

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 9th 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;

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- 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

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

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business or consumer bodies; and/or (ii) commitments by the competition (or competition and consumer) authority itself to take advocacy and/or enforcement action.'

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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

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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2011 - During 2010, the FNE has been closing market studies started in 2009 (one in telecom industry and a second one in banking sector). In addition, under the line of market studies, has been working in an ex-post evaluation for past interventions of the competition system over the supermarket industry.

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.

Non apply

**(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>)**

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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.

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B1	Draft Overview Chapter				
1a	Be clear about the reasons for a market study from the outset	5 - Extremely useful	We believe is very important that authorities have a clear comprehension about both the reasons behind market studies (MS) which the agency is being carrying out and also about the expected outcomes of those market studies; otherwise it is easy to get outcomes which not satisfy the expectatives	Yes	
1b	Be clear about the possible outcomes of a market study from the outset	5 - Extremely useful	idem	Yes	
1c	Ensure that market studies are clearly distinguished from, and adequately separated from, enforcement action.	4 - Quite useful	In our own experience, not always the authorities are clear enough about market studies' role and its separation between advocacy and enforcement efforts [specially when new authorities are appointed and mainly if they came from private bar and	Yes	

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			litigations]. Some times, they believe that enforcement activities are more profitable in the short term for the aims of the agency, trying to get outcomes from the market studies that they can use for initiate an ex officio investigation over a market. From this perspective, Market Study Handbook which states this role separation as a good practice can help the officials working with competition advocacy that market studies can be better understood.		
1d	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	5 - Extremely useful		Yes	

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	6. Evaluating the success of one or more studies				
1e	Carefully manage the process and outcomes of market studies.	4 - Quite useful	In spite of the fact that the suggestions are always welcome,	Yes	
1f	Solicit stakeholder engagement during market studies.	4 - Quite useful		click here	
1g	Ensure, wherever possible, market study teams combine members with relevant professional skills and experience and relevant market knowledge.	4 - Quite useful		click here	
1h	Allow flexibility in determining the timeframe for completing market studies.	3 - Indifferent	We think could be pretty obvious for the agencies and is less important than other practices suggested in the HB	Indifferent	
1i	Develop, and revise if necessary, an anticipated timeframe for conducting each study at the outset	3 - Indifferent	Although we recognize it as a good practice, we believe this is a practical issue that the agencies can easily face by themselves and has a lower level of importance than other practices considered in the handbook	Indifferent	
1j	Determine how many studies will be conducted in	3 - Indifferent	Even it is important to have in	Indifferent	

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	any one year by reference to available resource, the studies' complexity and other commitments and priorities.		mind both the extension and the resources needed to performance a market study (MS) -facts that have a huge incidence of the number of MS an agency can conduct simultaneously; we believe that this restraints will be clear for the agencies with or without it mention in the handbook		
1k	Consider carefully the pros and cons of conducting a study jointly with another organisation.	4 - Quite useful	Despite that most of the cons could be specific for each jurisdiction, it is a good point remind the competition agencies that not all the partnerships are as good as it seems (or will be like sailing in clear water) mainly when some level of conflict of interest could arise. We believe this is specially true in the relationship between the agency and some regulators, which pursue distinct objectives.	Yes	
1l	Where a joint study is undertaken be mindful of	5 - Extremely useful	based on the prevoius	Yes	

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	the parameters of the study and the respective roles and responsibilities of each participating organisation.		comment.		
1m	Modify project management processes appropriately when conducting market studies that are required by the government or legislature.	2 - Not very useful	We strongly believe that if the handbook state clearly than some things need to change when you are performing a market study by the government or the legislature is enough. No details are needed because this kind of relationship is very sensitive to different jurisdictions (for instance, whether the agency is independent or not from the Executive branch), legislative process and even local culture. Thus is difficult that best practices could be easily applied for most of the agencies (they are not generalizable recommendations)	No	
B2	Draft Project Management Chapter				
2a	Establish a core market study team at the outset	4 - Quite useful	Its ok but, in the real life, most	Yes	

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	of a study, unless there are already dedicated resources in place, or the authority intends to contract the work out to third parties.		of the time the defined market study team also have different task inside the agency, and/or some case handlers have a big experience or expertise in some markets, and unless you have a mixture composition in the team you will be losing some relevant internal knowledge		
2b	Consider conflicts of interest for market study staff.	4 - Quite useful		Yes	
2c	Establish clear roles and responsibilities for market study team members at the outset of the study.	5 - Extremely useful	Specially important for having a balanced assignment of the available human resources, with also help to finish different tasks according to was previously defined	Yes	
2d	Hold regular team meetings to monitor and review project plans and risks and test and debate ideas and findings with colleagues.	4 - Quite useful	Although is a good recommendation, we believe that most of the agencies have it in mind from their own practical experience; and from our perspective, it is a less relevant best practice than others developed in the	Indifferent	

