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Agency Effectiveness Working Group

Competition Agency Evaluation

ICN Agency Practice Manual

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Agency Evaluation Project: Overview

In 2015-16, the ICN's Agency Effectiveness Working Group (AEWG) organized a project on competition agency evaluation. The Project involved a call for member input to inform this comparative report of member agency practices, with a view to identifying the range of practices that agencies engage in to measure their overall performance and provide ideas for agencies looking to improve their own evaluation processes. Recognizing that ICN members are organized in various ways both internally and within their governments and that they operate under different legal systems, competition agencies may benefit from sharing information and experience on their evaluation practices. In support of this conclusion, one of the more striking results from the survey is that 85% of the responding agencies consider the performance or practices of their international peers when evaluating their own performance and practices.

In November 2015, AEWG member agencies were invited to participate in a survey of their evaluation tools and practices. This report aims to give a representative overview of the most common practices identified in the results. Thirty four ICN members from the following jurisdictions submitted responses on their evaluation practices: Australia, Austria, Barbados, Brazil, Chile, Cyprus, Czech Republic, Denmark, European Union, Finland, Germany, Hong Kong, Iceland, India, Indonesia, Italy, Jamaica, Japan, Kenya, Korea, Mexico, Mongolia, Netherlands, Norway, Pakistan, Russia, South Africa, Sweden, Taiwan, Ukraine, United Kingdom, United States, and Zambia.

The agency evaluation survey identified two broad categories of evaluation: evaluation for external consumption and evaluation for internal agency consumption. Additional topics explored common formats for and expression of the results of evaluation; the quantification of performance, including leading workload and efficiency metrics; qualitative evaluation; and how evaluation is put to use. Many of the questions provided agencies with an option to 'check the box' and indicate that the identified factor was a part of their evaluation processes, with occasional opportunities inviting further narrative explanation of key concepts and examples.

The results of the project confirm that agency evaluation is a common practice, with a particular emphasis on the reporting on agency activity. However, the survey and results did not identify consensus norms for how to evaluate a competition agency. This lack of common methods and standards can make it more difficult to compare an agency's performance across time, compare agencies across jurisdictions, and identify useful improvements or assess institutional reforms. Rather, the survey results intend to provide an overview of the range of performance measures and practices that go into agency evaluation, with the hope of inspiring further discussion of common evaluation methods. The ICN may wish to consider whether to develop the work further, for example, focused on the reporting of activity by competition agencies and the potential for progress toward more common reporting formats to assist in better understanding of what agencies are doing and to facilitate comparisons.

I. Executive Summary and Themes from the Member Survey of Evaluation Practices

Evaluation of agency performance is a universal practice. It is common to all of the member agencies that contributed to this project. Evaluation is integral to many of the key operational functions of a competition agency, and many of the topics previously examined by the AEWG. Throughout the responses on a variety of issues, agencies described how evaluation and its results interact with other core competencies; for example, the results of evaluation in one year are fed into strategic planning for future years, workload and outcome statistics help inform priority setting and decisions about how to allocate agency resources, human resources management and personnel decisions can be based on individual performance evaluations, qualitative feedback is used to improve project and investigative management, and evaluation is a part of the knowledge management systems practices at many agencies. In sum, evaluation is a versatile tool used for agency improvement.

Evaluation is a bundle of interrelated activities, exercises, and reporting functions. Evaluation is not a single, all-encompassing exercise to produce a single overarching report on everything that an agency does. It is a multifaceted collection of exercises that can be: formal and informal; focused on individuals, specific agency units, or agency-wide; related to enforcement and non-enforcement activities; linked to an overall report or separate and unrelated; focused on short, discreet terms or longer horizons or trends; crafted for outside review or internal learning; directed at specific cases, enforcement areas, investigative practices or general policy issues and agency operations; and based on quantitative as well as qualitative measurements. While exercises such as a report to a legislature or a public annual report may be the face of evaluation, such reports often result from several or many parallel efforts to measure performance and almost universally do not represent the full extent of evaluation that an agency engages in.

