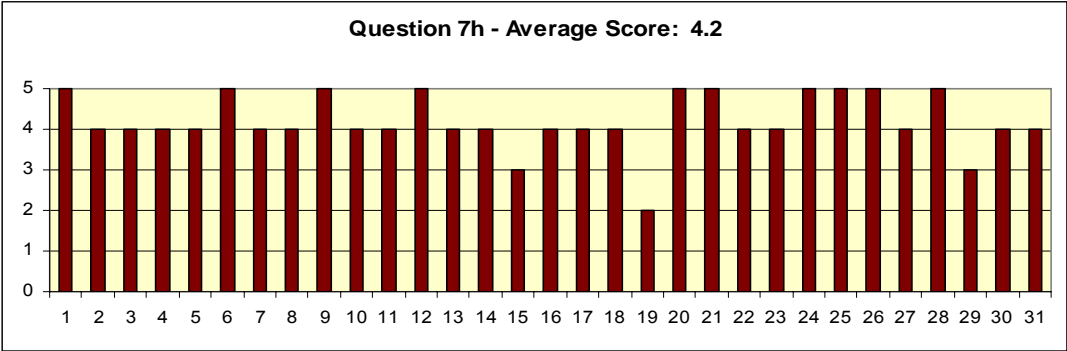
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 20 agreed, 3 disagreed and 8 were indifferent.

**7h     Where outcomes depend on third parties taking action, engage with the parties concerned throughout to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies**

**Marks awarded**



**Comments received**

But not unless one is reasonably certain that no enforcement action will be appropriate.

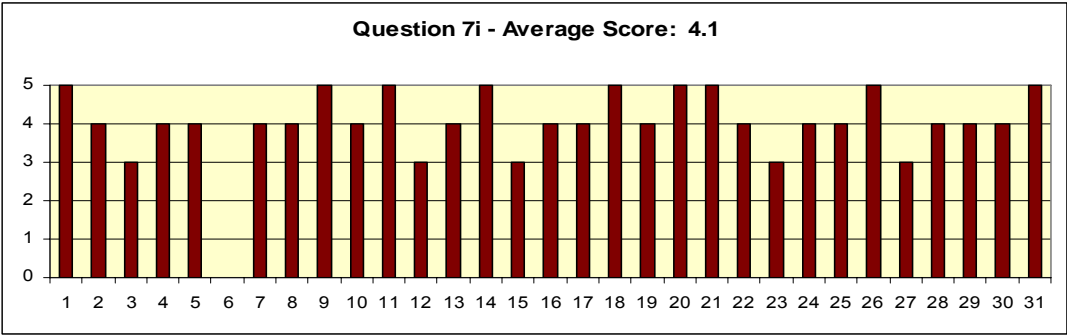
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 2 disagreed and 4 were indifferent.

**7i Include stakeholder engagement in advocacy efforts to support market study outcomes**

**Marks awarded**



**Comments received**

This practice is applicable only if stakeholders support the findings of the study.

Sometimes this decision is out of the scope of the market study team and the Authorities.

We think it is useful that related industry groups hold meetings to explain the report.

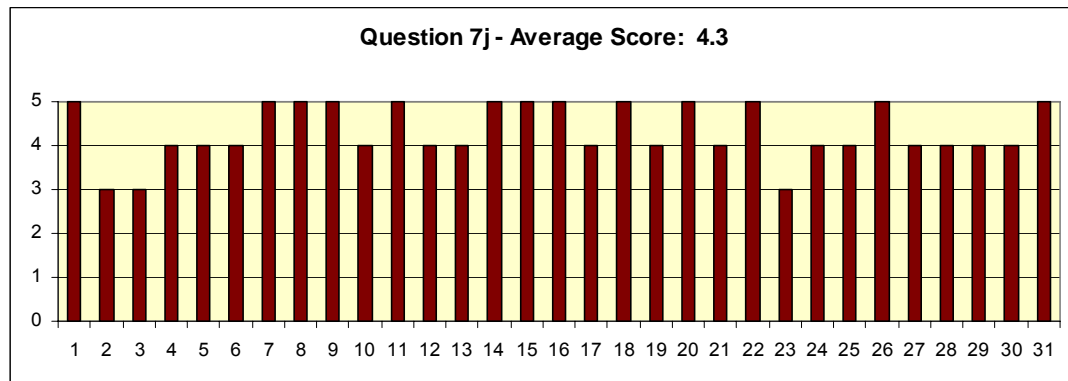
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 22 agreed, 2 disagreed and 7 were indifferent.

**7j Recognise the potential effect of media coverage on market study outcomes**

**Marks awarded**



**Comments received**

Sometimes this decision is out of the scope of the market study team and belongs to the communication unit or institutional affairs unit.

It is very useful to build communication strategy.

We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

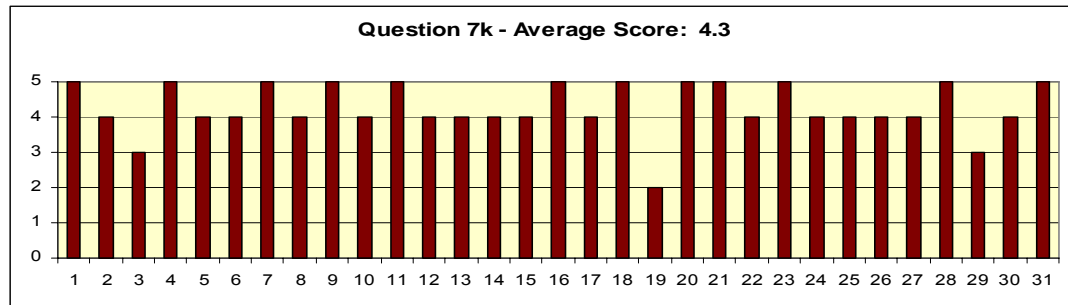
**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 25 agreed, 0 disagreed and 6 were indifferent.



**7k**     **Recognise that successful market study outcomes may take time and require well-sourced follow-up**

**Marks awarded**



**Comments received**

It is especially useful that an ICN handbook sets this out. Not everyone is familiar with competition advocacy and advocacy tools, and sometimes mainly when the Authorities are newly established, it is hard to explain to them that the final outcome of a market study advocacy effort is expected in the mid-term or long-term and that many market studies require resources for a follow-up phase.

Could help to accept recommendation made by the Authority.

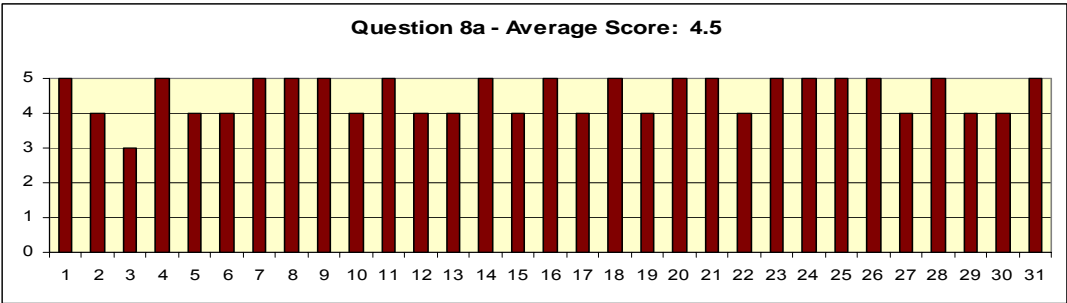
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 27 agreed, 1 disagreed and 3 were indifferent.

**8a     Consider evaluating the effectiveness of market studies**

**Marks awarded**



**Comments received**

Once you have clearly defined why you are performing a market study, and the goals you want to achieve with it, it is necessary to assess (in the short and also in the medium term) if you've got or not got the proposed aims. If you don't carry out an assessment process (ideally, an impact assessment) you are not able to know if you have got best value for money. It is a tool for accountability.

However, smaller Authorities might not have enough resources to conduct the regular evaluation for each market study.

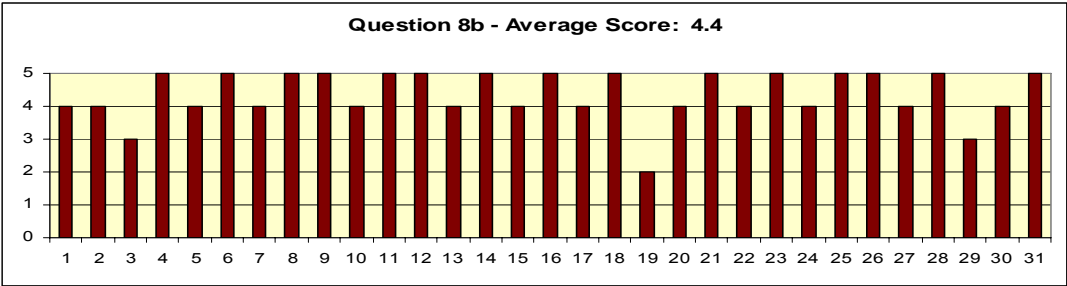
We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 26 agreed, 0 disagreed and 6 were indifferent.

**8b     When deciding how to approach evaluating market studies, take into account: (a) the purpose of the evaluation; (b) the scope of the evaluation; (c) available resources**

**Marks awarded**



**Comments received**

and any other outcome.

It is extremely useful because it is a developing area, and the Authorities (especially new Authorities) will need support that the handbook can provide on this topic (including complementary and methodological tools, as actually the draft does) to start implementing evaluation programs or initiatives. Otherwise, if the handbook just states the importance of evaluating market studies without providing the general criteria you need to take into account, it would be an incomplete tool.

We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report.

**Should this good practice be included in the final handbook?**

Authorities were asked if they agreed, disagreed or were indifferent as to whether it is important to include this good practice in the final version of the handbook:- of the 31 that responded, 22 agreed, 2 disagreed and 7 were indifferent.

## FULL LIST OF RESPONDENTS' EDITING COMMENTS

**2a Be clear about the reasons for a market study from the outset**

**Suggested revision to para 2.5 (proposed new text in italics)**

Market studies can have benefits for industry, insofar as industry players are given an opportunity to:

- inform the authority about how the market functions
- make their own suggestions as to how to improve the market
- identify outputs that could improve market functioning (where these are needed), potentially including deregulation.

*Market studies may also help the industry identify which of their practices comply with competition law and which ones raise doubts as to their compliance with competition law. This will spur voluntary compliance.*

Better functioning markets bring benefits for consumers and businesses alike.

**2b Be clear about the possible outcomes of a market study from the outset**

None

**2c Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action**

None

**2d Develop a process for carrying out and implementing market studies**

None

**2e Carefully manage the process and outcomes of market studies**

It is useful to describe more specifically the management of the process and the outcome of market studies.

**2f Solicit stakeholder engagement during market studies**

Solicit stakeholder activity during market studies.

It is better to explain more specifically what kind of stakeholder engagement is expected.

**2g Ensure, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge**

None

**2h Allow flexibility in determining the timeframe for completing market studies**

None

- 2i Develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset**

None

- 2j Determine how many studies will be conducted in any one year by reference to available resource, the studies' complexity and other commitments and priorities**

None

- 2k Consider carefully the pros and cons of conducting a study jointly with another organisation**

Not clear - is the intention that the Authority should always consider joint studies, or if they do, they should consider carefully pros and cons.

- 2l Where a joint study is undertaken be mindful of the parameters of the study and the respective roles and responsibilities of each participating organisation**

None

- 1m Modify project management processes appropriately when conducting market studies that are required by the government or legislature**

It is better to explain why and how management process should be modified when market studies are mandated by the legislature.

A bit unclear. Perhaps this should state that mandated studies may have different or special requirements and that Authorities should be attentive/responsive to them.

- 3a Establish a core market study team at the outset of a study, unless there are already dedicated resources in place, or the authority intends to contract the work out to third parties**

None

- 3b Consider conflicts of interest for market study staff**

None

**3c Establish clear roles and responsibilities for market study team members at the outset of the study**

None

**3d Hold regular team meetings to monitor and review project plans and risks and test and debate ideas and findings with colleagues**

None

**3e Early on - identify and make contact with other authority staff, provide such staff with advance notice of timings/timescales**

None

**3f Early on, identify other public bodies that may be working on the same issues**

None

**3g Ensure that the scope of a market study is focused and manageable**

We believe that this good practice should come before the best practices related to inviting people from other public services or bodies to join the work.

It would be helpful to explain why the scope should be appropriately focused and manageable.

**3h Retain flexibility for later variations in scope if possible**

None

**3i Once scope is settled, prepare a detailed plan that includes anticipated actions, responsibilities, key deliverables and milestones**

None

**3j When a market study is launched publicly, provide basic information about the scope of the study and contact points for further information**

None

**3k Keep under review the study's project plan**

Wasn't this covered in 3i?

Perhaps this idea is already covered by 3h (or could be combined).

**3l Report progress where needed or where this is required by the authority's governance processes**

None

- 3m     Actively consider and manage the risks relating to a market study**
- None
- 3n     Put in place a quality assurance process for the market study**
- It is helpful to explain specific steps of quality assurance process.
- 3o     Consider the outcomes of a study and ensure that these are approved according to the authority's approval process**
- Perhaps too obvious, hard to imagine a study issued without approval or does this go to another point? Idea of internal buy-in is covered by 7g.
- 3p     Ensure that the documentary outputs of a market study are in a format that reflects their purpose and the needs of the target audience**
- None
- 3q     Before a market study is completed, consider whether to release findings, and if so to plan for their release**
- None
- 3r     Have a plan for closing a market study that addresses outstanding issues such as any further follow-up work and capturing institutional learning**
- If there is any possibility to add something, we would like to suggest you conduct internal seminars to disseminate not just the outcome but the methodology and highlighting the outstanding issues.
- 4a     Explain the benefits that may result from stakeholder participation in market studies, both generally, and in relation to specific market studies**
- It is useful to specify what and to whom to explain.
- 4b     Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them**
- Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans on how and when to be involved in the process of collecting information.
- 4c     Review and update the stakeholder engagement strategy as necessary during the study**
- Inseparable from 4b
- 4d     Communicate to stakeholders what market study outputs will be published**
- None

- 4e      Communication to stakeholders basic information about a study, such as the reasons for the study, its proposed scope, and the types of possible outcomes. Authorities can also consider making key milestones of and/or indicative timeframes for studies**

Overlap with 4a. Perhaps could be consolidated. This point seems to provide information on specific studies, seems more important than a broader pronouncement not in the context of a study.

- 4f      Seek input on a market study from stakeholders**

It is useful to explain the examples of input from stakeholders.

- 4g      Try to minimise burdens on stakeholders when making information requests**

Perhaps minimise isn't the standard. "Consider burdens on stakeholders".

- 4h      Take stakeholder information and views into account to inform the market study**

None

- 4i      Engage stakeholders in developing market study outcomes**

None

- 4j      Engage with policy makers**

To develop better regulation practices.

- 5a      When authorities can be required to conduct market studies by government and legislators, wherever possible engage in dialogue prior to any requirement being imposed**

None

- 5b      When authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of third parties**

None

- 5c      When authorities have discretion to make their own selection of markets to study, consider issues for study from a wide range of internal sources**

None

- 5d      When authorities have discretion to make their own selection of markets to study, consider ways to collect issues for market study**

Perhaps 5b, 5c and 5d could be consolidated to the idea that Authorities consider a wide range of possible sources and ideas, both internal and external.



- 5e When authorities have discretion to make their own selection of markets to study, carefully weigh different issues that could be studied and only select those issues that best meet their objectives**

Virtually it is about prioritisation (5f)

When Authorities have discretion to make their own selection of markets to study, select issues for study that are aligned with the overall objectives of the Authority.

- 5f When authorities have discretion to make their own selection of markets to study, consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study**

None

- 6a Before seeking any information**

None

- 6b Make use of any publicly available information**

Perhaps remove "any".

- 6c Consider carefully how to conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive**

None

- 6d Consider carefully the sources of information for the market study, including from which stakeholders information needs to be sought, taking into account the wide range of potential sources, and the potential merits of each**

None

- 6e** When making an information request for a market study, make clear, as applicable
- None
- 6f** When seeking information explain how the information might be used
- When seeking information for a market study, it is good practice for authorities to explain how sensitive or confidential information will be managed.
- 6g** With a view to minimising burdens, consider consulting informally with stakeholders on the scope and range of information requests, the proposed timeframes for responding and the format in which information is to be supplied
- None
- 6h** Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first
- None
- 6i** If authorities run a market study in parallel with an enforcement investigation in the same market, consider carefully any interaction or duplication between the gathering and use of information in the different contexts
- None
- 6j** Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, study findings should be supported by empirical data where possible
- None
- 6k** There are a range of methodologies for collecting information for market studies - select among them, using more than one methodology where appropriate, and consider the benefits and disadvantages, and the costs of each
- Might be more than one idea here. The "consider the benefits and disadvantages" of whatever methodology used seems the more important over using more than one where appropriate. Perhaps could separate to emphasise.
- 6l** Where a third party is going to be used to carry out external research, consider the role and responsibilities of the third party
- None

- 6m Consider how to manage information gathered, including the receipt, review and organisation of information and logging of any confidentiality requirements**

None

- 6n Use stakeholder comments and insights to inform the market study analysis**

Linked to 6f

Repetitive of 4h.

- 6o When analysing information received, consider how it fits with the understanding of the market**

None

- 6p Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory**

Perhaps this concept is covered by 6o - idea that the data should drive the results and presentation of a study.

- 6q Keep in mind that stakeholders' information may not present a complete or unbiased view, but consider the information and its appropriate context nevertheless**

None

- 6r Cite safeguards for sensitive or confidential information when requesting information for a market study**

Add the word "such" between "requesting" - not all requested information is confidential and may not need safeguards cited.

- 6s Ensure that appropriate internal procedures are in place to safeguard the confidentiality of information once it is received**

Repetitive of 6m? Change "the confidentiality of information" to "confidential information" - not all requested info is confidential.

- 7a Develop any outcomes within the context of the purpose and findings of each market study. Authorities should not rule out seeking two or more complementary outcomes**

But taking into account comment.