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			handbook		
2e	<p>Early on:</p> <ul style="list-style-type: none"> • identify and make contact with the other authority staff who will need to be engaged, consulted or involved in the work • provide such staff with advance notice of the likely timing and timescales for their engagement/input. 	5 - Extremely useful		Yes	
2f	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.	5 - Extremely useful		Yes	
2g	Ensure that the scope of a market study is focused and manageable.	5 - Extremely useful	Just thinking in the apparition order, we believe that this should come before the best practices related to invite people from other public services or bodies to join the work	Yes	
2h	Retain flexibility for later variations in scope if possible.	4 - Quite useful		Yes	
2i	Once scope is settled, prepare a detailed plan that includes anticipated actions, responsibilities,	4 - Quite useful		Yes	

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	key deliverables and milestones.				
2j	When a market study is launched publicly, provide basic information about the scope of the study and contact points for further information.	5 - Extremely useful	We talked about our own experience. We have done the mistake to launch a market study outcome without providing basic information and context and the final results were not so good because we had to give many late explanations	Yes	
2k	Keep under review the study's project plan.	3 - Indifferent	Doesn't it was covered in 2i?	Indifferent	
2l	Report progress where needed or where this is required by the authority's governance processes.	2 - Not very useful	We believe this is a pretty obvious	No	
2m	Actively consider and manage the risks relating to a market study.	4 - Quite useful		Yes	
2n	Put in place a quality assurance process for the market study	5 - Extremely useful		Yes	
2o	Consider the outcomes of a study and ensure that these are approved according to the authority's approval process.	2 - Not very useful	We are not sure that most of the competition agencies have clear process (or not clear, any process at all) for outcome	Indifferent	

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			approval; because as far as we know, the "project" conception hasn't been enough disseminated among the agencies, specially the new ones.		
2p	Ensure that the documentary outputs of a market study are in a format that reflects their purpose and the needs of the target audience.	5 - Extremely useful		Yes	
2q	Before a market study is completed, consider whether to release findings, and if so to plan for their release.	5 - Extremely useful		Yes	
2r	Have a plan for closing a market study that addresses outstanding issues such as any further follow up work and capturing institutional learning.	5 - Extremely useful	If there is any possibility to add something, we would like to suggest to conduct internal seminars to disseminate not just the outcome but the methodology and highlighting the outstanding issues	Yes	
B3	Draft Stakeholder Engagement Chapter				
3a	Explain the benefits that may result from stakeholder participation in market studies, both generally, and in relation to specific market	5 - Extremely useful	Despite that this fact is not under consensus in our agency, we still believe that	Yes	

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	studies.		the stakeholder engagement is relevant; but -following our own experience- the feasibility of its implementation would be sensitive to the authorities opinion, specially in new agencies or agencies where the roles separation between advocacy efforts and enforcement efforts are not totally profiled.		
3b	Develop a stakeholder engagement strategy that identifies relevant stakeholders and plans for how and when to engage them.	4 - Quite useful	idem	Yes	
3c	Review and update the stakeholder engagement strategy as necessary during the study.	3 - Indifferent	Too much detailed	No	
3d	Communicate to stakeholders what market study outputs will be published.	4 - Quite useful		Yes	
3e	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	5 - Extremely useful		Yes	

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	timeframes for studies.				
3f	Seek input on a market study from stakeholders.	4 - Quite useful	As agency, here we fall in conflict. 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 it they have to provide by themselves voluntarily. The authorities not always agree with that in market study cases, because they believe that this could be interpreted wrongly as a way for the FNE desisting for future enforcement activities.	Indifferent	
3g	Try to minimise burdens on stakeholders when making information requests.	4 - Quite useful	idem	Indifferent	
3h	Take stakeholder information and views into account to inform the market study.	4 - Quite useful	i	Yes	

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3i	Engage stakeholders in developing market study outcomes.	4 - Quite useful		Yes	
3j	Engage with policy makers to: <ul style="list-style-type: none"> • 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. 	5 - Extremely useful	We would like to, but it is not just up to us because is also a decision of the policy makers. However, this is one of the goals of competition advocacy, from our perspective	Yes	
B4	Draft Selection Chapter				
4a	When authorities can be required to conduct market studies by government and legislators, wherever possible engage in dialogue prior to any requirement being imposed.	5 - Extremely useful		Yes	
4b	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.	5 - Extremely useful		Yes	
4c	When authorities have discretion to make their own selection of markets to study, consider issues for study from a wide range of internal sources.	5 - Extremely useful		Yes	

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4d	When authorities have discretion to make their own selection of markets to study, consider ways to collect issues for market study.	5 - Extremely useful		Yes	
4e	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.	5 - Extremely useful		Yes	
4f	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.	5 - Extremely useful		Yes	
B5	Draft Information Collection and Analysis Chapter				
5a	Before seeking any information, prepare by: <ul style="list-style-type: none"> • considering what information is needed for the purposes of the market study • consulting with any authority specialists • considering the time that will be required for information collection/analysis. 	5 - Extremely useful		Yes	
5b	Make use of any publicly available information.	4 - Quite useful	Does it is not pretty obvious?	Yes	