How competition agencies evaluate themselves is influenced by how they compare themselves with international and domestic peer agencies. The vast majority of the responding agencies indicated that they compare, in some way, their results, activities, policy and operations with their international counterparts or similar domestic agencies. Interestingly, competition agencies appear to be more likely to compare performance goals, policies, and practices with international peers than other domestic agencies. It is understandable to want to compare with peers that engage in the same type of enforcement, but this finding also underscores the increasingly international aspect of competition law enforcement, the extent of experience sharing that occurs today, and the potential for soft convergence based upon agencies “opting in” to best practices they see elsewhere. Two-thirds of the responding agencies also look to their domestic peers to compare operational experiences and key, non-competition enforcement specific aspects of agency operations, highlighting the value of learning about good agency practices beyond the competition context.

Activity or workload statistics are a common baseline measurement tool for competition agency evaluation. All responding agencies quantify their productivity across a strikingly similar set of workload statistics and often use them as the basis for performance reporting to outsiders including legislatures, ministries, and the public. Activity numbers are

among the easiest and most understandable metrics to communicate to audiences unfamiliar with the full range of actions and challenges of competition enforcement. They are among the easiest to monitor, track and articulate, as they tend to have bright line answers, e.g., whether an investigation has been initiated or closed, a request issued, a comment or statement delivered, or a case won. They can also be compared over time. Accompanying the unanimous use of activity measures, however, there is a shared recognition of the limits of counting case or matter numbers. Activity is only a rough proxy for effectiveness if one assumes all agency actions have a positive impact. Further, differences in the facts, markets, commerce involved, and impact of each enforcement action, not to mention other agency actions such as advocacy efforts, make the significance of simple cross-matter and cross-time comparisons less demonstrable.

Activity measurements appear to have a natural bias toward enforcement statistics.

While agency evaluation efforts regularly include quantification of non-enforcement activity, the results of the survey responses indicate that across the board agencies are more likely to track enforcement activity. As an exercise, tracking enforcement activity more readily lends itself to simple quantification: a case “win” directly linked to agency action may be more recognizable and easier to articulate than an advocacy “win” that is dependent upon the actions of outsiders to have an impact. Also, in many ways enforcement is viewed as the core purpose and highest profile activity of an agency, more readily understood and demonstrable in order to explain clear benefits and justify an agency’s mission and budget. While there is a general recognition that policy and advocacy activities can have profound impact (e.g., through deterrence or promotion of competition principles), due to difficulties in measuring and demonstrating a key agency link to the impact, statistics on non-enforcement activity play a secondary role to enforcement statistics.

Activity reporting is often accompanied by attempts to identify and demonstrate the efficiency of agency actions. This can be as simple as tracking an activity measure (e.g., cases opened) over time or relative to their costs or compared to the set of similar activities (e.g., a percentage of cases that resulted in a specific outcome, or the average duration of investigations, or employee time devoted to a matter, or surveys of awareness levels about the agency’s work) in an attempt to indicate whether an action or actions has some value or meets a stated objective. A key metric by which agencies grade themselves is the set of strategic goals established for a particular year or time and whether they were achieved.

The estimation of specific impact or quantification of the benefits of an agency’s actions is a common extension of activity reporting for many agencies, and comes with its own benefits and challenges. Approximately half of the agencies that responded to the project survey asserted that they engage in or attempt some form of measuring the direct consumer benefits of their actions. This ranges from the analysis of a few, select cases, to cases in a specific sector or enforcement type (e.g., mergers), to all agency enforcement matters over a period of time – but is almost always limited to enforcement actions. This practice recognizes that activity alone does not equal impact or benefit. Responses from the agencies that engage in quantifying benefits recognize the limitations in estimating or predicting the impact of their actions (let alone the challenge of considering the impact of decisions not to act). They report a variety of assumptions, models, and formulas used to estimate impact of specific enforcement actions, usually focused on some measure of or assumption about price effects and limited by the

necessity of comparing before and after scenarios, “but for” worlds and other projections all influenced by a myriad of market forces.

Transparency of results is a common aspect of agency evaluation. Much of what an agency does is shared, presented, and available for public critique. Activity reports – most often an agency annual report – are the most common and highest profile embodiment of agency evaluation. They are a near universal tool that competition agencies use to catalogue their results and present the narrative of their performance to the public. Given the breadth of what constitutes evaluation, not all results are transparent – a good deal is subject to internal use only – but the highest profile results about top level agency activity are often made public by agency reporting. Such reporting allows an agency to present its own perspective on the utility of its activity and allows for reactions, feedback, and criticism. An open question is whether the emphasis on transparency and public reporting impacts the evaluation exercises that are undertaken. Does it push agencies to “evaluate with the annual report in mind” and perhaps crowd out internal, longer term, or qualitative assessments? Does it focus evaluation on the expectations of outsiders, with a possible bias towards short term outcomes, the quantification of easier to understand enforcement statistics, and ever-increasing estimates of agency impact? Transparency through annual agency activity reporting comes with benefits and challenges but is a common exercise for competition agencies. Given the statutory requirements for many of these exercises and the resources devoted by agencies to them, this is an aspect of agency operation that is worthy of careful attention, strategic thought, and possible further study.