- 7b What developing market study outcome options**

When developing market study outcome options - keep the options under review throughout the course of the study.

**7c Assess the costs and benefits of proposed market study outcomes**

None

**7d Consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted**

Directly linked with 7c

**7e Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change**

Where market study outcomes are addressed to government, carefully consider how to present the recommendations to effectively advocate for change.

**7f Engage early with industry where voluntary action is a desired outcome**

Is "early" needed here, is it too limiting? Or is engage at the appropriate point (whenever it occurs)?

**Suggested revision to para 7.21**

Where authorities suspect, or it becomes clear, that businesses are unlikely to offer voluntary ~~commitments~~ *compliance* that will address the findings of the market study, the authority may wish to consider and explore, if relevant, options for advocating for new legislation or regulation and/or enforcement actions, as appropriate.

**7g Secure necessary internal buy-in to further work before announcing any outcomes that involve the authority itself taking action**

It is better to emphasise the importance of this practice by explaining its objective.

**7h Where outcomes depend on third parties taking action, engage with the parties concerned throughout to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies**

Perhaps remove the word "throughout" – as this seems a high standard. Also, does this cover point 7f?

**7i Include stakeholder engagement in advocacy efforts to support market study outcomes**

It is good practice for authorities to include relevant stakeholder engagement in their advocacy efforts in support of market study outcomes

**7j Recognise the potential effect of media coverage on market study outcomes**

None

**7k Recognise that successful market study outcomes may take time and require well-resourced follow-up**

None

**8a Consider evaluating the effectiveness of market studies**

There are some question marks missing in the text.

**8b When deciding how to approach evaluating market studies, take into account...**

None apply

**C1 Please tell us about any areas of good practice that your authority considers are missing from the list of proposed good practices**

**General Comments**

**Suggested new para before 7.27**

*Stakeholders have various, and possibly conflicting, interests in the market study outcomes. Authorities can carefully weigh the pros and cons, as stakeholders will anyway take up opportunities to express agreement and disagreement in function of their own objectives. In some cases, it may be an advantage to engage supporting stakeholders in advocacy efforts.*

**Suggested new para after 7.29**

*When they organize roundtables and public events, authorities can take care of giving an opportunity to supporters and opponents to express themselves.*

It might be useful to include advice on good practice on the matter of using information collected during a market study in a subsequent competition case - to the extent that such a practice is permissible. This could be general information, e.g. concerning market definition, or specific information indicative of an infringement of competition law.

We consider that all areas of good practice are included above.

As a final point - continuity of some market studies, i.e. taken into account necessity from time to time to carry out repeated market studies within once (even not to long time ago) investigated markets (for example, fuels markets, retail markets, post-merger markets, etc.) based on earlier procedures and documentation of studies results, as base for future procedures.

Difficult at this stage as we have yet to undertake a market study in [our jurisdiction].

In Sections 4 or 5: A good practice that could be more explicitly expressed, is to consider how the burden of submitting information on companies could be limited. Lengthy and complex questionnaire should be avoided.

**C2 If you wish to explain your ratings, or add any other comments or information**

We add our comment in the survey form.

We would like to ask to review one of the annex of the Draft Handbook. In the last version we managed, in the list of participants, the Chilean agency named was "Competition Tribunal - Tribunal de Defensa de la Libre Competencia (TDLC)", instead of "Fiscalia Nacional Economica, FNE (Chilean Competition Agency)". We would like to ask you, please, to add the FNE to this list.

In rating we have used "neither agree nor disagree", and "neither important nor unimportant" to mean that the question does not apply to our Authority. We have given very much importance in the relationship with stakeholders to explaining the reasons and scope of the study and to minimise the burden for them. We consider very important when recommendations are addressed to government to present them and use them in such a way as to advocate for change. We finally recognise as highly important the potential effect of media coverage on market study outcome and therefore we think that the output of a market study should be appropriately explained to the public.

Disclaimer: Please note that we have several divisions which are engaged in some kind of market studies and our replies are based on responses from one of such divisions. However, the responses may differ depending on the division in charge.

All this methodologies is, to say, more around market studying. As further projects of good practices for market studies it is advisable to go in depth trying to find what specific markets or kinds of competition concern are common for most of the ICN authorities. Then it would be very useful to develop some example of model methodologies for specific market studies, including i.e. proposals on application of economic analysis, technical tools, specific software etc.

I find very complete the handbook. I wish I had a suggestion, but unfortunately I don't.

The Market Studies Good Practices Handbook is very process oriented. More information on 'how to do things' is necessary as well.

It would be quite useful to provide some (good) examples of market studies, either as text, or as hyperlinks to studies.

This handbook (even in draft form) has been an invaluable tool for us in our research into market studies in other jurisdictions. Our internal guidelines will no doubt be drawing extensively from the handbook.

Concerning questions B1-B7, overall we agree with the proposed good practices. We find them very valuable not only for agencies that have a focus on market studies according to your definition but also for competition agencies like ours that do not use market studies to the same extent. For example, we find many of the proposed good practices come very helpful when working on recommendations.

## SLIDES FOR THE TELESEMINAR

OFFICE OF FAIR TRADING

# ICN DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK TELESEMINAR

**ICN Advocacy Working Group**

January, 2011

1

OFFICE OF FAIR TRADING

## Introduction

- In 2009-10 the ICN Advocacy Working Group (AWG) produced a draft Market Studies Good Practice Handbook
  - The draft Handbook is published on the ICN AWG pages of the website here:  
[www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf](http://www.internationalcompetitionnetwork.org/uploads/library/doc646.pdf)
- In 2010-11 the ICN Advocacy Working Group is 'road-testing' the draft Handbook
- As part of this project, the AWG sent a questionnaire to the ICN membership on the draft Handbook
  - A copy of the questionnaire will be published on the ICN website

2



## Overview of Questionnaire Process

- **The questionnaire asked respondents to:**
  - score each of the Draft Good Practices on a score of 1 to 5 as to the usefulness of each good practice (where a score of 1 indicated ‘not useful at all’ and a score of 5 indicated ‘extremely useful’)
  - comment on their score if they wished to do so.
  - provide any detailed editing suggestions on the Draft Good Practices.
- **The AWG received 31 responses to the questionnaire. The AWG is very grateful to those who took the time to respond.**

3

## Use of Questionnaire Results

- Taking the average scores for each Draft Good Practice, the responses ranged between **4.8** out of 5 at the **highest** to **3.7** out of 5 at the **lowest**.
- Today we are presenting some of the **highlights of the questionnaire results**, and inviting further discussion on key selected topics
- The results of the questionnaire, detailed editing comments on the Draft Good Practices, and any further comments collected today will be included in the AWG’s report to the 2011 ICN Conference on the ‘road testing’ project.
- It is anticipated that revisions to the Draft Handbook will be made during the ICN’s 2011 to 2012 work year. Where appropriate, and the AWG agrees, revisions will take on the comments and editing suggestions collected during the ‘road testing’ project.

4

## Overview of Slides

- **These slides select particular issues for discussion today**
- **They present:**
  - The average scores for each Good Practice by chapter (starting with Chapter 2 (Chapter 1 is the Introduction and does not contain any Draft Good Practices)
  - The detailed scores underlying the averages for selected Draft Good Practices that we want to discuss today, and the optional comments on these scores where they were provided. Respondents are not identified.
- **The slides do not include the editing suggestions that were provided for some of the Draft Good Practices, but these will be included in the AWG's report to the 2011 ICN Conference on the 'road testing' project. Again, respondents will not be identified**

5

## Chapter 2

### ‘Overview of Market Studies Process’

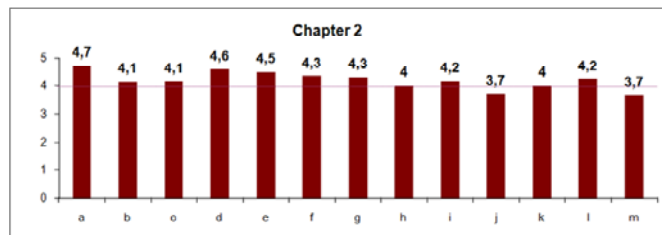
6

### Summary results for Chapter 2: ‘Overview of Market Studies Process’

This chapter presents **13 Draft Good Practices** in the following areas:

- Distinguishing market studies from enforcement action
- Market studies process
- Resources devoted to market studies
- Length of market studies and its number
- Joint studies
- Special considerations when studies are required by government or the legislature

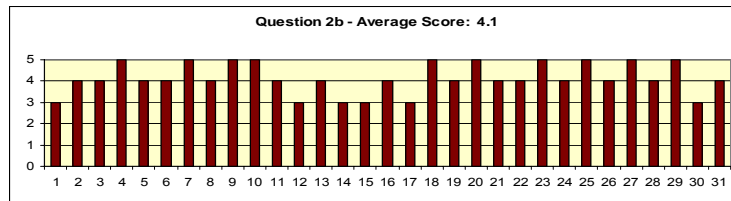
The average score was **4.2**, between ‘quite useful’ and ‘extremely useful’



7

## Good Practice 2b - Be clear about the possible outcomes of a market study from the outset

- It will facilitate the organisation of the working process and concentrate the analysis in a particular direction. Nevertheless the Authority must always be open to other options
- It is good practice to explain to the stakeholders why the market study is being conducted and what possible outcome can be expected
- Specially connected with explanation of the dynamics and the market structure
- At the outset one cannot know the precise outcome of the sector inquiry so flexibility is also important
- It is difficult to understand "possible outcomes" without specific examples
- This may either lead to an investigation depending on the outcome or advice to government
- Important for resource allocation and planning
- Often not possible to foresee all outcomes
- Outcomes in some cases are not predictable



8

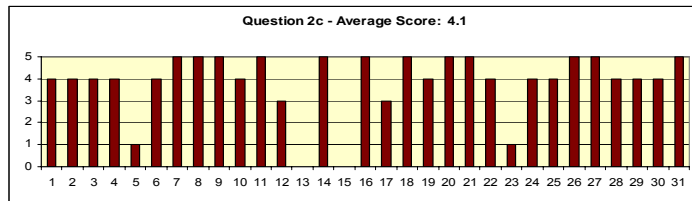
## Good Practice 2c - Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action

- Different, but it should be clear that they may lead to enforcement as was the case with the EU studies on liberal professions and pharmaceutical industries
- It is important for market participants to know that they are not under investigation as they will give more detailed information and express their view more freely
- In our own experience, Authorities are not always clear enough about the market studies' role and its separation between advocacy and enforcement efforts (especially when new staff are appointed and they come mainly from the private bar and litigation world). Sometimes, they believe that enforcement activities are more profitable in the short term for the Authority's aims as opposed to trying to get outcomes from the market studies that they can use to initiate an ex officio investigation over a market. From this perspective, the Market Study Handbook which states that role separation is a good practice can help the officials working with competition advocacy to make market studies work better understood
- Very often market studies serve as a basis for enforcement action when competition concerns are revealed. Hence, we would strongly advise that both roles of the market studies, as a competition advocacy and enforcement tool are kept
- Could change the perception of the undertakings concerning the market study and lead to better co-operation during the collecting and evaluating of information
- Just to avoid having any early idea of practice or conduct that is anti-competitive in the market
- Adequately separated: no, since eg information collected in the sector inquiry may be used in a subsequent enforcement action
- Market studies may sometimes lead to enforcement action
- Powers relating to enforcement as a result of its outcomes differ. No remedies will be applicable for a market study unless it is properly converted into an investigation

9

### Good Practice 2c - Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action (Cont.)

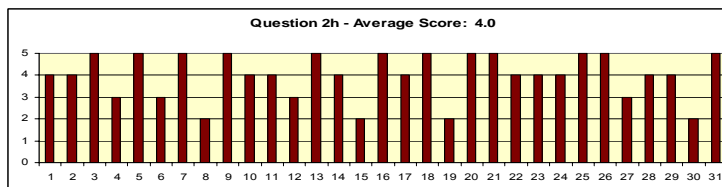
- This helps in getting co-operation from stakeholders especially private sector
- Market studies actually constitute (a part) of the foundation for enforcement action
- This helps in getting co-operation from stakeholders especially from the private sector



10

### Good Practice 2h - Allow flexibility in determining the timeframe for completing market studies

- But this should be no excuse for lack of efficiency!
- We think this is pretty obvious to Authorities and is less important than other practices suggested in the handbook
- During the market studies certain market conditions might change and this could result in additional market study work
- Setting a standard length of time for a market study is difficult, because market studies vary case by case
- One of the problems in progressing a market study, is the deliberate slowness of companies in providing information
- Timeframe is extremely important when managing market studies
- Relates to the regular planning process
- Depending on the specifics or collaboration or non-collaboration of stakeholders, timeframe may change
- A hard deadline can be beneficial
- Helps manage costs and also helps to expedite the study



11

## Chapter 3

### 'Project Management of Market Studies'

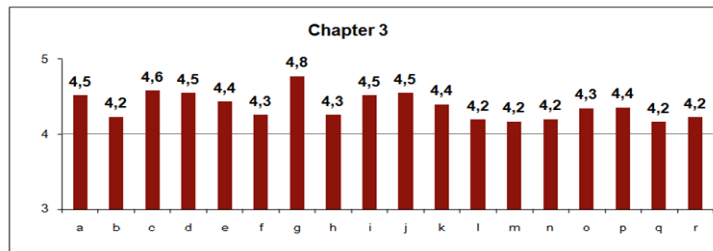
12

### Summary results for Chapter 3: 'Project Management of Market Studies'

This chapter presents **18 Draft Good Practices** in the following areas:

- Creating a market study team
- Considering conflicts
- Roles and responsibilities
- Team meetings
- Input from outside the market study team
- Working with other public bodies
- Scope
- Planning
- Market studies launch
- Review of market study plan
- Reporting progress
- Risk management
- Quality assurance
- Deciding on desired outcomes
- Drafting the written outputs
- Releasing market study findings
- Closure of the market study

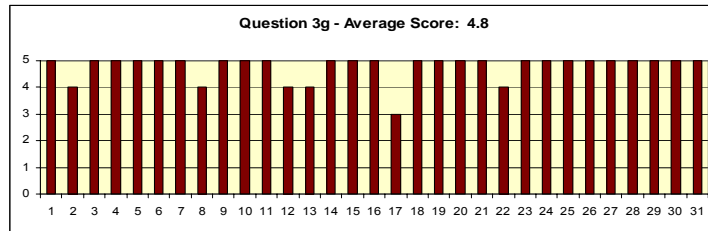
The average score was **4.4**, between 'quite useful' and 'extremely useful'



13

### Good Practice 3g - Ensure that the scope of a market study is focused and manageable

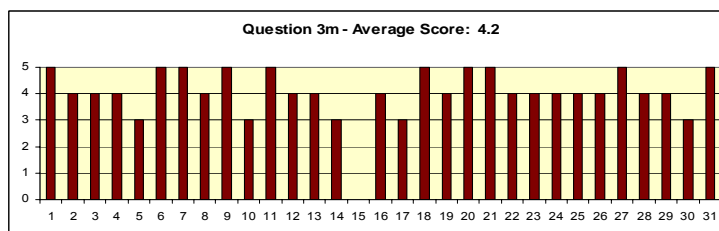
- It is difficult to determine the usefulness of the practice without more explanation
- This allows us to get the desired result
- May result in a waste of resources and confidence in the Authority



14

### Good Practice 3m - Actively consider and manage the risks relating to a market study

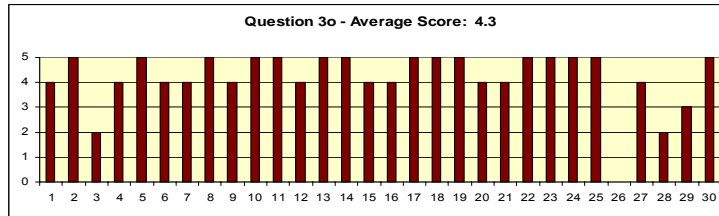
- The identification of risks helps give a better chance of solving the problems
- Validation of data is part of the market study
- This gives us a better chance for a successful outcome
- Important for credibility issues



15

### Good Practice 3o - Consider the outcomes of a study and ensure that these are approved according to the authority's approval process

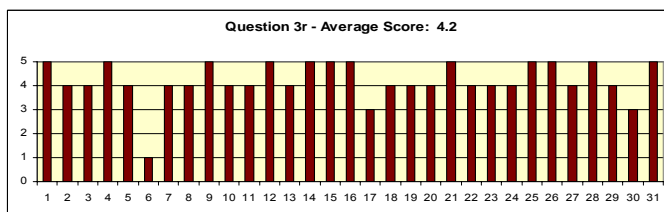
- Again: one has no option!
- We are not sure that most of the Authorities have clear processes (or any process at all) for outcome approval, because as far as we know, the "project" conception hasn't been disseminated enough amongst Authorities, especially the new ones
- Could help to identify further actions
- Not sure what this means: perhaps too obvious – hard to imagine a study without approval processes
- Authority's approval process must be transparent at all times



16

### Good Practice 3r - Have a plan for closing a market study that addresses outstanding issues such as any further follow-up work and capturing institutional learning

- This enables us to embark on an investigation if the study shows that some enforcement actions are needed in that specific market
- Enforcement in terms of remedies and penalties are only possible when there has been an investigation and not a market study
- Very important to show that all issues will be considered in due course



17



## Chapter 4

### 'Stakeholder Engagement'

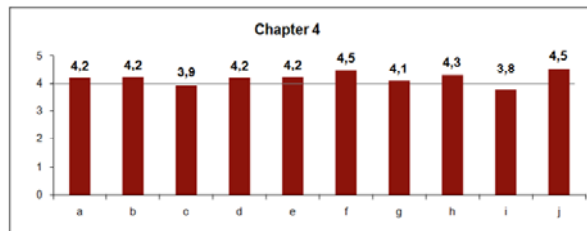
18

### Summary results for Chapter 4: 'Stakeholder Engagement'

This chapter presents **10 Draft Good Practices** in the following areas:

- Communication the benefits of market studies to stakeholders
- Developing a stakeholder engagement strategy
- Communicating what documentary outputs will be published
- Communicating basic information about a study
- Seeking information from stakeholders
- Taking stakeholders' input into account
- Engaging stakeholders in developing outcomes
- Engaging policy makers

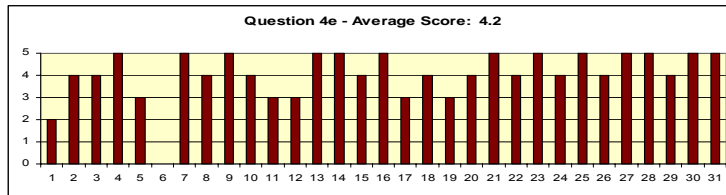
The average score was **4.2**, between 'quite useful' and 'extremely useful'



19

**Good Practice 4e - Communicate to stakeholders basic information about a study, such as the reasons for the study, its proposed scope, and the types of possible outcomes. Authorities can also consider making public key milestones of and/or indicative timeframes for studies**

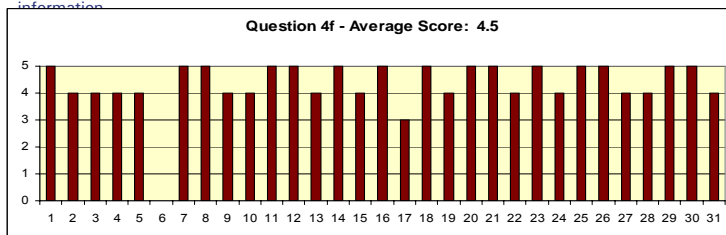
- It is appropriate only in certain cases. In other cases, when the market study is expected to lead to the discovery of evidence of infringement communicating the details of the study should be avoided
- Increase transparency
- Depends on market study, useful if there are significant problems identified already at the starting stage



20

**Good Practice 4f - Seek input on a market study from stakeholders**

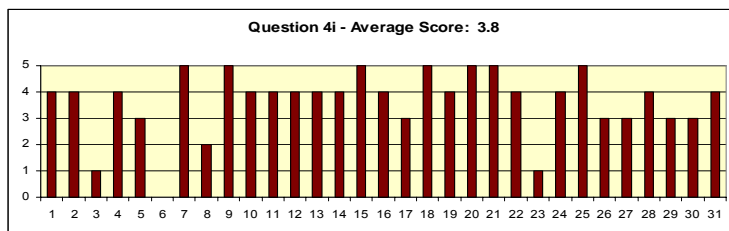
- As an Authority, we don't follow this good practice. Our relationship with the stakeholders for market studies is not clear, because our powers don't include that stakeholders must give us information for something different than enforcement activities (investigations), so if we would like to use their information then they have to provide it voluntarily. It is believed by some that asking for information could be interpreted wrongly as a way for our Authority to desist from future enforcement activities. It is crucial in cases when the Authority needs co-operation with stakeholders to collect the information
- Assistance from stakeholders always increases effectiveness of the study
- It is important to procure that such inputs will not bias the outcome of the market study
- It is better to explain the input from stakeholders more specifically. If the practice means to ask for co-operation in completing questionnaires and interviews, it would be useful
- This facilitates the work of the Commission



21

### Good Practice 4i - Engage stakeholders in developing market study outcomes

- Final findings and outcome are entirely and only made by the Authority
- It all depends on the level of preparedness of stakeholders to co-operate and to be engaged
- When the results are unfavourable to stakeholders, there are cases when it is inappropriate to engage them in the process
- Especially when some improvements in the situation analysed are necessary
- This contributes towards a non-contested agreement on the outcomes



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## Chapter 5

### 'Selection of Market Studies'

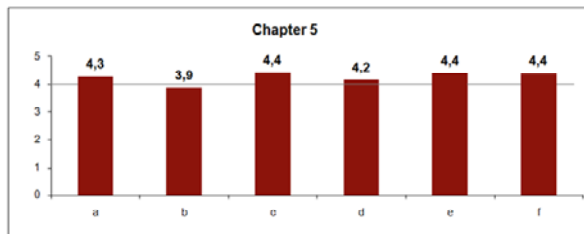
23

### Summary results for Chapter 5: 'Stakeholder Engagement'

This chapter presents **6 Draft Good Practices** in the following areas:

- Working with government and legislators when market studies can be mandated or required
- Soliciting issues for study from a wide range of third parties
- Collecting issues for study from a wide range of internal sources
- Resourcing the collection of issues for study
- Selecting issues for study
- Developing flexible prioritisation principles

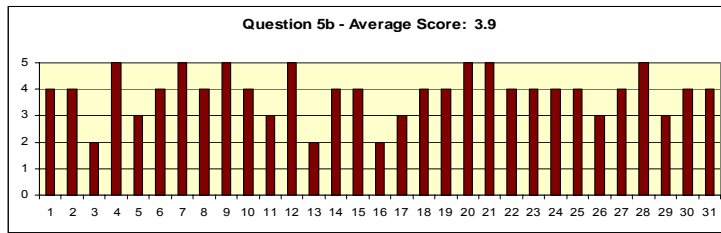
The average score was **4.3**, between 'quite useful' and 'extremely useful'



24

**Good Practice 5b - When authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of third parties**

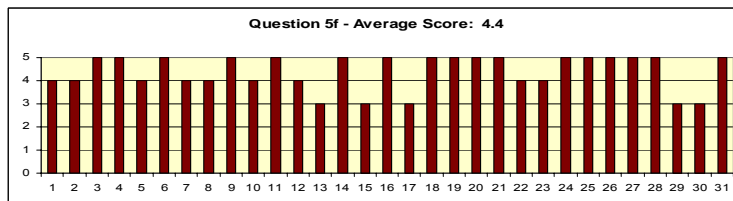
- Before deciding to launch a market study the Authority is free to collect information from all sources it deems appropriate. However, the final assessment should be independent and discretionary not under pressure (of course when the Authority is competent to initiate market studies). Political or business pressure from interested groups is not a good reason to initiate a market study
- The Authorities should retain their discretion to choose markets for their studies
- It is useful to communicate especially with consumer associations, business associations, chambers, media and other experts
- This is presently our case and therefore this is very useful



25

**Good Practice 5f - When authorities have discretion to make their own selection of markets to study, consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study**

- It is not easy to develop a set of prioritisation principles
- We have drafted a 'prioritisation rule' for consultation and investigation and will apply this to market studies with the necessary modifications and adaptations
- Useful to link this to the Authority's overall prioritisation criteria
- Some sectors are particularly important for overall economic activity
- Studies on these sectors will allow an improved functioning of the economy
- Transparency
- Studies on these sectors will allow an improved functioning of the economy
- Transparency



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## Chapter 6

### 'Information Collection and Analysis'

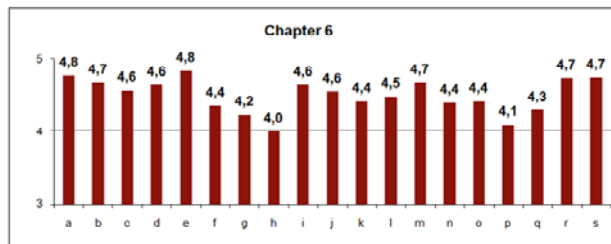
27

#### Summary results for Chapter 6: 'Information Collection and Analysis'

This chapter presents **19 Draft Good Practices** in the following areas:

- Preparing for information collection
- Organising research
- Sources of information
- How to request information
- How information might be used
- Consulting on draft information requests
- Use of formal powers to compel the supply of information
- Types of information collected
- Methods of collecting information
- Using third parties to collect information
- Managing information
- Analysing information
- How to safeguard information

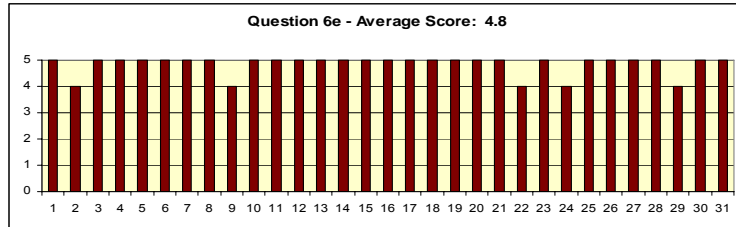
The average score was **4.5**, between 'quite useful' and 'extremely useful'



28

**Good Practice 6e - When making an information request for a market study, make clear, as applicable what information is being sought, how it should be submitted, timescales for submission, consequences of not supplying it, and a contact point for questions**

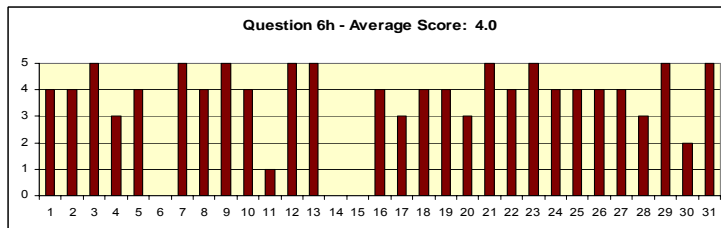
- It can help to gain relevant information in a good format and in the required time
- About the consequences it might be more appropriate to make them specifically clear if the stakeholder has not complied with the timeframe to provide the information
- Crucial to focus the study, meeting deadlines etc
- The law does not empower us to compel information when doing a market study therefore this is very useful in terms of explaining to people the missed opportunity to inform the study
- Very important because information is stored in different formats and information must be provided in the set timeframe



29

**Good Practice 6h - Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first**

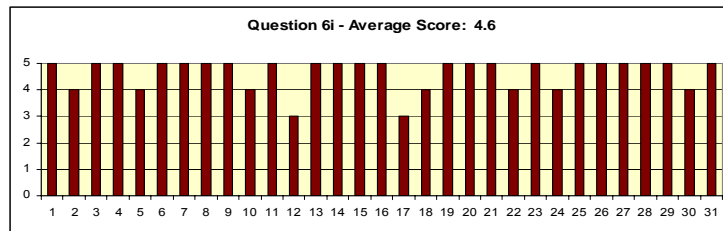
- It builds co-operation with stakeholders and separates the market studies and enforcement actions
- There is no possibility to request information by our Authority on a voluntary basis
- Voluntary co-operation may assist in addition to information given under obligation
- We do not have such powers
- We do not have such powers
- We do not have such powers
- Sometimes voluntarily submitted information is seen as less credible
- This can be an ice breaker and also increase confidence of stakeholders that the Authority means well (is acting in good faith)



30

**Good Practice 6i - If authorities run a market study in parallel with an enforcement investigation in the same market, consider carefully any interaction or duplication between the gathering and use of information in the different contexts**

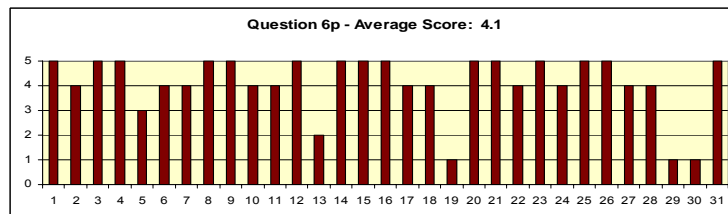
- We would wait for the results before deciding to commit our own scarce resources
- It avoids duplications
- We normally co-ordinate with other divisions in advance so as not to run a market study in parallel with an enforcement investigation
- Extremely useful as presently we are conducting both an investigation in view of enforcement action and a market study in the cement industry
- It can easily be misunderstood to be harassment



31

**Good Practice 6p - Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory**

- This practice is particularly important and it should be developed very carefully. In some cases it is difficult to assess whether the Authority should defend its hypothesis (for example where the information submitted is inaccurate or the standpoints of the stakeholders are unbiased or one-sided) and when it should accept it was wrong and therefore modify its preliminary hypothesis or theory
- This will avoid later unnecessary work
- The hypothesis should not necessarily be modified, the report should say the data contradicted it
- This ensures the study remains relevant. It shows that the Authority had the wrong perception of the market but still issues of concern may be there



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## Chapter 7

### 'Developing and Securing Outcomes'

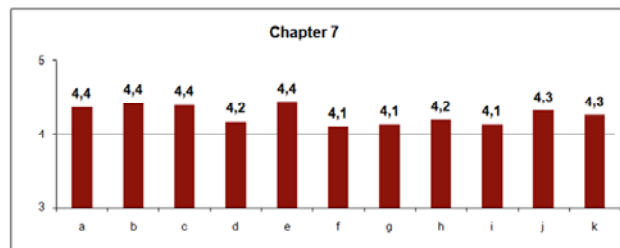
33

#### Summary results for Chapter 7: 'Developing and Securing Outcomes'

This chapter presents **11 Draft Good Practices** in the following areas:

- Types of outcome
- Developing outcome options
- Benefits versus costs
- Testing the outcomes
- Recommendations to government -v oluntary action, action by the authority, referral to third parties, stakeholder advocacy
- Effective use of the media
- Measuring success and deciding when to stop follow-up advocacy

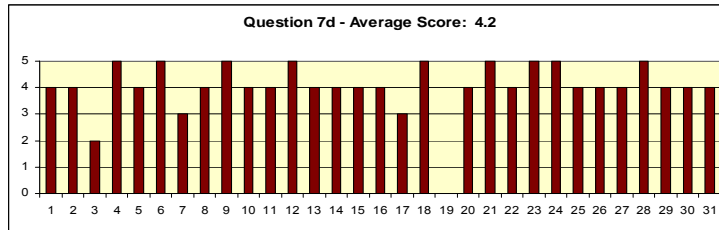
The average score was **4.3**, between 'quite useful' and 'extremely useful'



34

**Good Practice 7d - Consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted**

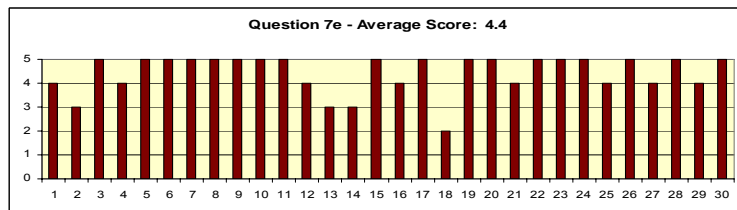
- Appropriate only in certain cases. In other cases, the recommendations envisaged by the Authority to eliminate the competition problem are likely to encounter serious resistance from market participants (stakeholders). Such reluctance, however, should not be a reason for the Authority to refuse to express its competent concerns on the matter
- It depends on the purpose of the market study, should be evaluated case by case
- This is essential good practice, but in this jurisdiction the test is made by the addressee of the recommendations
- We consider it is not easy to assess the workability and the likelihood of possible outcomes in advance
- We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report



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**Good Practice 7e - Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change**

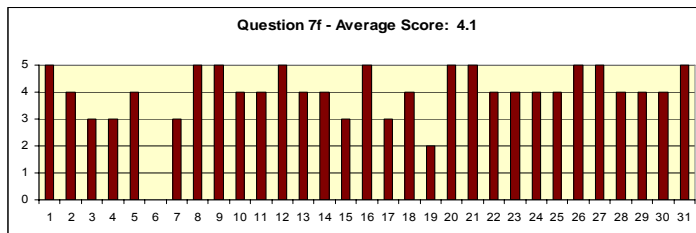
- But we guess rarely feasible
- Sometimes this issue is out of the scope of the market study team and the Authorities
- Important good practice, but in the case of advocacy in our practice it is the responsibility of the addressee to plan how to use the recommendation and our possibilities are quite limited in this respect
- We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report



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**Good Practice 7f - Engage early with industry where voluntary action is a desired outcome**

- It helps to find the interest of the industry and may help to build co-operation
- Not 'early', but rather in due time
- As it depends on the objectives and the contents of the study, it is not necessarily the case that we can engage industries early
- We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report



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## Chapter 8

### 'Evaluation'

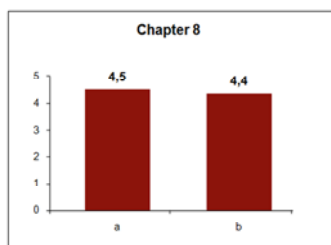
38

#### Summary results for Chapter 8: 'Evaluation'

This chapter presents Draft Good Practices in the following areas:

- Why evaluate market studies, and
- How to approach market study evaluation

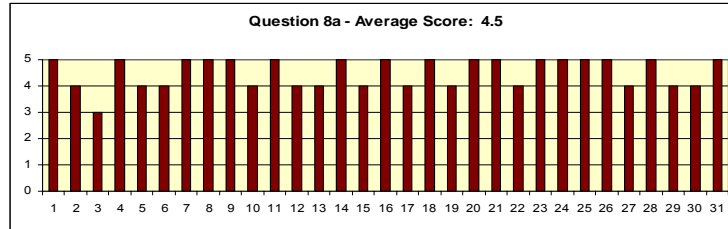
The average score was **4.4**, between 'quite useful' and 'extremely useful'



39

### Good Practice 8a - Consider evaluating the effectiveness of market studies

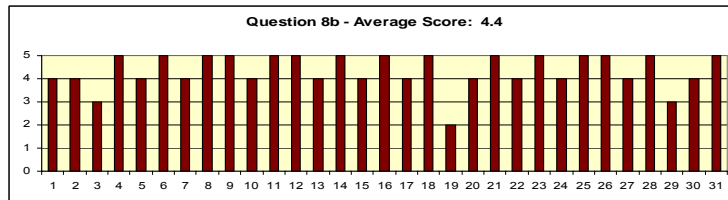
- Once you have clearly defined why you are performing a market study, and the goals you want to achieve with it, it is necessary to assess (in the short and also in the medium term) if you've got or not got the proposed aims. If you don't carry out an assessment process (ideally, an impact assessment) you are not able to know if you have got best value for money. It is a tool for accountability
- However, smaller Authorities might not have enough resources to conduct the regular evaluation for each market study
- We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report



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### Good Practice 8b - When deciding how to approach evaluating market studies, take into account: (a) the purpose of the evaluation; (b) the scope of the evaluation; (c) available resources

- And any other outcome
- It is extremely useful because it is a developing area, and the Authorities (especially new Authorities) will need support that the handbook can provide on this topic (including complementary and methodological tools, as actually the draft does) to start implementing evaluation programs or initiatives. Otherwise, if the handbook just states the importance of evaluating market studies without providing the general criteria you need to take into account, it would be an incomplete tool
- We have not yet completed our market study and therefore this is extremely helpful when we are concluding our report



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**Please tell us about any areas of good practice  
that are missing from the Handbook**

- We have given very much importance in the relationship with stakeholders to explaining the reasons and scope of the study and to minimise the burden for them. We consider very important when recommendations are addressed to government to present them and use them in such a way as to advocate for change. We finally recognise as highly important the potential effect of media coverage on market study outcome and therefore we think that the output of a market study should be appropriately explained to the public.
- All this methodologies is, to say, more around market studying. As further projects of good practices for market studies it is advisable to go in depth trying to find what specific markets or kinds of competition concern are common for most of the ICN authorities. Then it would be very useful to develop some example of model methodologies for specific market studies, including i.e. proposals on application of economic analysis, technical tools, specific software etc.
- I find very complete the handbook. I have no suggestions.
- The Market Studies Good Practices Handbook is very process oriented. More information on 'how to do things' is necessary as well.
- It would be quite useful to provide some (good examples of market studies, either as text, or as hyperlinks to studies.
- This handbook (even in draft form) has been an invaluable tool for us in our research into market studies in other jurisdictions. Our internal guidelines will no doubt be drawing extensively from the handbook.