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5c	Consider carefully how to conduct research, including factors such as spending decisions, organisation and alternative routes to gather information if initial results are inconclusive.	5 - Extremely useful		Yes	
5d	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.	4 - Quite useful		Yes	
5e	When making an information request for a market study, make clear, as applicable: <ul style="list-style-type: none"> • what information is being sought • how information is to be submitted – that is, the required format (if any) • the timescales for submission • 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 • a contact point for questions about the information request. 	5 - Extremely useful		Yes	
5f	When seeking information explain how the	5 - Extremely useful		Yes	

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	information might be used.				
5g	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.	4 - Quite useful		Indifferent	
5h	Where authorities have powers to compel the supply of information for market studies, consider seeking information on a voluntary basis first.	3 - Indifferent		Indifferent	
5i	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.	5 - Extremely useful		Yes	
5j	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.	5 - Extremely useful		Yes	
5k	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.	5 - Extremely useful		Yes	

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5l	Where a third party is going to be used to carry out external research, consider the role and responsibilities of the third party.	5 - Extremely useful		Yes	
5m	Consider how to manage information gathered, including the receipt, review and organisation of information and logging of any confidentiality requirements.	5 - Extremely useful	In our case, this is a mandatory requirement (by our Transparency Law)	Yes	
5n	Use stakeholder comments and insights to inform the market study analysis.	4 - Quite useful		Yes	
5o	When analysing information received, consider how it fits with the understanding of the market.	5 - Extremely useful		Yes	
5p	Where information collected does not support a hypothesis or theory consider modifying the hypothesis or theory.	5 - Extremely useful		Yes	
5q	Keep in mind that stakeholders' information may not present a complete or unbiased view, but consider the information and its appropriate context nevertheless.	5 - Extremely useful		Yes	

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5r	Cite safeguards for sensitive or confidential information when requesting information for a market study.	5 - Extremely useful	In our case, this is a mandatory requirement (by our Transparency Law)	Yes	
5s	Ensure that appropriate internal procedures are in place to safeguard the confidentiality of information once it is received.	5 - Extremely useful	In our case, this is a mandatory requirement (by our Transparency Law)	Yes	
B6	Draft Outcomes Chapter				
6a	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.	5 - Extremely useful		Yes	
6b	When developing market study outcome options: <ul style="list-style-type: none"> • keep the options under review throughout the course of the study • test the support, where applicable, for recommendations and actions 	5 - Extremely useful		Yes	
6c	Assess the costs and benefits of proposed market study outcomes.	5 - Extremely useful		Yes	
6d	Consider testing possible outcomes of a market study to assess their workability and the	5 - Extremely useful		Yes	

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	likelihood that they will be adopted.				
6e	Where market study recommendations are addressed to government, plan carefully how to present recommendations and use them to advocate for change.	5 - Extremely useful	Sometimes this issue is out of the scope of market study team but the authorities	Yes	
6f	Engage early with industry where voluntary action is a desired outcome.	3 - Indifferent		Indifferent	
6g	Secure necessary internal buy-in to further work before announcing any outcomes that involve the authority itself taking action.	3 - Indifferent		Indifferent	
6h	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.	4 - Quite useful		Yes	
6i	Include stakeholder engagement in advocacy efforts to support market study outcomes.	4 - Quite useful	Sometimes this decision is out of the scope of market study team but the authorities	Yes	
6j	Recognise the potential effect of media coverage on market study outcomes.	4 - Quite useful	Sometimes this decision is out of the scope of market study team and belongs to communication unit or	Yes	

ICN DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK QUESTIONNAIRE

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]
6k	Recognise that successful market study outcomes may take time and require well-resourced follow-up.	5 - Extremely useful	institutional affairs unit It is specially useful that an ICN's handbook sets this. Not everyone is familiar to competition advocacy and advocacy tools, and sometimes -mainly when the authorities are just appointed- 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 of them requires resources for a follow up phase	Yes	
B7	Draft Evaluation Chapter				
7a	Consider evaluating the effectiveness of market studies.	5 - Extremely useful	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 short and also in med term) if you got or not the proposed aims. If you don't carry out an assessment process (ideally,	Yes	Say "...following areas of best practice", and in our opinion should say ".....following areas of best practices" There are some questions marks missing in the text

ICN DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK QUESTIONNAIRE

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]
			an impact assessment) you are not able to know if you just have spent money or if we got our best value for money. It is tool for accountability.		
7b	When deciding how to approach evaluating market studies, take into account: <ul style="list-style-type: none"> • the purpose of the evaluation • the scope of the evaluation • available resources 	5 - Extremely useful	It is extremely useful because is a developing area, and the agencies (specially new agencies) will need the much support a handbook (HB) 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 HB just state the importance of evaluating market studies without providing the general criteria you need to take into account, it would be an incomplete tools.	Yes	Non apply

ICN DRAFT MARKET STUDIES GOOD PRACTICE HANDBOOK QUESTIONNAIRE

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.

We add our comments 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.

C3. Please provide your contact details below.

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Thank you very much for completing this questionnaire.