Qualitative assessment and reputational feedback play an important role in agency evaluation. Nearly all of the responding agencies reported use of qualitative evaluation, often in the form of reputational feedback from stakeholders via informal interaction and/or more formal feedback surveys, regularly and at ad hoc intervals, and most often with the legal community, companies, and consumers. Many of the responses from agencies about how they put their evaluation results to use cited the value of qualitative feedback in identifying areas in need of improvements, such as communication or awareness levels with the public and case management procedures. This ability to zero in on weaknesses or areas for needed improvement was identified as a comparative advantage over quantitative assessment alone.

The results of agency evaluation are routinely used to shape strategic plans and internal changes to agency policies and practices. Agency evaluation is not an idle exercise done for posterity sake – the responding agencies were unanimous in their assertion that agency evaluation is put to use to improve their agencies. Examples of how the results of evaluation are used included: guiding agency strategic planning, informing choices to allocate resources, setting priorities and agency goals, improving case management, and identifying topics for new or improved agency guidelines and internal procedures. The results of agency evaluation are read, studied, compared over time, and put to use by agency leadership and staff. It is integral to effective agency management.

II. What is meant by agency evaluation and its key challenges

For the purposes of this report, we define “agency evaluation” as the assessment of all or a part of an agency’s activities over a given period of time. This is inspired by the OECD’s

definition of “evaluation for accountability” in its recent work on evaluation. This project does not seek to address the evaluation of specific enforcement outcomes in any detail, though it touches upon that practice as part of the larger context of agency-wide assessment. Nor does this project seek to address attempts to determine the impact of competition policy on broader economic indicators such as productivity, innovation, growth or employment. The OECD also has explored these forms of evaluation in detail. (See resources annex.)

An agency’s evaluation of its actions is a core component of agency governance. Evaluation, and the accountability it reinforces, can provide an informed foundation for future agency planning and enforcement choices and helps justify the resources an agency receives for its mission.

Agencies face challenges in evaluating the effectiveness of their activities. The impact that agency actions have is often only ascertained over time and difficult to isolate from market factors. Interventions may have impact beyond their direct effects, in terms of less quantifiable deterrence effects and changes to market behavior. Non-enforcement activity and decisions not to intervene are part of an agency’s impact but are difficult to measure and often not included in assessments. To get a sense of some of the top challenges to effective evaluation, the first question posed by the questionnaire to members was an open-ended invitation to “name the top challenges that agencies face in evaluating the effectiveness of their activities.” Here are the results.

The main challenges identified by the responding agencies can be grouped as follows (in order by the number of responses):

- Limited available financial and human resources to devote to evaluation when compared to enforcement demands; also the demands of data collection, interpretation and analysis
- Quantifying the impact of the authority’s actions or inactions, more specifically, difficulties measuring indirect effects (e.g., deterrence) and isolating or distinguishing agency impact from other market or outside factors (e.g., government action)
- Finding objective measures or benchmarks for meaningful comparisons; lack of proven criteria to accurately and consistently measure performance
- Creating a valid frame of reference, e.g., how to set indicators in light of the agency’s main objectives and goals; identifying factors to measure that have a direct link to effective enforcement
- Timing issues: addressing the needs to analyze data and results over time for long range conclusions within the structure and demands of short term reporting requirements
- Difficulty analyzing qualitative effects of actions and using subjective qualitative feedback received
- Establishing a system, mindset and capacity for regular evaluation exercises

Other challenges mentioned in the responses were: demands developing sophisticated evaluation mechanisms, quality of source information, rapid changes in markets, comparison between agencies, low feedback rates to stakeholder questionnaires, preparation required in anticipation of external evaluations, and aggregating the impact of different activities into one number.