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**Any other areas for market studies  
work by the Advocacy Working  
Group?**

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## SCRIPT FOR TELESEMINAR: CHAPTERS 2 TO 8 AND FINAL SLIDES

### Chapter 2: Process Overview

Speaker	Script
<p>Gus Chiarello US</p> <p>(2 mins from 0810 – 0812)</p> <p>Slides 6 &amp; 7</p>	<p><b>Chapter average score – 4.2</b></p> <p>Scores range from 4.7 to 3.7 – the full range. Some comments that more detail would be welcome. To note that Chapter 2 is the overview chapter and there is more detail in the chapters that follow.</p> <p>High scores (4.5 or above):</p> <p>2a (being clear about reasons for a study from the outset) which scored 4.7</p> <p>2d (developing a process for carrying out studies) which scored 4.6</p> <p>2e (carefully managing the process) which scored 4.5</p> <p>Low scores:</p> <p>2j (determine number of studies by available resource, complexity and other commitments/priorities) which scored 3.7</p> <p>2m (modify processes when conducting studies mandated by others)</p> <p>Low scores in 2j possibly due to a misunderstanding about the scope of the GP. It says:</p> <p><b>2j) Determine how many studies will be conducted in any one year by reference to the available resource, the studies' complexity and other commitments and priorities</b></p> <p>Frequent comments were: assessing this at the start of the year not appropriate. Very hard to determine. Could lead to studies being conducted unnecessarily. Also that enforcement action is the priority.</p> <p>But the text here (paragraph 2.36) says 'It may be unduly burdensome and inflexible for authorities to set a fixed number of studies to be conducted in any given year'. The GP was intended as a guide throughout the year, and to balance market studies with other commitments and priorities. We will consider rewording for clarification.</p> <p>Low score in 2m) possibly driven by the fact that it wasn't applicable to several authorities:</p>

	<p><b>2m) Modify project management processes appropriately when conducting market studies that are required by the government or legislature</b></p> <p>Also one strong concern that this GP provided too much detail, since requirements will vary by jurisdiction. And a concern that modifications shouldn't harm the independence of Authorities. We think the text associated with the GP is sufficiently flexible but we will reflect.</p> <p><u>GPs in more detail</u></p> <p>We intend to focus on GPs scoring in the mid range – to see if we can tease out some of the debate behind the comments:</p> <p>2b (be clear about outcomes), 2c (distinguish studies from enforcement action), 2h (allow flexibility in determining timeframe for market study)</p>
<p>Reena das Nair, South Africa</p> <p>(3 mins from 0812 - 0815)</p> <p>Slides 8 to 11</p>	<p><b>2b) Be clear about the possible outcomes of a market study from the outset</b></p> <p>Lower score: 4.1. Several lower scores of 3</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+Support for the GP on the basis that it aids stakeholder understanding and work organisation/allocation/planning</li> <li>-Be open to other options – flexibility is important</li> <li>-Difficult to understand/foresee possible outcomes</li> </ul> <p>Comments from webinar participants? This GP anticipates that there may be a fixed range of possible market study outcomes and that these could be referenced at the start even if it is not possible to foresee exactly what will be the outcome at the end? How far is this the case for webinar participants?</p> <p><b>2c) Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action</b></p> <p>Lower score: 4.1. 12 top scores of 5. Two low scores of 1</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+Separation from enforcement action is important – helps encourage provision of information, helps Authority staff understand the benefits of market studies in themselves</li> <li>-MSs often serve as basis for enforcement action and this should be clear: MSs actually constitute a part of the foundation for enforcement action</li> </ul> <p>This GP aimed at allowing flexibility for different practices (i.e. as between those where studies may lead to enforcement action</p>



	<p>and those where it may not). Even where it may lead to enforcement action is it not useful to be clear about this from the outset?</p> <p><b>2h) Allow flexibility in determining the timeframe for completing market studies</b></p> <p>Lower score: 4. Range of scores: 2 thru 5.</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>-Too obvious for a good practice</li> <li>+Agree flexibility is important</li> <li>0 Interaction with degree of stakeholder engagement</li> <li>-Hard deadline is good/efficiency is important (four comments)</li> </ul> <p>What is the overall view of Webinar members on this GP? Do the benefits of a hard deadline outweigh the benefits of being able to be flexible if circumstances change? How about building flexibility in to the project plan (e.g. using different phases)</p>
<p>Discussion (Up to 8 mins 0815 – 0823)</p>	

### Chapter 3: Project Management

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0823 – 0824)</p> <p>Slides 12 &amp; 13</p>	<p>Scores range from 4.8 to 4.2 – Chapter average: 4.4</p> <p>High scores (4.5 or above):</p> <p>3a (establish a core team) which scored 4.5</p> <p>3c (establish clear roles and responsibilities) which scored 4.6</p> <p>3d (hold regular team meetings) which scored 4.5</p> <p>3g (ensure scope is focused and manageable) which scored 4.8</p> <p>3i (prepare a detailed plan with actions, responsibilities, deliverables and milestones) which scored 4.5</p> <p>3j (provide info on scope and contact points on launch) which scored 4.5</p> <p>All other scores were mid-range.</p> <p>There was one GP where it is clear from the comments that there was a misunderstanding about the intent of the GP. This was GP 3e) (identify and make contact with other authority staff). The intention here was to refer to staff within the same authority – i.e. to secure input from outside the market study team, but from within the authority conducting the study. We will revise the GP to make this clearer</p> <p><u>GPs in more detail</u></p> <p>We will focus here on two of the highest scoring GP and a couple of the lower scoring GPs – again to try and tease out some of the differences of opinion:</p> <p>3g ) (ensure scope is focused and manageable) which scored 4.8</p> <p>3m) (actively consider and manage risks) which scored 4.2</p> <p>3o) (secure internal approval for market study outcomes) which scored 4.3</p> <p>3r) (have a plan for closing a market study that addresses outstanding issues) which scored 4.2</p>
<p>Marianne Faessel-Kahn, France</p> <p>(4 mins from 0824 - 0828)</p> <p>Slides 14 to 17</p>	<p><b>3g) Ensure that the scope of a market study is focused and manageable</b></p> <p>Highest score: 4.8. One 3, five 4s and the rest 5s</p> <p><b>Themes:</b></p> <p>+helps ensure that the study obtains the desired result</p> <p>+not managing scope leads to waste of resource</p> <p>Scope is critical to outcomes, and there are strong links between</p>

	<p>managing scope and overall success of the study.</p> <p>One comment that it was difficult to understand without further explanation. We hope it is explained in the handbook – but if not please let us know.</p> <p><b>3m) Actively consider and manage the risks relating to a market study</b></p> <p>Mid range score: 4.2. Five 3s, the rest 4s and 5s. One nil return</p> <p><b>Themes:</b>  All comments positive:  +identifying risks helps give a better chance of solving problems  +improves credibility  -validation of data is part of the study process – from the member that didn't score. But this GP was not solely about data validation. It was intended to capture the full range of risks: quality and consistency as well as resource and organisational risks and relationship and reputational risks.</p> <p>Should this GP be clarified?</p> <p>Also notable that some members gave a moderately low score but did not comment. Any other views on why this one is not as important?</p> <p><b>3o) Consider the outcomes of a study and ensure that these are approved according to the authority's approval process</b></p> <p>Mid range score: 4.3. Two 2s, one 3, the rest 4s and 5s. One nil return</p> <p><b>Themes:</b>  Starkly differing comments ranging from:  -this is too obvious – there is no choice but to do so; to  -we're not sure Authorities have clear internal processes to approve outcomes because the 'project' concept for market studies hasn't been disseminated enough  Also some positive support:  +helps identify further actions  +approval processes must be transparent at all times</p> <p>What do webinar participants think of this good practice? Too obvious? Not obvious enough?</p> <p><b>3r) Have a plan for closing a market study that addresses outstanding issues such as any further follow-up work and capturing institutional learning</b></p>
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	<p>Mid range score: 4.2. One 1, Two 3s, the rest 4s and 5s.</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+important to show all issues will be considered in due course</li> <li>+facilitates later enforcement action</li> <li>-enforcement only possible where there has been an investigation</li> </ul> <p>Some comments here relate to enforcement action. This GP was intended to capture the fact that recommendations may need follow-up work, and that Authorities may want to take steps to capture institutional learning from the study. Do webinar participants have comments about this in substance? Or about whether this is clear enough from the way the GP is drafted?</p>
<p>Discussion (Up to 9 mins 0828 – 0837)</p>	

## Chapter 4: Stakeholder Engagement

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0837 – 0838)</p> <p>Slides 18 &amp; 19</p>	<p>Scores range from 4.5 to 3.9. Chapter average: 4.2</p> <p>High scores (4.5 or above): 4f) (seek input from stakeholders) which scored 4.5 4j) (engage with policy makers) which scored 4.5</p> <p>Low scores (below 4) 4c) (review and update stakeholder engagement strategy during the study) which scored 3.9 4 i) (engage stakeholders in developing market study outcomes) which scored 3.8</p> <p><u>GPs in more detail</u></p> <p>We will look at the high scoring GP because there was some difference of view:</p> <p>4f) (seek input from stakeholders) which scored 4.5</p> <p>We will also focus on some of the mid and lower range scoring GPs to try and tease out some of the differences of opinion:</p> <p>4e) (communicate to stakeholders basic information about a study) which scored 4.2 4i) (engage stakeholder in developing market study outcomes) which scored 3.8</p>
<p>Marcia Pardo, Chile</p> <p>(3 mins from 0838 – 0841)</p> <p>Slides 20 to 22</p>	<p><b>4e) Communicate to stakeholders basic information about a study, such as the reasons for the study, its proposed scope, and the types of possible outcomes. Authorities can also consider making public key milestones of and/or indicative timeframes for studies</b></p> <p>Mid range score: 4.2. One 2, five 3s, the rest 4s and 5s. One nil return</p> <p><b>Themes:</b> -avoid communicating when using study to unearth evidence of infringement +increases transparency 0 depends on study: useful if problems are identified at the start</p> <p>Indicates range of approach to market studies. In UK we wouldn't usually start a study without some thinking about scope and purpose and proposed outcomes. What do webinar participants think?</p> <p><b>4f) Seek input on a market study from stakeholders</b></p>

	<p>Higher end score: 4.5. One 3, the rest 4s and 5s. One nil return</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+assistance from stakeholders always facilitates/ increases effectiveness of study</li> <li>-don't follow this GP because don't have powers to compel information, and if we ask for information there is concern in the authority that this will be interpreted by stakeholders as an indication that there will be no later enforcement action</li> <li>-important that stakeholder input doesn't bias the study</li> </ul> <p>Other webinar members share these concerns? In UK we never do a study without asking for input from stakeholders – otherwise we have no way to validate internal research. What do webinar participants think?</p> <p><b>4i) Engage stakeholders in developing market study outcomes</b></p> <p>Low score: 3.8. Two 1s, one 2, six 3s, the rest 4s and 5s. One nil return</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>-lowest individual scores for this GP</li> <li>-final findings and outcomes are entirely and only made by the Authority</li> <li>-depends on whether stakeholders will engage</li> <li>-not appropriate to engage if results will be unfavourable to stakeholders</li> <li>+supports a non-contested outcome</li> <li>+especially where study shows improvements are needed</li> </ul> <p>Mixed views: where improvements are needed important to engage stakeholders versus: if change is needed, stakeholders may interfere. Or – it's all up to the Authority alone. In UK we would take the view that even where stakeholders might resist proposed changes, it is better to have the debate during the study because there is some prospect of explaining rationale and changing their views.</p> <p>Any comment from webinar participants?</p>
Discussion (Up to 7 mins 0841 – 0848)	

## Chapter 5: Selection of Market Studies

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0848 – 0849)</p> <p>Slides 23 &amp; 24</p>	<p>Scores range from 4.4 to 3.9. Chapter average: 4.3</p> <p>High scores: none</p> <p>Low scores (below 4):</p> <p>5b) (welcome or solicit issues for study from a wide range of third parties) which scored 3.9</p> <p>Also two GPs where there were no comments offered:</p> <p>5c) (consider issues for study from a wide range of sources) which scored 4.4</p> <p>5d) (consider ways to collect issues for market studies) which scored 4.2</p> <p>Assume no significant issues from respondents with these proposed GPs?</p> <p><u>GPs in more detail</u></p> <p>We will look at the low scoring GP:</p> <p>5b) (welcome or solicit issues for study from a wide range of third parties) which scored 3.9</p> <p>We will also look at GP 5f) (consider developing a set of flexible prioritisation principles) which scored 4.4 because there were a range of views here.</p>
<p>Mirta Kapural, Croatia</p> <p>(2 mins from 0849 – 0851)</p> <p>Slides 25 &amp; 26</p>	<p><b>5b) When authorities have discretion to make their own selection of markets to study, welcome or solicit issues for study from a wide range of third parties</b></p> <p>Low score: 3.9. Two 2s, five 3s, the rest 4s and 5s.</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>-concern that the final decision should be independent and discretionary and not imposed or under pressure from interested groups</li> <li>+very useful to communicate especially with consumer and business organisations, media and other experts</li> </ul> <p>A range of views here. Any consensus or further views among webinar group?</p> <p><b>5f) When authorities have discretion to make their own selection of markets to study, consider developing a set of flexible prioritisation principles according to which they will prioritise issues for market study</b></p> <p>Mid range score: 4.4. Five 3s, the rest 4s and 5s.</p>

	<p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+useful for transparency</li> <li>+useful to prioritise particular sectors that are economically important</li> <li>-not easy to do</li> </ul> <p>Any views from the webinar group?</p>
<p>Discussion (Up to 5 mins 0851 – 0856)</p>	



## Chapter 6: Information Collection and Analysis

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0856 – 0857)</p> <p>Slides 27 &amp; 28</p>	<p>Scores range from 4.8 to 4.0. Chapter average: 4.5. Chapter with GPs achieving greatest overall support</p> <p>High scores (4.5 and above):</p> <p>6a) (Prepare for information collection by considering what information is needed, consulting with specialists in the authority, considering the time needed for information collection and analysis) which scored 4.8</p> <p>6b) (make use of any publicly available information) which scored 4.7</p> <p>6c) (Consider carefully how to conduct research) which scored 4.6</p> <p>6d) (Consider carefully the sources of information) which scored 4.6</p> <p>6e) (Clarify certain information when making information requests) which scored 4.8</p> <p>6i) (Consider interactions and duplications when running in parallel with enforcement action) which scored 4.6</p> <p>6j) (Importance of empirical as well as anecdotal data) which scored 4.6</p> <p>6l) (Consider roles and responsibilities of any third parties used to conduct external research) which scored 4.5</p> <p>6m) (Consider how to manage information gathered) which scored 4.7</p> <p>6r) (Cite safeguards for sensitive or confidential information when requesting information) which scored 4.7</p> <p>6s) (Put in place internal procedures to safeguard confidentiality of information) which scored 4.7</p> <p>Low scores (below 4): none</p> <p><u>GPs in more detail</u></p> <p>We will look at two of the highest scoring GPs – as these seemed to raise interesting comments:</p> <p>6e) (when making information request make clear what information is being sought, how it should be submitted, timescales, consequences of not supplying and contact point for questions) which scored 4.8</p> <p>6i) (if authorities run market studies in parallel with enforcement action in the same market consider the interactions and duplications in gathering and use of information carefully) which scored 4.6</p> <p>We will also look at the following mid range scoring GPs, because comments seemed to be polarised:</p>

	<p>6h) (where authorities have the power to compel information consider seeking information voluntarily first) which scored 4.0</p> <p>6p) (where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory) which scored 4.1</p>
<p>Mauritius</p> <p>(4 mins from 0857 to 0901)</p> <p>Slides 29 to 32</p>	<p><b>6e) When making an information request for a market study, make clear, as applicable: what information is being sought; how the information is to be submitted; the timescales for submission, the consequences of not supplying the information; and a contact point for questions about the information request</b></p> <p>High score: 4.8. All 4s and 5s. Most supported GP</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+Helps gain information in the right format and timescales, and maintain study focus</li> <li>+useful when no powers to compel the supply of information – helps educate stakeholders about the benefits of informing the study</li> <li>-consequences: may be more appropriate to make these clear only if stakeholder has not complied within the timeframe</li> </ul> <p>ICN members seem to view this GP as essential to the success of the study. Comments from webinar group?</p> <p><b>6h) Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first</b></p> <p>Mid range score: 4.0. One 1, one 2, four 3s, the rest 4s and 5s. Three nil returns</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>+builds cooperation with stakeholders and separates market studies and enforcement actions, increases confidence of stakeholders that authority is acting in good faith</li> <li>-don't have such powers (not clear whether voluntary or power to compel)</li> <li>-don't have power to request voluntarily</li> <li>-voluntary information may be seen as less credible</li> </ul> <p>What powers do webinar participants have? Any that do not have power to request voluntarily? Any that do not have power to compel? Do participants agree that this is a worthwhile GP for those that have the powers? Any pitfalls?</p> <p><b>6i) If authorities run a market study in parallel with an enforcement investigation in the same market, consider carefully any interaction or duplication between the gathering and use of information in the different contexts</b></p>

	<p>Higher end score: 4.6. Two 3s, the rest 4s and 5s.</p> <p><b>Themes:</b>  +avoids duplications/misunderstanding on part of stakeholders  +extremely useful  -normally don't run market studies and enforcement action in parallel x2</p> <p>What is the practice on running studies in parallel with enforcement action in the webinar group? Responses suggest there are mixed practices. Any other views on usefulness of this GP?</p> <p><b>6p) Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory</b></p> <p>Mid range score: 4.1. Three 1s, one 2, one 3, the rest 4s and 5s.</p> <p><b>Themes:</b>  +avoids later unnecessary work  +ensures the study remains relevant – there may be issues of concern even though they weren't the ones the Authority thought  +Particularly important to be clear when to defend hypothesis and when to accept it was wrong and modify it  -don't modify the hypothesis. Say that the data contradicted it</p> <p>Mixed views here. NB the GP just says 'consider modifying'. This also allows not modifying if there is doubt about the quality of the data. On balance a good GP?</p>
Discussion (Up to 9 mins 0901 – 0910)	

## Chapter 7: Developing and Securing Outcomes

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0910 – 0911)</p> <p>Slides 33 &amp; 34</p>	<p>Scores range from 4.4 to 4.1. Chapter average: 4.3. All scores in the medium range. No high or low scores</p> <p><u>GPs in more detail</u></p> <p>We will look at three scores that seemed to raise interesting comments:</p> <p>7d) (consider testing outcomes to assess workability and likelihood of adoption) which scored 4.2 and</p> <p>7e) (where recommendations are addressed to government plan how to present them and how to use them to advocate change) which scored 4.4</p> <p>7f) (engage early with industry where voluntary action is desired) which scored 4.1</p>
<p>UK OFT</p> <p>(3 mins from 0911 – 0914)</p> <p>Slides 35 to 37</p>	<p><b>7d) Consider testing possible outcomes of a market study to assess their workability and the likelihood that they will be adopted</b></p> <p>Mid range score: 4.2. Three 1s, one 2, one 3, the rest 4s and 5s. But comments on the whole negative</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>-only appropriate in certain cases, where there is unlikely to be resistance from stakeholders</li> <li>-depends on the purpose of the market study/the addressee of the recommendations: evaluate on case by case basis</li> <li>-not easy to assess this in advance</li> </ul> <p>Any comments from webinar participants as to the cause of these concerns? Do participants have any views as to whether it is wise to test outcomes even if there is likely to be resistance?</p> <p><b>7e) Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change</b></p> <p>Higher mid range score: 4.4. One 2, three 3s, the rest 4s and 5s. But comments on the whole negative</p> <p><b>Themes:</b></p> <ul style="list-style-type: none"> <li>-rarely feasible/sometimes out of power of market study team and authority</li> <li>-it's the addressee's responsibility to implement</li> </ul> <p>Are these views shared with the webinar group? Is there scope for planning how to present recommendations in the best light</p>

	<p>and for planning how to follow up recommendations to seek their implementation?</p> <p><b>7f) Engage early with industry where voluntary action is a desired outcome</b></p> <p>Mid range score: 4.1. One 2, five 3s, the rest 4s and 5s. One nil return But comments on the whole negative</p> <p><b>Themes:</b> -questions about timeframe for engaging with industry in these cases: won't necessarily do it early +helps find out industry interests and build co-operation</p> <p>Any views among webinar group about the right time to engage industry where a desired study outcome is voluntary action?</p>
<p>Discussion (Up to 7 mins 0914 – 0921)</p>	

## Chapter 8: Evaluation

Speaker	Script
<p>Gus Chiarello US</p> <p>(1 min from 0921 – 0922)</p> <p>Slides 38 &amp; 39</p>	<p>Scores range from 4.5 to 4.4. Chapter average: 4.4. Only two GPs in this Chapter. But there are a number of more detailed annexes, covering:</p> <p>Five possible tools for evaluating market studies Possible content of an impact estimation plan Possible content of a post study monitoring plan An example from UK OFT of an impact estimation annex to a market study</p> <p>Material here was handled by way of annexes because practice on evaluation is very varied, and some ICN members feel strongly that estimating impact is not possible.</p>
<p>Shiraz Kutar, Germany</p> <p>(Up to 4 mins from 0922 – 0926)</p> <p>Slides 40 &amp; 41</p>	<p>The GPs in this chapter are:</p> <p><b>8a) Consider evaluating the effectiveness of market studies</b></p> <p>Scored 4.5. One 3 the rest 4s and 5s</p> <p><b>Themes:</b> +need to assess results to test success and value for money -may not be possible for all studies for smaller authorities</p> <p><b>8b) When deciding how to approach evaluating market studies, taken into account a) the purpose of the evaluation; b) the scope of the evaluation; c) available resources</b></p> <p>Scored 4.4. One 2, two 3s, the rest 4s and 5s</p> <p><b>Themes:</b> +useful support to an authority that is developing its practice in this area +add other possible outcomes</p> <p>Don't plan to consider these in more detail – unless comments from the webinar group?</p>

## Other comments

Speaker	Script
<p>Gus Chiarello US</p> <p>(4 mins from 0926 – 0930)</p> <p>Slides 42 &amp; 43</p>	<p>We asked for other comments, items missing from the Draft Handbook. We had a range of responses. These are:</p> <ul style="list-style-type: none"> <li>We have given very much importance in the relationship with stakeholders to explaining the reasons and scope of the study and to minimise the burden for them. We consider very important when recommendations are addressed to government to present them and use them in such a way as to advocate for change. We finally recognise as highly important the potential effect of media coverage on market study outcome and therefore we think that the output of a market study should be appropriately explained to the public.</li> </ul> <p>Any comments from webinar participants?</p> <ul style="list-style-type: none"> <li>All this methodologies is, to say, more around market studying. As further projects of good practices for market studies it is advisable to go in depth trying to find what specific markets or kinds of competition concern are common for most of the ICN authorities. Then it would be very useful to develop some example of model methodologies for specific market studies, including i.e. proposals on application of economic analysis, technical tools, specific software etc.</li> </ul> <p>Any comments from webinar participants?</p> <ul style="list-style-type: none"> <li>The Market Studies Good Practices Handbook is very process oriented. More information on ‘how to do things’ is necessary as well.</li> </ul> <p>Any comments from webinar participants?</p> <ul style="list-style-type: none"> <li>It would be quite useful to provide some (good examples of market studies, either as text, or as hyperlinks to studies.</li> </ul> <p>There is the market studies information store. Difficult for AWG to label particular studies as 'good'. But ICN members are free to post successful studies on posting section of AWG page. Any other suggestions?</p> <ul style="list-style-type: none"> <li>This handbook (even in draft form) has been an invaluable tool for us in our research into market studies in other jurisdictions. Our internal guidelines will no doubt be drawing extensively from the handbook.</li> </ul> <p>Any other participants found it useful for their internal guidance?</p>

	<p>Any other areas that are missing?</p> <p>Any thoughts on what other work participants would like the AWG to do on market studies?</p> <p>Wrap up</p>
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## ICN Advocacy Working Group

### CHILE

## THE FNE'S EXPERIENCE ROAD-TESTING THE ICN DRAFT HANDBOOK ON MARKET STUDIES

### 1. Background about the FNE and Market Studies (MS)

The *Fiscalía Nacional Económica* (hereinafter, “FNE”) understands market studies (hereinafter, “MS”) as all those activities enhancing its current knowledge on specific economic activities, markets or sectors. Market Studies can be carried out by professionals within the FNE or by external consultants hired by the FNE.

MS help the staff dealing with enforcement activities. They serve mostly as evidence in adversarial proceedings before the Competition Tribunal (*Tribunal de Defensa de la Libre Competencia*, hereinafter “TDLC”) or as a baseline for technical reports submitted by the FNE to the TDLC in non-adversarial proceedings. In addition, market studies have also served as material for the FNE’s competition advocacy efforts; for instance, supporting the National Economic Prosecutor’s (the agency’s Head) opinions when responding consultations made by Legislators or other agencies of the Executive branch. In this sense, market studies contribute to strength the FNE’s opinion on specific topics or in relation to markets and economic activities not necessarily covered by current or past investigations.

Finally, MS may also provide a ground for launching an *ex-officio* investigation whenever their outcome suggests that certain feature, structure or condition of a market, or a combination of them, can prevent, restrict or distort competition.

Initially, the disclosure of MS’ outcomes led mainly to internal working papers and data bases. That is, the results and main conclusions of the MS were treated as information for the FNE. Later on, some of the MS have been made public in the context of cases or reports submitted to the TDLC. During 2010, in order to strength the FNE’s work on competition advocacy, the authority decided to publish on its website (for the first time) the results of MS which had not been part of proceedings before the TDLC<sup>5</sup>.

According to the law, the FNE can only request mandatory information from market participants during formal investigations. The FNE cannot compel stakeholders and other market participants to provide data for market studies for competition advocacy purposes. In such cases, the FNE works with public sources (i.e., information provided by other agencies and market agents, seminars, publications, previous researches, institutional websites, financial statements, among others) or builds data carrying out surveys. The FNE can also resort to information elaborated in previous cases, provided it does not violate confidentiality or affect the informant or related third parties.

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<sup>5</sup> [www.fne.gob.cl](http://www.fne.gob.cl).

**Note:** Although the FNE participated in the AWG when the ICN Draft Handbook on Market Studies was drafted (mainly providing comments and answers to questionnaires), the Technical Terms of Reference for the MS described below were drafted before the drafting of the HB. Therefore, the good practices included in the Handbook (HB) could not be tested.

## **2. Assessing the pertinence of good practices included in the ICN Draft Handbook on Market Studies**

### **Case No. 1**

#### **Market Study on the Chilean Forestry Sector**

##### **Summary**

In 2008, whilst visiting the Bío Bío region in the south of Chile, the then National Economic Prosecutor attended a seminar on competition advocacy. One of the conclusions of the seminar was the need of increasing the FNE's general knowledge of the forestry sector. With this aim, the FNE commissioned a study to University of Concepción (a prestigious university located in the region). The MS was carried out during the second half of 2009, and was closely supervised by a team of 3 FNE's professional staff (a lawyer and economist from the Investigation Division, led by an economist of the Research and Advocacy Division).

The study included a detailed characterization of the sector and the identification of the key stakeholders in the industry<sup>6</sup>. They were interviewed as "key informants" during the research (for which qualitative techniques for gathering information were used). Some potential risks for competition were identified, such as abuse of dominant position in some stages of the production and marketing chain. Early in 2010 the authors presented the study to the FNE's staff in a private seminar (MS's outcome No.1). The final MS was publically disclosed on the FNE's website in April 2010 (MS's outcome No.2). This was the first time the FNE published the results of its market studies outside any proceeding before the TDLC.

The study was uploaded to the FNE's website in December 2009. It immediately stimulated public debate and stirred up several comments in the media. Particularly, comments were submitted by Chile's National Forest Products Association (CORMA), the industry's trade association. As a result FNE and CORMA have stated their mutual willingness to collaborate.

##### **Questions and answers for Case No.1**

###### **1) Are the specific good practices that you found very relevant or very helpful, and why?**

When a good practice is qualified as 'highly relevant' or 'highly helpful', we are not assessing the good practice as such – that is, considered isolated from the specific study<sup>7</sup>, but how important the practice was to achieve the actual outcome in the study or how important might have been its implementation to obtain a better performance.

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<sup>6</sup> Such as: the regulatory agency, forest producers, forestry contractors, forest transport services and other forestry services, commercial brokers, sawmills and the national guild association.

<sup>7</sup> This has already been done by answering the "ICN Draft Market Studies Good Practice Handbook Questionnaire".

Handbook Chapter and Highly relevant / helpful good practice	Observation
<b>2. Overview</b>	
a) Clear reasons for the MS	<p>In the FNE's Case No.1 there were two main reasons:</p> <ul style="list-style-type: none"> <li>(i) <i>Improving the understanding of the sector:</i> although forestry is a very important industry for the Chilean economy, the FNE lacked of enough information on how the marketplace was working; and</li> <li>(ii) <i>To be aware of potential competition concerns and/or infringements,</i> particularly those affecting regional economies.</li> </ul>
b) Be clear about the possible outcomes	<p>In case No.1 the FNE's main aim was to get some recommendations about how to improve competition in the industry, particularly through initiatives with the private and the public sector. Also, the study would potentially identify potential competition infringements, which would be later analysed in depth by the FNE.</p>
g) Ensure that market study teams combine relevant professional skills and experience and relevant market knowledge	<p>This good practice has been crucial to achieve the objectives and expected outcomes of the studies. In case No.1, the work with University of Concepción (a prestigious university) was based on their broad experience and knowledge of the local economy, the forestry industry and natural resources economics more generally. The FNE's market study team was also selected following the same criteria, combining professional knowledge in natural resources economics, industrial organization and competition policy.</p>
<b>3. Project management</b>	
d) Hold regular team meeting to monitor and review project plans and risks and test and debate ideas and findings with colleagues	<p>This good practice is critical for any MS, especially when the study is carried out by external consultants or developed by staff from different divisions within the agency. Holding regular meetings during the drafting of the study serves both for diffusion within the agency and validation results across the different divisions. In case No.1, notwithstanding the consultants worked in a university distant from the FNE's headquarters, the terms of reference established periodical meetings.</p>
j) When launching MS publicly, provide basic information about the scope of the study and contact points for further information	<p>This is a highly relevant good practice. The FNE acknowledges the importance of providing basic information about the scope and outcomes of the study in due time.</p>
q) Before a MS is completed,	<p>Case No.1 was one of the first market study's report disseminated publically by the FNE. The communication strategy at that time was not</p>

consider whether to release findings and planning for their release	refined, but nonetheless the study had an impact on media and stakeholders.
r) Have a plan for closing a MS that addresses outstanding issues such as any further follow up work and capturing institutional learning	Although we acknowledge this good practice is important, the FNE's experience in this area is still limited. The FNE is evaluating the need to have further meetings with CORMA in order to assess whether particular results of this MS have been incorporated as trade practices.
<b>4. Stakeholder engagement</b>	
a) Explain the benefits that may result from stakeholder participation in market studies, both generally and in relation to specific market studies	This good practice requires some careful analysis. In occasions, stakeholder participation in market studies may be (wrongly) regarded as signal that the agency is desisting from taking future enforcement actions. In case No.1, private stakeholder participation was limited to get information for gathering information when qualitative techniques were employed by the consultants under the FNE's request.
<b>5. Selection</b>	
b) When authorities have discretion to make their own selection of MS, welcome / solicit issues for study from a wide range of third parties	This good practice is highly relevant and has been applied by the FNE. In case No.1, the industry/sector to be studied was selected after a regional seminar on competition advocacy. The final decision was made after further assessment of the importance of the topic, the impact on the regional economy, etc.
<b>6. Information collection and analysis</b>	
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<b>7. Outcomes</b>	
i) Include stakeholder engagement in advocacy efforts to support market study outcomes.	The FNE agree with this good practice. However, it might eventually be merged with "7.k)", because it is not only important to <i>include</i> stakeholders to support market study outcomes, but also to define and measure what resources are going to be used to reassure this engagement and follow-up the potential stakeholders' commitments.
j) Recognise the potential effect of media coverage on market study outcomes.	This GP is also relevant and we are working on it. Media coverage can be a powerful ally in the agency advocacy efforts, particularly if there is a previous engagement with the media. For instance, the public announcement of the decision to carry out a market study and the explanation of its aims is important. The impact may be more at the beginning of the process rather than at the end, when the final report is issued.

k) Recognise that successful market study outcomes may take time and require well-resourced follow-up.	Up to now, the FNE has devoted few time and resources to follow-up market studies' outcomes. Some key milestones (such as the disclosure of the final report and/or the organisation of a seminar presenting the findings) are normally considered the end of the process.
<b>8. Evaluation</b>	
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## Case No. 2

### Market Study on the Chilean Construction Sector: Competition analysis of bidding processes for public construction contracts

#### Summary

Due to the complexity of the construction sector, its importance for the Chilean economy, and the wide international evidence about competition concerns in this industry, in 2009 the FNE decided to carry out a market study. For this purpose, the FNE hired external consultants with experience in the sector and appointed four of its competition officials (economists and lawyers) led by the Research and Advocacy Division. The study took 6 months and centred on the bidding processes for public construction contracts (roadways and hydraulic infrastructure works).

The Ministry of Public Works (hereinafter, "MOP") participated providing valuable information for the research. The collaboration was motivated by a previous agreement between the MOP and the FNE, being both members of an Interagency Taskforce for fighting bid-rigging in public procurement – an activity promoted by the FNE.

The FNE shared the outcomes with the MOP. The findings served as base for the review of both MOP's procedures for public contracts and the criteria used in its Registers of Contractors and Consultants.

In July 2010, the Chilean Construction Chamber and the Comptroller General of the Republic organized a seminar on "*Infrastructure and Ethics: A challenge under construction*" where, among others, the highlights of the market study and a presentation of the National Economic Prosecutor were analyzed.