III. Format for agency evaluation

The first half of the agency questionnaire explored the format of evaluation, with a distinction between “external” and “internal” evaluation, and sections on benchmarking or relevant comparison points for agencies and the structure of regular “activity” or “performance” reports.

A major distinction in the format for evaluation is whether the assessment is done for or by an external body or whether the assessment is done internally for the agency’s use. The two may overlap and coexist; for instance, an agency may use many of the same performance measures in reporting to an external body that it uses for internal assessment.

A. External assessment – assessment done for or by outside entities

The performance of some agencies is evaluated by outside entities either via ad hoc requests or on a regular basis. This type of external assessment can be conducted by another part of the government (e.g., audit office), private consultants, or the agency itself. The series of questions related to “external” evaluation refer to assessment done *for* or *by* entities outside the competition agency.

The vast majority of responding agencies (85%) are subject to external evaluation, often multiple external reviews or a review for multiple purposes or audiences. The questionnaire asked a series of questions about the nature of external evaluation. For approximately two-thirds of the responding agencies, this type of evaluation is required by statute. For a majority of the respondents, external evaluation is conducted by outside entities, most commonly a government ministry with oversight responsibility or a centralized government audit office or commission. Other examples of outside evaluators include financial inspection agencies and legislative bodies, committees, or offices. Several respondents noted that the competition agency itself conducts the evaluation that is then submitted to outside evaluators. Nearly all agencies described their own involvement in the evaluation process, for example by tracking and providing performance statistics, as well as background on and descriptions of work accomplished, even if it is not the ultimate author or approver of the evaluation report.

Approximately 30% of the responding agencies have hired external, non-government consultants to conduct an evaluation or a focused aspect of a broader evaluation (e.g., to conduct stakeholder surveys). About half of these agencies that hired consultants described examples of specific, narrowly-focused evaluations that were outsourced, such as the impact evaluation of a specific case outcome or types of cases, or the review of agency operating procedures, case handling process, or personnel practices.

The questionnaire next explored who received or required the external evaluations. Consistent with the most common responses for who conducts these types of evaluations, the most common responses for the audience of external evaluations were government ministries or executive offices (19 responses) and government audit offices (15 responses). About half of all the responses also noted that one of the audiences for their external evaluation is the general

public. Nine responses listed a legislative body and seven said their external evaluations go to non-governmental stakeholders. Notably, 23 responses indicated that the agency itself is an audience for the evaluation. Thus, even in the situation of crafting, contributing, or being subject to an evaluation for an outside audience, the agency still takes advantage of the results to inform itself. For this question, reflecting the nature of evaluation as often a collection of multiple efforts, many of the respondents identified several different audiences for their external evaluation(s).

Four additional questions probed deeper into the general nature of external assessment. The results for each question evidence common characteristics as a majority of the responses agreed with each proposition. First, the questionnaire asked if there were set or stated objectives or criteria for the evaluation; 55% answered “Yes.” Examples of the general criteria and standards used for evaluation include: measurement against outcome-based performance indicators; “effective” and “efficient” use of agency resources and budget or an accounting of an agency’s use of public resources; activity measures such as case statistics or case management measures; assessment of specific impact of cases or types of cases – often quantified in terms of consumer savings; transparency of information provided; and the views of external stakeholders. Several agencies explained that they are judged against the goals and objectives they themselves set via strategic planning every year or set criteria in statutes or government-wide guidelines for agency performance.

Next, the questionnaire asked if external evaluation leads to a written report; nearly all of the responding agencies answered “Yes.” Further, over 85% of responding agencies confirmed that the results (or a portion) of their external evaluation are made public, consistent with the idea that these results are given to external evaluators, often other parts of the government. Finally, agencies were asked if the results of external evaluation include feedback for the agency, a common goal of the exercise of evaluation: over 80% of the responses to this question indicated that external evaluations do include feedback, with a minority of responses indicating that external evaluation is limited to a reporting of their activity.

B. Internal assessment – assessment done by and for the competition agency

Many agencies evaluate their performance for internal reasons. Such evaluation can be agency-wide and/or focused on specific enforcement areas, units, or even conducted at the individual employee level. As such, internal evaluation can be dispersed throughout the agency. It can also take varying forms of formality, from ad hoc “lessons learned” sessions and oral reviews to written institutional plans. Some agencies make public the results of internal evaluation.