#### Questions and answers for Case No.2

##### 1) Are the specific good practices that you found very relevant or very helpful, and why?

Handbook Chapter and Highly relevant / helpful good practice	Observation
<b>2. Overview</b>	
a) Clear reasons for the MS	In case No.2, the FNE's main reason for initiating the market study was based on bid rigging: international experience had shown this

	has been a continuous concern for competition agencies in this industry.
b) Be clear about the possible outcomes	The study did not find any evidence on this matter. However, the final report was an important input for the FNE's advocacy efforts.
g) Ensure that market study teams combine relevant professional skills and experience and relevant market knowledge	In case No.2, a combined team was essential for the results. Legal resources were used in analysing legal framework ruling public works contracts, bidding terms and contractors' registers. Economic resources were used to analyse entry barriers, market definition and others. In addition, one of the consultants had experience working with the construction industry, which was useful to understand industrial relations.
<b>3. Project management</b>	
g) Ensure the scope of a MS is focused and manageable	This good practice is fundamental. In case No.2, given the complexity of the construction industry, the FNE defined a very specific scope for the research, focusing on bid processes for public works' contracts.
r) Have a plan for closing a MS that addresses outstanding issues such as any further follow up work and capturing institutional learning	Although we acknowledge this good practice is important, the FNE's experience in this area is still limited. The FNE is evaluating the need to have further meetings with MOP in order to assess whether particular results of this MS have been incorporated in their new bidding process.
<b>4. Stakeholder engagement</b>	
b) Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them	In case No.2, the main stakeholder was the MOP, which provided most of the key information and data needed for the study. Arguably, without this information the study risked to have ended in a less profound revision of the industry. Thus, developing an engagement strategy was key.  After finishing the study, the FNE advocated some recommendations for reforming the MOP's contractors register and other internal procedures and rules.
d) Communicate to stakeholders what market study outputs will be published.	
f) Seek input on a market study from stakeholders	
j) Engage with policy makers to: * reinforce policy and regulation that are working well * raise the profile of competition issues generally, and/or * advocate for specific recommended changes to policy and/or regulations	
<b>5. Selection</b>	

b) When authorities have discretion to make their own selection of MS, welcome / solicit issues for study from a wide range of third parties	Since the FNE has discretion to make MS' selections, this GP makes sense.
<b>6. Information collection and analysis</b>	
a) Before seeking any information, prepare by: <ul style="list-style-type: none"> <li>• Considering what information is needed for the purposes of the market study</li> <li>• Consulting with any authority specialists;</li> <li>• Considering the time that will be required for information collection/analysis.</li> </ul>	<p>This good practice is very helpful.</p> <p>In the FNE's experience, time is critical, but hard to control. In case No.2 the FNE worked with quantitative information provided by the MOP.</p> <p>The delay in the delivery of the information caused an unforeseen delay in the study.</p>
l) Where a third party is going to be used to carry out external research, consider the role and responsibilities of the third party	
j) Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, study findings should be supported by empirical data where possible.	<p>Despite the main results of case No.2 were supported by quantitative data and empirical analysis, qualitative information was useful to get a deeper understanding of the MOP's bid process for contracting public works.</p> <p>Generally, in most cases the FNE uses (or requests the use of) different methodologies to gather information. The FNE recognise that both qualitative and quantitative techniques for collecting information provide complementary and valuable information for performing MS.</p>
k) There are a range of methodologies for collecting information for market studies - select among them, using more than one methodology where appropriate, and consider the benefits and disadvantages, and the costs of each	
<b>7. Outcomes</b>	
j) Recognise the potential effect of media coverage on market study outcomes.	This GP is also relevant and we are working on it. Media coverage can be a powerful ally in the agency advocacy efforts, particularly if there is a previous engagement with the media. For instance, the public announcement of the decision to carry out a market study and the explanation of its aims is important. The impact may be more at the beginning of the process rather than at the end, when the final report is issued.
k) Recognise that successful market study outcomes may	Up to now, the FNE has devoted few time and resources to follow-up market studies' outcomes.

take time and require well-resourced follow-up.	Some key milestones (such as the disclosure of the final report and/or the organisation of a seminar presenting the findings) are normally considered the end of the process. In case No.2, we have not yet assessed which improvements the MOP has already implemented or are part of its working agenda.
<b>8. Evaluation</b>	
---	Same as in Case 1. The FNE acknowledges the relevance of evaluation on the basis of "value for money". However, it is a criterion that so far, has not been implemented in our studies.



## General questions and answers (Cases 1 & 2)

### 2) Are there specific good practices that you found not relevant or not helpful, and why?

We have not found any practice completely irrelevant or unhelpful. The list below contains practices that the FNE considers less helpful and therefore recommends their reassessment or further analysis.

Handbook Chapter and Highly not relevant / not helpful GP	Why?
<b>2. Overview</b>	
c) Distinguishing MS from enforcement actions	<p>The FNE understands MS as an instrument with different possible outcomes – <i>ex-officio</i> investigation (enforcement activity); advocacy activity (under the form of proposals or others); etc. In practice, it may not be easy to identify when the MS finishes and the next activity begins.</p> <p>Although this is a GP, it seems to be one less generally applicable than others in the HB.</p>
h) Allow flexibility in determining the timeframe for completing MS	<p>Although this one is a good practice, it seems less important than other practices considered in the handbook. Flexibility will depend on who carries out the market study. If it is performed by external consultants, usually timeframe is part of the contractual conditions, so the availability to adjust the deadline will depend on the particular agency's legal framework.</p>
i) Develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset	<p>Although a good practice, this is largely a practical issue. Therefore, it seems less important than other practices considered in the handbook.</p>
j) Determine how many studies will be conducted in any one year by reference to available resource, the studies' complexity and other commitments and priorities.	<p>It is important to have in mind both the extension and the resources needed to conduct market studies. However, it is also important to consider that there may be a number of unforeseen circumstances which may lead to cost overruns. These costs need to be balanced against the potential downsides of having an incomplete study – i.e., a study that falls short of expectations. Accordingly, it is not always possible to determine the exact number of studies the agency shall conduct the next year. For this reason, a flexible budget for market studies is advisable.</p>
m) Modify project management processes appropriately when conducting market studies that	<p>The handbook previously states that some things need to change when you are performing a MS by the government or the legislature. No</p>

are required by the government or legislature.	additional details should be needed on that. The relation between the government or the legislature and the agency varies according to a number of institutional determinants – e.g., whether the agency is independent or not from the Executive branch, the nature of the legislative process, local culture, etc. Therefore, it is difficult to give general advice that may be easily applied by most agencies.
<b>3. Project management</b>	
k) Keep under review the study's project plan	It may be not necessary to mention this good practice as separated from planning (letters “i” and “j” above). Checks and adjustments should be already part of the strategic plan.
l) Report progress where needed or where this is required by the authority's governance processes.	Although this one is a good practice, it seems less important than other practices considered in the handbook.
<b>4. Stakeholder engagement</b>	
c) Review and update the stakeholder engagement strategy as necessary during the study.	It may be not necessary to mention this good practice as separated from planning (letters “i” and “j” above) – perhaps only as specification. Defining a strategy should also consider revision and adjustments.
<b>5. Selection</b>	
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<b>6. Information collection and analysis</b>	
h) Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first.	Whether to collect information on a voluntary basis or make use of statutory powers to request information is a decision that each agency should decide on a case by case basis, taking into account the topic, the nature of the relation with stakeholders, local culture and political concerns, amongst others. Therefore, it seems difficult to give general advice on this area – a GP may not be easy to be followed by most agencies.
<b>7. Outcomes</b>	
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<b>8. Evaluation</b>	
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**2) Which chapter(s) did you find more useful and less useful and why?**

<b>More Useful</b>	
<b>Handbook Chapter</b>	<b>Why</b>
Chapter 2	This summary plays the role of check list.
Chapter 6	This chapter provides several “tips” on how to treat information collection and analysing it, including what topics agencies should treat more carefully.
Chapter 8	Although currently the FNE does not develop <i>ex post</i> assessment for market studies, its introduction in the handbook is highly useful.
Chapter 4	This chapter provides several good recommendations on stakeholders’ engagement, both for public agencies and private parties.
<b>Less Useful</b>	
<b>Handbook Chapter</b>	<b>Observation</b>
Chapter 3	Chapter 3 is too process/project-oriented. It has been drafted with excessive detail.

**3) Do you have any comments or suggestions on the structure and presentation of the document?**

- Some of the chapters (e.g. CH3, CH4 or CH6) may have excessive detail. Some good practices can be merged or deleted without major loss to the document.
- Each agency should assess which good practices are more adequate for their work (according to their legal framework, organizational culture and past experience) before implementing them.

**4) Are there any areas currently covered that you think could come out and if so, why?**

- None

**5) Are there any areas not currently covered that you think should be added in or expanded and if so, why?**

- Given that a number of case-studies or examples have been collected during the road-testing experience, perhaps some good practices might be illustrated with examples taken from some countries' contributions.

## GERMANY

### **DRAFT ICN MARKET STUDIES GOOD PRACTICE HANDBOOK – ROAD TESTING BY THE BUNDESKARTELLAMT**

For the road testing of the Draft ICN Market Studies Good Practice Handbook, the experience of a number of colleagues closely involved in conducting market studies in their case work or policy work was harnessed to the review process.

#### **Process for the road testing**

Due to the necessarily limited timeframe within the tight schedule of the Working Group it was not possible to road test the entire handbook. We thus have to limit ourselves to comments on some of the Chapters.

The best possible road test of the handbook would be to apply it while working on a market study from the start of the study to the end. However, market studies generally have a duration of at least several months. The time frame for the road testing did not coincide with a real-time market study of the Bundeskartellamt. This necessarily limits the scope for measuring the impact/ practicability of the handbook.

We asked colleagues who are currently working on market studies or have recently concluded market studies to comment on their perception of the practicability of the handbook. For their guidance we requested them to consider the points suggested by the Working Group.

#### **Results of the road testing**

Overall, the practitioners thought that this handbook is a useful tool. This may be especially true for authorities which have limited or no experience with market studies. Some of our practitioners commented on the comprehensiveness of the handbook. Due to the wide scope chosen in approaching the topic some of the aspects in the handbook may seem obvious, at least for more experienced agencies. However, the intention of the handbook makes it necessary to state such aspects. This procedure is believed to be especially helpful for competition authorities who are preparing their first market study.

However, the handbook, in particular some of the structural / organizational suggestions, is also very helpful for more experienced agencies. To give an example:

The Bundeskartellamt's market studies were carried out in the past without necessarily having determined the project management process at the start of a study – a topic covered by Chapter 3 of the Handbook. Our practitioners agreed that a more structured project management process as advocated by the handbook may prove very useful in future market studies. Of course, this must not impair the necessary flexibility to adjust the market study according to actual developments during the exercise.

Further, some points were especially highlighted by our practitioners as important considerations. To name one example it was strongly supported that it may be very helpful to publish interim reports and to give stakeholders the possibility to comment on these (cf.

4.44). This will help improve the acceptance of the authority's measures and may be of particular relevance for authorities that do not have relevant investigatory powers.

In this context the Bundeskartellamt can build on its experience with the interim reports which were published for the market study into the Milk Sector and for the Fuel Sector inquiry. These interim reports have proven to be very useful in several respects. On the one hand interim reports are a constructive means to control and guide the discussions with the relevant stakeholders. An interim report may serve as a practical basis for the discussions. On the other hand interim reports should also be recognised as an important tool to manage the public's and stakeholders' expectations. The announcement that a competition authority has initiated a market study may produce certain expectations. The interim report may thus serve as a medium for the communication of time management aspects. This is especially important if the time frame could not be clearly sketched out at the start or if the timing had to be revised.

In some respects, the handbook was found to focus in its advice on avoiding certain mistakes, while running the risk of inviting other problems. The practitioners concluded for example that with regard to the collection of information the handbook does not sufficiently mention the danger of collecting too little or inadequate data at the beginning of a study process (cf. 6.4). Furthermore, it does not sufficiently address the question whether purely voluntary cooperation may jeopardise the timeframe of the enquiry and/or the reliability of the data received.

Moreover, the importance was stressed of making the best use of market studies within the authority. This includes an internal review and evaluation process of a specific market study project to learn for future projects. This internal process should be broadbased to make lessons learnt available to all units of the agency potentially involved in market studies (cf. e.g. Annex 2). The Handbook discusses how authorities can make the most of their ex post evaluation. In the Bundeskartellamt's understanding this section concentrates predominantly on the external impact of the work. It may thus be helpful to include a stronger reference to the internal impact of market studies. In dealing with impact issues in different constituencies it should always be clear who the recipient of the respective information or action of the authority is.

Based on the feed-back from our practitioners, we would also like to suggest that the wording of the text on the passing-on of benefits to the final consumers may be too far reaching (Annex 2, para. 15). It's not entirely clear what this assumption is based on.

Especially when seen in conjunction with the text in the preceding paragraph, we think it should be toned down. Furthermore, we would like to suggest moving Footnote 62 to the remarks on the consumer welfare standard.

Finally, though our practitioners may not concur with all points made in the handbook, they agreed that this was also not the aim of the handbook. In our understanding the Handbook should be regarded as a compilation of ideas, from which every authority can choose those which are deemed helpful in a specific case. On this basis, the handbook was found to be a helpful tool.

## JAPAN

### COMMENTS ON DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK COORDINATION DIVISION, ECONOMIC AFFAIRS BUREAU, JFTC

#### 1. Summary of the market study conducted by the Coordination Division, JFTC

THEME: The study on international shipping market and the competition policy

MARKET TO STUDY: International liner shipping market

METHODS: Questionnaire survey and hearing

#### 2. Comments on Draft Market Studies Good Practice Handbook

##### OVERVIEW OF MARKET STUDIES PROCESS (Chapter 2)

- From our experience, it is good practice to be clear about the reasons for conducting a market study before its start (2a). In the current study, some businesses asked us for the detailed reasons for the study at first. In addition, some businesses wanted to make sure that the study is clearly distinguished from our enforcement action. Sufficient explanation of the reasons helped increase cooperation from the businesses in the market at issue.

##### STAKEHOLDER ENGAGEMENT (Chapter 4)

- From our experience, it is good practice to explain the benefits that may result from stakeholder participation in market studies (4a). It is not always easy to understand the benefit of the participation in market studies, and, in the current study, some businesses had not understood the benefits of the participation in our market study prior to our explanation. The explanation helped increase cooperation from the businesses in the market at issue.

##### SELECTION OF MARKET STUDIES (Chapter 5)

- From our experience, it is good practice to weigh different issues that could be studied and only to select for study those issues that best meet the objectives (5e). There are several issues regarding the international shipping market. In our case, we conducted the study focusing on the opinions of the shippers on antitrust exemption system in international liner shipping section. This selection of the issue makes our study more efficient.

##### INFORMATION COLLECTION AND ANALYSIS (Chapter 6)

- From our experience, it is good practice to consult with authority specialists like college professor or knowledgeable person in the area studied (6a). We usually consulted with college professors and experts from trade association in the area studied before a study is initiated, as we did before the current study. They have useful information on the specific market to study and their opinions helped us especially in planning the scale (number of samples) and the target (types of samples) of our market study.

#### DEVELOPING AND SECURING OUTCOMES (Chapter 7)

- From our experience, it is good practice to recognize that successful market study outcomes may take time and require well-resourced follow up (7k). Our current study is a follow up study of our market study on the same market conducted in the past. The antitrust exemption system in international liner shipping section has neither abolished nor changed despite our advocacy efforts based on the previous market study. The follow up study is necessary to know the most recent situations and opinions of the concerned parties of this issue, and it is important for more effective advocacy.

## MEXICO

### **DRAFT ICN MARKET STUDIES GOOD PRACTICE HANDBOOK – ROAD TESTING BY THE COMISIÓN FEDERAL DE COMPETENCIA**

The Mexican Federal Competition Commission (CFC) tested the Market Studies Good Practice Handbook applying it to an ongoing market study on retail banking. This note provides feedback on the good practices that were most useful to accomplish the study and summarizes the lessons derived from this exercise.

#### **1. Background**

The CFC has a long history of efforts directed to improve competition in the Mexican banking sector. Mexico's banking industry is characterized by a large concentration and a low penetration of banking services among population. Although the industry performance has improved, most regulators, including Banco de México (México's central bank), the sectorial watchdog Comisión Nacional Bancaria y de Valores (CNBV) and the CFC acknowledge that the industry is still far from delivering low cost and efficient services to Mexican consumers.

Many of the legal reforms undertaken in the last years were suggested by the CFC and are mainly a consequence of market studies carried out by the CFC at different moments in time.

Recently, the most important contributions were derived from a market study carried out in 2007 where the CFC recommended changes to the legal framework of the industry. The most important implemented proposals were:

1. Reduction of the absolute minimum capital requirements for a bank license, and detachment of this amount from the total Mexican banking sector capital.
2. Incorporation of measures allowing employees to change the bank where their wage payment is deposited (by default chosen by the employer).
3. The obligations to provide standardized basic current accounts and proper payment means whose costs are easy to compare.
4. To extend financial transparency obligations to non-bank financial firms providing services to the public.
5. To strength regulatory bodies capacities to enforce consumer protection and competition policy.
6. To guarantee access to payment networks to any entrant in the sector.

In spite of improvements in the industry performance, there is a widespread perception among the public and policy makers, including representatives at the Federal Congress, that competition in the sector is lackadaisical and that consumers aren't deriving enough benefits from innovation and rivalry among banks. This resulted in the Federal Congress approving legislation in 2010 that allows the Central Bank to regulate fees, interest rates and other conditions in retail banking services where competition is found not to be effective.

In order to have an accurate vision of the industry performance, Mexico's central bank asked the CFC in 2010 to provide its assessment of the competition in the retail banking services. This assessment is meant to detect the specific activities in which more efforts should be



carried out to bring benefits to consumers and it does not oblige the Central bank to intervene in any way in the market, nor to regulate rates or fees.

### **Objective of the study**

The objective of the study is to detect the specific retail banking activities in which policy makers should focus to foster competition.

### **Timing and development of the study**

Originally a final report should have been delivered at the end of 2010. Nonetheless, availability of new data made public by the sectorial watchdog, the CNBV in the second semester of 2010 made the CFC to take the decision to extend the original time frame for a few months until the end of April 2011.