The second major portion of the questionnaire addressed internal agency evaluation practices, the various ways and approaches used to self-assess performance. Some level of internal evaluation is a near universal practice among the responding agencies, with all but one response indicating that this is part of regular agency practice.

The first set of questions on internal evaluation explored the basic contours of such assessment, identifying six elements that may be included in evaluation practices: tracking

activity or workload; assessing activity in specific sectors or enforcement areas, assessing both enforcement and non-enforcement activity, evaluating specific units, evaluating the performance of individuals, and lessons learned evaluations of specific matters.

Each of these six elements was selected by over two-thirds of the respondents, with many of the responses confirming most, if not all of the elements. The top cited practices, according to the results, were 1) tracking activity and workload measures and 2) assessing both enforcement and non-enforcement areas. As evidence that evaluation can include a focus on specific practices, individuals or enforcement matters, the next two most commonly cited practices were 3) assessment of the performance of individual employees and 4) conducting “lessons learned” sessions after specific agency decisions or projects. A touch less common, but still regularly practiced by a majority of the responding agencies, are the 5) evaluation of the performance of specific units within an agency and 6) the assessment of enforcement activity or outcomes in a specific sector or enforcement area.

Mirroring the results for external evaluation, the overview on internal evaluation concluded with three questions about general characteristics of such exercises. First, as for external evaluation, the vast majority of responding agencies report that their internal evaluation exercises result in written reports or are incorporated into institutional planning. However, unlike the results for external evaluation, there was a split as to whether internal assessment is made public, with only a minority (45%) reporting that they make significant portions of their internal assessments public. The responses made clear that transparency is not a simple yes/no metric for the vast range of activities that make up internal evaluation. This result may underestimate the number of agencies that use some of the results in public statements but also overestimate the scope or volume of information obtained from evaluation that is made public. The results showed examples of aspects of internal evaluation that appear to be used routinely to support public agency statements, e.g. workload measures, and aspects of internal evaluation that are unlikely to be made public, e.g. individual employee evaluations. Relatedly, the questionnaire asked if agencies provide all or part of the results of their internal assessment to other government entities. Reflecting the multipurpose use of performance measurements, two thirds of the responses to this question confirmed that some of the results of internal evaluation are also used outside the agency.

C. Comparative assessment or benchmarking

As either part of their assessment or as a separate exercise, many agencies benchmark or compare themselves to domestic or international counterparts. This exercise can include experience sharing and policy discussions with other agencies.

In this section of the questionnaire, agencies were asked two baseline questions about whether they compare their performance to international and domestic peers. The points of comparison – the results of an agency’s evaluation, its goals, or its policies and practices – were intentionally broad in scope to get an indication of the relative frequency of comparison over the details of what is compared.

The results revealed an interesting difference in comparison points for the responding agencies: the agencies are more likely to compare their performance results to international counterpart competition agencies than other domestic agencies. Eighty-five (85) percent of the responding agencies indicated that they compare their performance to international peers; approximately half indicated that they make such comparisons to domestic agencies.

Two additional “international” line of questions asked about the “exchange of operational experience” and “exchange of policy ideas” with international competition agency peers. Not surprisingly for members of an international network devoted to sharing experiences, nearly all of the responding agencies (88% for operations; 97% for policy) answered in the affirmative. When asked for examples of the venues for such exchanges, in both instances similar responses emerged. Major multilateral endeavors such as the ICN and OECD were mentioned in many responses, so too were regional competition initiatives such as the ECN, BRICS, Nordic cooperation, CARICOM, and regular bilateral dialogue between agencies, often via relationships established in MOUs or other agreements.

About two-thirds of the responding agencies indicated that their agency has been the subject of more formal international evaluation: a peer review by an international organization on, or including, competition law and enforcement. The most commonly cited venues for such reviews were the OECD and UNCTAD. Of this subset of agencies that has undergone peer review, approximately 80% reported that the agency introduced significant changes as a result of the recommendations of the peer review, supporting the utility of such reviews. The agencies were then asked to characterize the nature of those changes into three set categories. The most commonly reported changes as a result of peer review were new agency guidelines or rules (61%), followed by legislative changes to the competition law (50%), and the least common category cited was changes to internal agency practices (44%). Some agencies that have been peer reviewed argued for these evaluations’ usefulness to implement larger and fundamental changes to the competition law and enforcement architecture. Sometimes an in-depth, professional external evaluation may identify agencies’ strong and weak policy areas more effectively than purely an internal one.