### **Market Study Description**

The competition assessment of the retail banking services focused in the following markets:

- Mortgages
- Credit cards
- Current accounts
- Saving accounts and
- Payment cards systems

Although the assessment is not finished yet, preliminary results are summarized as follows:

The CFC did not find reasons to worry about the **mortgage market** performance. The number of competitors has increased in the recent years, and the minimum value of the financed dwelling has steadily decreased, increasing penetration. Nonetheless, it is noteworthy that switching credits for cheaper providers is still a rare practice among Mexican mortgage debtors, and banks and other financial mortgage providers have not used any tactic to attract other institutions' debtors.

The **credit card market** is the one which causes more concerns among the public and policy makers, as the interest rates can reach levels above 60% a year. The study found that there is a large degree of differentiation, and that banks discriminate mainly by the borrowers' income, while individual debtor's risk rating does not seem relevant. In spite of entry of new players providing credits to small income borrowers, large interest rates are not fully explained by individual or consumer segment risk, and might reflect some degree of market power. In contrast, rates in credit cards designed for large income borrowers seem to behave in a competitive fashion. In conclusion, low income credit cardholders might be paying an interest rate larger than the one that a competitive market would provide.

Regarding the **saving accounts**, the increased penetration of other saving options, such as low risk investment funds has shown, during the last decade, that Mexican savers have more instruments to keep their savings. Nonetheless, the small penetration of this kind of instruments and the lack of access for low income savers is an important issue to be addressed.

The analysis of the **current account** market showed that the geographical dimension of the market is very restricted, and that there are large variations among regions. Thus, contrary to

former analysis, it was found that concentration is larger than previously taught, although it has been relatively constant.

Finally, regarding the payment card systems, the analysis did not find additional barriers to entry different to the ones already detected by the CFC in previous market studies. Nonetheless, the assessment provided input confirming that the lack of competition among issuers makes unlikely for banks to transfer rents derived from interchange fees revenues to cardholders, calling for a closer oversight on the way the interchange fees are settled by the Mexican banks.

### **Handbook feedback**

This section provides specific feedback regarding the usefulness of the chapters of the Handbook and its structure.

### **Good practices especially relevant**

#### Scope

Points 3.11 to 3.13 were especially relevant for the assessment. The Handbook suggests having some flexibility regarding the scope of the market study, which translated into two kinds of adjustments: first, in scope, and second, in depth of the remaining issues.

In the beginning it is important to have a broad idea of the issues and topics that we would like to cover during the study. In the first outline of the assessment, there were very specific issues that were contemplated, such as the study of the role and performance of “credit bureaus” or “credit reference agencies” in the Mexican credit card market. As the study continued, we realized that analyzing this issue would take far more time than initially taught and it was unlikely that analyzing this issue would change the main conclusions. On the other hand, the acquisition of an individual level data base regarding credit cardholders’ characteristics and debt demanded much more time to concentrate on a quantitative analysis that had not been done by any other regulatory body before. This analysis eventually provided new insights on the market performance and much more precise idea of where the problems are.

So, the decision was taken to perform a deeper analysis on certain topics, while covering fewer issues.

Other kind of adjustments were to focus less on markets in which initial analysis did not indicate any problems in the market, such as mortgages, and to focus our efforts in credit cards, a market in which competition seemed less aggressive and where fees related revenues have significantly increased during recent years.

### **Good practices not relevant, helpful and why**

We do not find any practice considered in the Handbook as not relevant for the development of a market study. All of them are important.

### **Which chapter is more useful?**

From our point of view, the most relevant chapters for our exercise are Chapter 3, Project management of Market Studies, and Chapter 4, Stakeholders Engagement.

These two activities are “horizontal”, i.e. they imply specific actions all along the project, and they are crucial for market studies’ effectiveness.

The importance of chapter 3 on Project Management comes from the fact that, compared to other procedures, market studies are projects that have a lesser degree of routine inside the Competition Authority (CA), and where there is a larger uncertainty regarding the resources needed and the time necessary to accomplish it. Very often, a study will analyze a market or an issue where the CA has less expertise and where it is not clear if there will be enough information to in proper depth.

All these factors make project management even more important than for other procedures, and require a continued evaluation of the resources and time span of the project. In the case of the retail banking competition assessment, time span was agreed with the central bank, providing an external pressure to deliver on time. Inside the authorities, it is a good practice to engage internally with a specific time table. In any case, if the team in charge of the study proposes to devote more or less time, it should be proportional to the benefits that the study could bring.

Stakeholder Engagement, treated in chapter 4, is especially important since the competition authorities will often rely on other actors, either to get the information, for technical advice or, in the case of authorities, to advocate for reforms in a specific sector.

Badly managed relationships with other authorities can jeopardize market studies results, efforts for reform, and probably the will for cooperation of other authorities in the future.

### **Comments or suggestion on structure and presentation**

There is a small disadvantage about the labeling of the chapters, in the sense that labeling the “horizontal” chapters 3 and 4 with the same kind of label as chapter 5 to 8 might be a bit misleading.

If the reader misses point 1.11, where the relationship among both kinds of chapters is described, a fast reader might not notice that chapter 3 and 4 are not activities that are done before the selection, information collection, securing outcomes and evaluation activities.

Just for pedagogical reasons it might be useful to label them in such a way that it emphasizes their different nature. For instance, they can have a common element in the name:

Chapter 2: Overview of market studies process

Chapter 3: Key elements for a successful market study: Project Management

Chapter 4: Key elements for successful market study: Stakeholder Engagement

Chapter 5: Market study development stages: Selection

Chapter 6: Market study development stages: Information collection and analysis

Chapter 7: Market study development stages: Outcomes securing and development...

This is for sure redundant, but it is possible that given the handbook nature, a reader in information collection and analysis may not be aware that he or she might miss important hints if he only reads chapter 6 without reading 3 and 4.

### **Specific suggestions to the Handbook**

There are a few suggestions of good practices already considered in the Handbook that could be rephrased or modified to emphasize their benefits.

#### Looking for studies and cases abroad

Point 3.7 of the Handbook highlights the importance of reviewing literature, statistical data, market research, policy developments and regulation that is relevant and available. We suggest including other authorities' decisions and studies in the subject. In our particular experience, it was very useful to consult decisions and studies of other competition authorities in the field and to take into account what is useful for our specific case. This provides a benchmark and provides a clearer idea of how a specific market works under different conditions, which is often the closest we can get to a public policy laboratory. In our exercise, this meant to study banks mergers decisions from the Australian ACCC, the UK's Competition Commission and OFT, and the U.S.' DoJ. It was very useful to consult a market study done by the European Commission on the topic as well.

Many of the issues arising in these studies and decisions were not relevant for the Mexican case, of course, but many others were and they were treated in ways that were interesting to consider for our study.

#### Additional Benefits of Market Studies

It might be worthy to add a benefit to the Market Studies in "Chapter 2. Overview of Market Studies Process". A market study might be an opportunity not only to learn about an industry, but also is a way in which a competition authority might explore new tools and of doing things that would be too risky or time consuming during other kind of procedures.

If you want to use a new econometric approach, a new data base, new elements to define a market etc. it could be expensive or risky to do it when dealing with other kind of procedures, like the analysis of an important merger or a case regarding abuse of dominant position. The CA might prefer to follow these procedures according to past experience and not to get too far from the "bitten track". Thus, a market study provides the opportunity for the competition authority to improve not only the knowledge on a certain market, but also to invest in new ways of doing things. These new techniques or tools can be incorporated later to the day by day work of the authority.

In our case, the assessment provided the CFC the opportunity to find and use information that eventually will lead to different criteria for other procedures, such as mergers in the banking sector.

In particular, it was found that current accounts and saving markets might have a much smaller geographical market dimension than was thought before, and that regional markets might be not necessarily small local versions of a single national market. To process and analyze this information would have been risky with the deadlines and resources applied to other procedures.

### Stakeholders engagement

As we have said, the Competition Authority was informally asked by Banco de México, México's central bank, to provide an assessment of competition in the retail banking sector in Mexico. At that moment two ways of working were considered:

- a) Either to work together closely with the area inside the central bank in charge of monitoring these markets or
- b) Letting the competition authority to work alone on the assessment and to contrast the results with the perceptions of the central bank staff

In the case of this particular study, it was decided to follow the second option, as it was thought that a different point of view could be very useful and could bring new insights to the people working on regular basis on the topic.

Although no consensus might be reached, letting the CFC to reach its own conclusions was indeed insightful for the central bank staff, as we shed light on the importance to take into account different variables that had been absent from their analysis, such as the size of the credit lines. On the other hand, the cost of this is that the CFC had to invest time and resources learning things that the central bank staff already knew.

### Dealing with disagreements

This approach eventually led to relevant differences among the CFC staff and the central bank staff. For instance, the CFC found that there was no evidence that banks discriminate regarding length of credit card tenure, a perception that was contested by the central bank staff.

In this topic there was enough margin to debate and to reach a joint conclusion, but it might be the case that no synthesis would be reached. In those cases, in particular when the market study is meant to be released to the public, it is important to agree in advance a default rule to deal with these disagreements.

By default, we suggest that both authorities should be able to make public their point of view on any issue. For instance, if the CFC was to release a public report by itself, the central bank should be able to include its disagreements and arguments in an annex.

We have the impression that this kind of experience could be important for other authorities, and small modifications, maybe of points 2.37 to 2.41 of the Handbook, could reflect these issues.

## PORTUGAL

### EVALUATION OF THE PCA REPORT ON LIQUID FUELS AND BOTTLED GAS MARKETS

Roadtesting ICN Draft Market Studies Handbook, Chapter 8: Evaluation

#### I. Introduction

The PCA concluded, in March of 2009, its Report on Liquid Fuels and Bottled Gas Markets in Portugal. The market study process, which began in June of 2008, had the aim of analysing the way fuel markets were operating, from crude oil down to retailing of road fuels and liquefied petroleum gas (LPG). As part of the ICN Market Studies Good Practices Handbook (MSH) Project, the PCA has volunteered to roadtest Chapter 8 of the Manual: Evaluation. The following document will seek to evaluate the PCA *Final Report on the Sectors of Liquid Fuels and Bottled Gas in Portugal*, published in March of 2009, based on the good practices outlined in Chapter 8: Evaluation of the MSH, and will, by way of evaluation, review which good practices, as outlined in the remaining chapters of the Handbook, were applied and which would have been useful for the market study under review.

According to the ICN Draft Market Studies Handbook, evaluating market studies is a good practice for competition authorities. “Evaluation, in the context of market studies, means any activity that is designed to measure the effectiveness and/or the costs and benefits of conducting one or more market studies, or the effectiveness and/or costs and benefits of a market studies regime as a whole.”<sup>8</sup>

There is not yet a systematic evaluation regime in place at the PCA, though there has been an institutional commitment to reflecting on a future practice that would evaluate the impact of a selection of PCA market studies. In this particular case, the PCA is set to carry out a more detailed impact assessment of the adoption and implementation of selected recommendations of the Report on Liquid Fuels and Bottled Gas in Portugal which should start within the next year. However, this market study lends itself to more comprehensive evaluation, as its scope and objectives made it an extremely important document for the PCA. The nature of the object of the market study, fuel markets, and their enormous social, economic and political importance in Portugal, meant the process and outcome of the market study held an important place in social and political discourse, and by consequence were subject of a great of deal of scrutiny. This Report was also of significance to the PCA as it represented a significant allotment of human resources and represented innovative methodologies in market studies. The timeliness of the exercise is also important in that enough time has passed since the conclusion of the Report for recommendations issued by the PCA to have been either adopted by government and stakeholders, or subject of significant debate and scrutiny, so as to contribute to a substantial evaluation exercise.

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<sup>8</sup> ICN Draft Market Studies Handbook, 2010, p.111

As a precursor to a more in-depth evaluation, limited by the resources available for this exercise, this document aims to evaluate two main aspects relating to this particular PCA market study, and will base its methodology on Chapter 8: Evaluation, of the Draft MSH:

1. **Internal review of conducting a market study**
2. **Ex-post evaluation of the impact of the market study**
  1. Immediate outputs
  2. Long-term outcomes

In conducting the *internal review of conducting a market study*, we will apply concepts outlined in **Tool 1** from the MSH Annex 2. We will examine the quality of the information collected, stakeholder engagement and any improvements to be incorporated in future market studies. In the *ex-post evaluation of the impact of the market study*, analysing outputs and outcomes, we will draw from **Tool 4** from the MSH Annex 2.

## **II. The PCA Report on Liquid Fuels and Bottled Gas Markets in Portugal, 2009**

In June of 2008, the PCA published a Report on the Fuel Markets in Portugal, in response to a request from the Minister for Economy and Innovation (MEI) for an analysis on the formation of domestic fuel retail prices, as there had been suggestions, that such retail prices did not reflect production costs, in particular when taking into account the Euro/US Dollar exchange rate. The June 2008 Report, which included data up to April 2008, clarified the way petrol and diesel final pump prices are formed along with their relation with the evolution of international prices for crude and refined products.

As a follow up to this Report, the PCA decided to further develop its analysis of the fuel sector. The PCA requested an array of additional information on supply and demand from various entities involved in these markets covering the stages in the vertical chain from production/import to prices charged to final consumers in public outlets for liquid and gas fuels. The additional information, in most cases up to the end of September 2008 but wherever possible up to and including October and November 2008, was requested to allow for a broader framework than had been available in June 2008, and included data on structural features of the market, such as storage and logistics, port access and motorway retail markets. Information was requested from market operators and other entities, including the different oil companies, independent operators, large distribution chains with petrol stations on store sites, and entities such as the National Association of Fuel Retailers (ANAREC), a number of public entities (General and Regional Directorates of MEI), port authorities, motorway concessionaires and related public bodies (such as *Estradas de Portugal* – EP), together with storage facility managing entities and liquid fuel and bottled gas wholesalers and stockists.

An Interim Report on the Liquid Fuel and Bottled Gas Sectors in Portugal was published in December 2008. This Report fulfilled three aims: (i) to make available to the general public the on-going economic, statistical and econometric analysis and share the relevant information available up to the end of September 2008; (ii) to provide another contribution towards a better understanding of how these markets work; and (iii) to play a part in bringing to light issues that are considered relevant to the mission of the Competition Authority.

A Final Report was published in March 2009 and concluded the PCA detailed analysis of the fuel sector. This Report included an econometric analysis of the relation between the price for crude (Brent), Platts prices and retail prices for diesel and IO95 gasoline in the EU15 countries, including Portugal. The aim of the market study undertaken by the PCA was to

evaluate the way fuel markets were operating, from crude oil down to retailing of road fuels and liquied petroleum gas (LPG).

With the aim of achieving changes in these markets that would benefit consumers, the PCA's Final Report issued several recommendations concerning the liquid fuel and GPL sectors. These recommendations were of a structural, regulatory and behavioural nature. One should stress the recommendation made to the government to provide the regulatory framework for Decree law no. 31/2006, relating to the national oil system, and the recommendation that the special tax regime still in place on gas used as fuel should be revoked and the standard regime for paying VAT introduced, in the same way as it was introduced when pump prices for liquid fuels were fully liberalized in January 2004. One should also stress the regulatory recommendations concerning tenders for new concessions or renovation of concessions for service stations on the motorways so as to ensure that different operators run consecutive service stations, whenever this is likely to be of benefit to the consumer and, further to this, that there should be consideration given to a reduction in the duration of the concessions for service stations on the motorways to the extent that very long periods can contribute to foreclose the market.

### **III. Internal Review of Conducting the Market Study**

**Were the processes followed properly planned, managed and efficient (for example, were team roles clear, activities clearly defined and planned, timescales met)?**

After defining the main aims of the study, and submitting a work proposal to the Board, including a work timetable, each person in the team was assigned a specific task. Sometimes a particular task was assigned to a group of two people, with each one knowing which part of the task he/she was responsible for. These tasks loosely corresponded to the different chapters in the Report. The director of the Bureau of Economic Studies was closely involved in the work and met regularly with the whole team, checking their progress and the way the different parts would fit together. Typically all members of the team were present in all the meetings held with the different stakeholders. For the most part team roles were clear, activities were clearly defined and planned, and timescales were met. Nevertheless, there was room for improvement particularly regarding the clear definition and planning of the different activities and the setting of timescales.



### **Was engagement with stakeholders effective?**

In general yes. We held several meetings with different market operators (oil companies and independent operators) and professional associations, where we discussed the aim of our market study, the type of data we were looking for, the way the different markets functioned up and down the vertical chain, from import, refining and storage to the retail sale of the different types of liquid and gas fuels. This interaction with the different stakeholders was kept ongoing throughout our work, including through the questionnaires we sent out to them. Nevertheless, a greater engagement with super and hypermarkets running gas stations would have been helpful, as well as with the Directorate-General for Energy and Geology (DGEG) and with EGREP, the public entity responsible for managing the country's oil reserves. Some stakeholders were less forthcoming than expected when interviewed by the PCA, in particular smaller independent operators, regarding some structural market features such as storage logistics.

### **Was the right information obtained?**

Yes, for the most part. However, further contact with some markets operators was needed to sort out discrepancies and doubts concerning the quantitative data sent to us in response to the questionnaires we sent out.

### **Was the knowledge of the authority improved to the desired extent?**

Yes. Even though the PCA has been monitoring the fuels market since 2004, the year when the fuel price liberalization was completed, conducting this study on fuel markets allowed us to acquire a deeper knowledge of the import, refining and storage activities, the logistics involved in bringing the refined product to the final consumer and the relation over time between changes in the price of Brent, Platts prices, ex-refinery prices and final retail prices. In particular, the data collected allowed us to identify some asymmetries in the price adjustment processes.

Moreover, later meetings with Platts, both in Lisbon and in London, together with e-mail exchanges between Platts and the PCA improved our knowledge of the platform and the methodologies used by this agency.

## **IV. Ex-post evaluation: Immediate Outputs**

### **Was awareness raised and was knowledge of the market in question improved?**

The Final Report on fuel markets (liquid and gas) considerably improved the PCA's knowledge about (i) the fuel sector regulatory framework, (ii) the value chain in the sector of liquid fuels for road use, (iii) the international markets for crude oil and for refined products, (iv) the storage and transport logistics in Portugal, (v) the wholesale and retail domestic markets, including the sale of road fuels on the highways, (vi) the relation between the price of crude oil, Platts prices and retail prices for diesel and gasoline IO95, in particular the magnitude of the asymmetries in the price adjustment processes after a rise and a fall in the crude oil prices.

We believe that as a result of the publication of the Final Report in March 2009, together with the ongoing market monitoring and continuing publication of the quarterly Newsletters on fuel markets (online publication since 2004) and the online publication of a Monthly Bulletin

on liquid fuel statistics starting last September 2009, public awareness was raised on the way fuel markets function and on measures to be taken, either structural, regulatory or behavioral in nature, that can increase the level of competition in the different relevant markets along the domestic vertical production chain. However, due to the continuing price volatility and other factors, complaints are still being received on what is perceived as high fuel price levels as well as on the “rockets and feathers” type of phenomenon affecting the relationship between prices along the vertical chain, which was identified nonetheless in the March 2009 Final Report.

**Was the debate with governments, consumers and/or businesses better informed as a result of the market study?**

We have had some feedback from business, in particular from fuel market operators and associations, that the PCA Final Report and the continuing publication of the Quarterly Newsletters and Monthly Bulletins has made a contribution to clarifying the general understanding of how fuel markets work. However, some divergences remain, in particular with the Portuguese Automobile Association, on how fuel markets operate and on the likely impacts of some existing structural features.

In addition to the publication of the reports on the PCA website, the Final Report was officially presented by the President of the PCA to the Parliamentary Committee on Economy, Innovation and Energy, the committee that deals with competition issues in the Portuguese National Parliament (*Assembleia da República*). This level of public scrutiny, by way of the main lawmaking political institution, was important in the promotion of informed public debate, especially in the light of the Report’s recommendations, which advocated for legislative change regarding these markets. This interaction with the parliamentary committee also contributed to the PCA’s accountability and transparency *vis à vis* the political process, reinforcing the PCA’s independent and academically rigorous, but accountable, position regarding these politically and socially contentious issues.

Additionally, we believe that this report contributed, as well as other important factors, such as the PCA’s advocacy initiatives for legislative reform, to the recognition of competition policy as an essential policy area for parliamentary supervision, leading to the creation of a specialised parliamentary working group on competition issues.

The market study also allowed for a better understanding of fuel markets, and conducting market studies in the field, internationally. The PCA was invited to present the market study at a variety of international conferences and seminars.

**Were recommendations accepted and implemented (for example, the government made the recommended legislative changes)?**

The government has yet to provide the regulatory framework for Decree law no. 31/2006, relating to the national oil system. The recommendation that the special tax regime still in place on gas used as fuel should be revoked and the standard regime for paying VAT introduced, in the same way as it was introduced when pump prices for liquid fuels were fully liberalized in January 2004 has not been followed so far.

The PCA is currently analyzing the impact of the installation of road panels along the highways with information on prices being charged by the different fuel stations on average retail fuel prices practiced along the highways in mainland Portugal. This analysis should be regarded as being part of the overall ex-post evaluation exercise, which has yet to be conducted, where a consumer welfare standard will be adopted, but also taking into account some measurable implementation costs such as the overall cost of the installation of road panels program. For now, a cost-benefit analysis of the installation program is the only one under progress. Recall that several of the recommendations put forth by the PCA have yet to be followed such as the recommendation made to the government to provide the regulatory framework for Decree law no. 31/2006, relating to the national oil system, which might have far reaching consequences on domestic fuel markets, and the recommendation that the special tax regime still in place on gas used as fuel should be revoked and the standard regime for paying VAT introduced.

**Were solutions devised that changed behaviour in the right direction (for example, a considerable number of firms have taken some voluntary action, or consumers' awareness and understanding have changed the choices they make)?**

The Final Report in March 2009 together with the continuing publication of the quarterly Newsletters on fuel markets have raised public awareness about the lower fuel prices being charged by the “no frills” fuel stations next to super and hypermarkets. Indeed, the market shares commanded by such retailers have significantly increased in the last few years, and it is reasonable to assume that they have successfully increased the competition levels in the fuel retail markets where they operate. On the other hand, the installation of road panels along the highways with information on prices being charged by the different fuel stations, another recommendation issued by the PCA some years ago, is now very close to completion. As mentioned above, the PCA is currently conducting an economic analysis of the impact of such installation programs on average retail fuel prices practiced along the highways in mainland Portugal.

**Timeliness: was the study timed for maximum effect to feed into a current government policy agenda?**

As referred above, since 2004 and following the full liberalization of fuel prices in January of that year, the PCA has been publishing quarterly Newsletters on liquid fuels and GPL as part of its fuel markets monitoring activity. The publication of the June 2008 Report on Fuel Markets in Portugal answered a request from the Minister of Economics and Innovation (MEI) for an analysis on the formation of domestic fuel retail prices following some public concerns that retail prices did not properly reflect production costs. The follow-up work undertaken by the PCA on fuel markets, including the publication of the March 2009 Final Report, tried to answer some deeper questions concerning import, storage and transport

logistics, and the so called “rockets and feathers” phenomenon relating changes in prices along the vertical chain.

## **V. Ex-post evaluation: Long-term outcomes in terms of consumer welfare**

In terms of long-term outcomes in terms of consumer welfare, we find the lack of measurability of indicators makes this particular aspect especially difficult to approach.

## **VI. Feedback on Evaluation Chapter of the Draft MSH**

We found the Evaluation Chapter of the Draft MSH very useful in terms of its good practices, and the information held in the Annexes. Evaluation, in its various forms, can be complex in their design and execution. In this light, we would suggest that the information held in the Annexes as relates to the various types of Evaluations and the criteria relating to each, be included in the text of the Chapter, so as to give visibility to the wide-ranging nature of the exercise, while simultaneously alerting the reader as the various approaches possible.

### **VI. General Comments on MSH Good Practices**

**Question 1:** *Are there specific good practices that you found very relevant, or very helpful, and why?*

**Answer:** The market study on liquid and gas fuels was conducted before the publication of the ICN Handbook draft version. Hence, our answers will be retrospective as well as prospective. We find very relevant and helpful the following specific good practices, as listed in chapter 9 of the Handbook: 9.6., 9.7., 9.8., 9.9., 9.14., 9.15., 9.34., 9.36., 9.41., 9.50., 9.54., 9.55., 9.58., 9.63., 9.65., 9.66 and 9.67.

The reasons are as follows:

*9.6 It is good practice to solicit stakeholder engagement during market studies. Stakeholders' inputs and reactions to a study can be a key determinant of a market study's success.*

Typically, the different stakeholders can bring into a market study quantitative and qualitative information and knowledge that the PCA might lack. We believe their contributions will be of a higher quality if they are engaged in a market study and come to understand that the study might benefit the way markets work, regardless of whether, or particularly when an authority has the powers to compel them to supply information. Finally, it is important to take into account stakeholders' reactions to the study, in particular if the market study issues recommendations for actions to be taken by the stakeholders themselves, being them market operators, professional associations, the legislature and/or the government. Notice that, if possible, it might be good practice to engage stakeholders in a discussion of a preliminary version of the study since their feedback might lead to its improvement and to the enhancement of its effectiveness.

*9.7 It is good practice to ensure that, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.* In fact, whenever possible, one should make full use of the in-house knowledge of the relevant markets and the relevant professional skills. In the case of the PCA's market study on fuels, all four team members had relevant knowledge of fuel markets. One of the four members was actually been responsible for the publication of the quarterly Newsletters on fuel markets since 2004 and another member of team had been involved in the investigation of several antitrust cases involving fuel markets, in particular the markets for propane and butane gases. A third member had extensive experience in econometric modelling which proved essential for a rigorous analysis of perceived price adjustment asymmetries along the vertical

production chain of liquid road fuels, namely gasoline IO95 and diesel, both in Portugal and in the other EU15 Member States.

*9.8 It is good practice to allow flexibility in determining the timeframe for completing individual market studies. However, it is also good practice to develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset. Being able to complete studies efficiently, in a relatively short timeframe, is likely to enhance the benefits from conducting the work, and the authority's reputation.* Focusing on the last assertion, we feel that being able to complete studies efficiently, in a relatively short timeframe, enhances the benefits from conducting the work, and also the authority's reputation. Several times market studies, such as the one on fuel markets developed by the PCA, are conducted partially in response to a public perception that some markets are not functioning properly. Even though enough time has to be allowed for the study to be completed, as it involves stakeholders' engagement, data collection and a rigorous economic analysis, a market study that can be completed in time to address such public concerns and eventually issue recommendations that can purportedly mitigate them will be regarded as especially useful, enhancing the authority's reputation in its competition advocacy efforts.

*9.9 It is good practice for an authority to determine how many studies it conducts in any one year by reference to its available resource, the complexity of the studies it selects, and its other commitments and priorities.* As any authority's human resources are relatively scarce, to enhance its effectiveness implies to prioritize its actions, i.e., in the present context to choose which market studies will be conducted or initiated in any given year. Even though some flexibility ought to be allowed, as any work plan might be subject to a revision, to determine how many studies it conducts in any one year helps to optimize the use of its resources and enhance its impact on the way markets function.

*9.14 It is good practice to establish clear roles and responsibilities for market study team members at the outset of the study.* This is part of a good human resources management policy in that each team member needs to define his/her own work timetable once the different tasks involved are assigned together with a calendar for their completion. In the case of the market study on fuels, and following several initial meetings, all team members knew which tasks were assigned to them and the work timetable they had to follow, allowing nonetheless for some flexibility which was relatively easy to implement given that the work team met regularly to discuss each member's work progress and the way the different parts were to fit together.

*9.15 It is good practice for market study teams to hold regular team meetings to monitor and review project plans, and risks, and test and debate ideas and findings with colleagues.* The answers to points 9.7 and 9.14 pretty much provide an answer to why this practice is important. It helps people to focus on the important issues, improve their understanding of how markets work, what the main issues are under a competition policy point of view, and what is to be expected from each team member as the work progresses. In the case of the market study on fuels, regular meetings were held at least every other week on average, with a more frequent and easy interaction between the different team members as they all work close together.

*9.34 It is good practice for market study teams to take stakeholder information and views into account to inform the market study.* The reason why we consider this practice to be relevant is presented above in point 9.6.

*9.36 It is good practice for authorities to engage with policy makers to: reinforce policy and regulation that are working well; raise the profile of competition issues generally, and/or; advocate for specific recommended changes to policy and/or regulations.* In the market study on liquid and gas fuels, several recommendations were addressed to policy makers, either governmental bodies or the legislature. Their collaboration proved to be essential. Also, we find that to raise the profile of competition issues in general is an essential part of an authority's mission, in that it is part of the general competition advocacy effort.

*9.41 When authorities have discretion to make their own selection of markets to study, it is good practice for them carefully to weigh different issues that could be studied and only to select for study those issues that best meet their objectives.* The reason why we consider this practice to be relevant is presented above in point 9.9.

*9.50 Authorities can collect anecdotal as well as empirical data for use in market studies. To increase evidential rigour, it is good practice for study findings to be supported by empirical data where possible. Anecdotal data can be helpful to illustrate key points, and to support existing empirical data and findings based on it.* If anecdotal data can be helpful to illustrate key points, to be able to support study findings by empirical data where possible seems to be the only way to conduct a market study that pretends to be credible. In our market study on liquid and gas fuels we collected both anecdotal evidence and empirical evidence, but the latter type of information was crucial in enabling us to answer some open questions concerning e.g., perceived price adjustment asymmetries along the vertical production chain of liquid road fuels, namely gasoline IO95 and diesel, both in Portugal and in the other EU15 Member States, as mentioned in the above point 9.7.

*9.54 It is good practice for stakeholder comments and insights to be used to inform the market study analysis. When analysing information received, it is good practice for authorities to consider how it fits with their understanding of the market. Where information collected does not support a hypothesis or theory it is good practice to consider modifying the hypothesis or theory. It is good practice to keep in mind that stakeholders' information may not present a complete or unbiased view, but to consider the information and its appropriate context nevertheless.* One reason why we consider this practice to be relevant is presented above in point 9.6. Concerning the cases where information collected does not support a hypothesis or theory, it is important to recall which guidelines should inform good scientific research namely that in these cases one ought to consider modifying the hypothesis or theory. However, we also consider quite relevant to keep in mind that stakeholders' information may not present a complete or unbiased view, especially in the case of qualitative information. Whenever possible and maintaining confidentially safeguards, the views expressed, or the information conveyed, by one stakeholder should be tested with other stakeholders.

*9.55 It is good practice for authorities to cite safeguards for sensitive or confidential information when requesting information for a market study, and to ensure that appropriate internal procedures are in place to safeguard the confidentiality of such information once it is received.* The PCA follows this practice. Apart from legal requirements, we find that the different entities that are requested to send us information, typically express their concern that sensitive information be kept confidential, and that their involvement and engagement with the authority will be more fruitful if such confidentially is respected and if the authority has in place tested practices that can reassure them.

*9.58 It is good practice for authorities to assess the costs and benefits of proposed market study outcomes.* Even though we recognize this to be a relevant practice, we are aware of the

manifold difficulties in assessing the costs and benefits of proposed market study outcomes. We hope to be able to develop and/or apply some already existing methodologies as we believe can be gained by it.

*9.63 Where outcomes depend on third parties taking action, it is good practice to engage with the parties concerned throughout the market study to test their willingness and ability to take the desired action, and to consider and employ the most effective advocacy strategies.* Part of the reason why we consider this practice to be relevant is presented above in point 9.36. It should also be pointed out that, following a market study the PCA has issued recommendations that require the collaboration and involvement of stakeholders in e.g., drafting codes of good practices, or strengthening the existing ones. Hence, to engage with the parties concerned throughout the market study to test their willingness and ability to take the desired action might be very relevant.

*9.65 It is good practice for authorities to recognise the potential effect of media coverage on market study outcomes. A well thought through communications strategy can help to drive successful outcomes.* This practice seems to us to have been especially relevant in the case of the market study on liquid and gas fuels. This study was launched in 2008 when the attention of the media and the public at large were very much focused on fuel markets (IO95 and diesel) due to the very significant price increases in refined products and the price hike in crude, and a shared perception that prices for refined products responded quicker to increases in the price of crude than to its decrease, a phenomenon long known in economic theory as “rockets and feathers”. By publicly releasing this market study, the PCA tried to address those issues and introduce some rigor into the public debate, possibly not being totally successful in this endeavour, which only emphasizes the relevance of recognizing the potential effect of media coverage on market study outcomes and the importance of developing a well thought through communications strategy to drive successful outcomes.

*9.66 It is good practice for authorities to recognise that successful market study outcomes may take time and require well-resourced follow-up.* As mentioned above, any authority’s human resources are typically scarce relative to the multiple tasks at hand. Moreover, market studies are launched when an authority decides to be important to understand better the way certain markets function, in part because there might be a perception that the way they function might raise competition concerns. The need to conduct a rigorous analysis of markets that might be poorly understood and to collect reliable and sometimes extensive quantitative and qualitative information from different stakeholders about these same markets, who might take some have to spend time and human resources to collect such information, requires enough time, often more than one year. A well-resourced follow-up of a market study is a right strategy to learn about its effectiveness, in particular if recommendations were issued.

*9.67 It is good practice for authorities to consider evaluating the effectiveness of their market studies. This can help authorities to demonstrate: that individual studies have met their objectives cost-effectively; the value of market studies more generally. It can also inform future market study selection, and process management.* Even though we recognize this to be a relevant practice, as in the case of point 9.58 we are aware of the manifold difficulties in evaluating the effectiveness of their market studies. Nevertheless, an authority can monitor the way the markets analyzed evolve and whether some of the recommendations issued were followed and had the desired impact. As mentioned before, in the case of the PCA’s market study on liquid and gas fuels we are presently conducting an economic analysis of the impact of the installation of road panels along the highways with information on prices being charged by the different fuel stations on average retail fuel prices practiced along the

highways in mainland Portugal. Such installation program was part of the recommendations package, going back to 2005.

**Question 2:** *Are there specific good practices that you found not relevant, or not helpful, and why?*

**Answer:** We did not find specific good practices that can be considered not relevant or not helpful, even though some are clearly more relevant for us than others.

**Question 3:** *Which chapter[s] did you find more useful and less useful and why?*

**Answer:** We found particularly useful chapters 2 (Overview of market studies process), 4 (Stakeholder engagement) and 7 (Developing and securing outcomes). Chapter 2 is quite useful as it provides an overview on how to conduct market studies. Chapter 4 presents several arguments on why and how to engage stakeholders in a market study, from government departments, regulators and public bodies to businesses and consumer groups. We believe that without stakeholders's engagement the effectiveness of market studies, in particular when it includes recommendations, might be significantly reduced. In the latter case, it is difficult to see how certain recommendations made to e.g. the government or the legislature, might be taken in and adopted within a reasonable time period if such entities are not engaged early on or as soon as convenient and if the targeted entities, e.g., businesses, were kept out of the market study process. Finally, chapter 7 on developing and securing outcomes raises very important issues concerning the overall effectiveness of market studies.

**Question 4:** *Do you have any comments or suggestions on the structure and presentation of the document?*

**Answer:** The structure and presentation of the document is well balanced. Given its non-prescriptive nature, the document manages to cover most of the important topics in a fairly developed manner.

**Question 5:** *Are there any areas currently covered that you think could come out and if so why?*

**Answer:** It is our view that all covered areas are relevant and should be kept in the document.

**Question 6:** *Are there any areas not currently covered that you think should be added in or expanded and if so why?*

**Answer:** We feel that Chapter 8 on Evaluation includes a wealth of information. However, we would suggest including a greater amount of this information, and in particular the various Tools available to competition agencies, in the chapter itself. This would give the content of the chapter greater visibility, and would facilitate understanding of this often complex activity.