In contrast to the relatively heavy reliance on international peers in agency assessment and benchmarking, domestic agencies were considered as a comparison point by only half of the responding agencies when evaluating performance, goals, or considering changes to policies or practices. The types of domestic agencies that were identified by those that do such benchmarking can generally be divided into two groups: first, administrative agencies dealing with economic law and regulation such as consumer protection agencies, security regulators, tax regulators and anti-corruption authorities and second, sector regulators, the most commonly cited being telecommunication and energy regulators, many of which have some degree of concurrent jurisdiction with the competition agencies. These agencies were often not only used as a comparison point for performance measures, but also for the exchange of operational and other administrative expertise, including complaint handling, strategic planning, prioritization, authority to issue fines, procurement policies, administrative policies, human resource management and budgetary issues. In some cases this domestic benchmarking occurs with other “agencies” or missions within the same umbrella organization; e.g., multi-mission agencies that address competition alongside consumer protection or area of economic regulation.

D. Agency Annual or Activity Reports

A common form or embodiment of agency evaluation is a written activity or performance report, often in the form of an annual report describing the agency's work and used as a key tool for communicating an agency's performance. Several responses explained that their agency reports on its activity and performance in speeches, testimony, and other public statements as well. This widespread practice of public, written activity reports underscores the value of disclosing an agency's performance.

The questionnaire explored five common components of such reports. The responses to each were unanimous, providing a de facto "template" of the basic contours of agency performance reports: 1) regular reports, 2) made public, including 3) enforcement and non-enforcement activity, 4) workload statistics, and 5) narrative descriptions of actions taken.

First, all agencies that responded to the questionnaire indicated that they issue written activity reports – often an "annual report" or "performance report" – regularly. For the vast majority of responding agencies, this means an annual report. Approximately 15% of respondents explained that they issue performance reports more frequently, either semi-annually or quarterly, often in addition to producing an annual report.

Second, all responding agencies make their activity reports public. How an agency publicizes its evaluation results and activity levels can influence the perceptions of an agency and how those results are perceived can influence what is reported. The prevalence of publicizing evaluation results raises the interesting questions of whether it helps drive the desire to articulate understandable and meaningful measures of performance and also whether it promotes an inclination towards reporting higher activity levels, regardless of the significance or importance of the activity.

As to the content of these annual or activity reports, three common factors emerged:

- ✿ all include reporting on both enforcement and non-enforcement activities,
- ✿ all include workload statistics, and
- ✿ all include narrative descriptions of agency activity, including decisions reached and interventions made.

An agency's own analysis, explanation, or assessment of its performance is also included in a large number of the reports produced by responding agencies. This provides an additional level of detail and insight on specific matters and agency initiatives and priorities beyond aggregated activity numbers. The agency can express its own perspectives on the impact and value of its activity.

IV. What is evaluated

A. Quantification of agency activity and productivity

Evaluation often includes the quantification of some measure(s) of agency performance or activity, notably based on input and/or output measurements. There are many ways to assess an agency's productivity and many performance indicators can be quantified. Many agencies track and report similar workload statistics focused on output, mostly from enforcement activity. There is also considerable variation in how agencies report case metrics – some aggregate numbers of matters, others break down matters by name, category, and procedural history – and may report them in different formats for different purposes in different documents. The indicators chosen by an agency for evaluation may reflect its reporting requirements, institutional organizational choices, strategic planning, enforcement resources, and agency priorities.

The questionnaire presented agencies with fourteen possible performance measures, repeated below with response rates. Respondents were asked to check the box of each indicator that their agency tracks or reports as part of its evaluation exercises. The questionnaire urged respondents to “check all that apply” and indeed, each metric was checked in over 70% of the replies, indicating common use among the responding agencies. Most of the responding agencies track or report the full list of performance indicators. Ten of the indicators were near unanimous, with over 90% positive response rates. If it is meaningful to recognize the slight differentiation in results with the other four, the bottom three involve non-enforcement metrics (appearances before or comments to legislative bodies, courts, sector regulators; policy statements and guidelines issued; and press coverage) and the fourth is a slightly more sophisticated and resource intense version of tracking case metrics (more frequent intermediate investigative steps or actions). The results are:

Does your agency track and/or report the number or scope of: (check all that apply)

Indicators with 90+% agreement

- 🌀 *enforcement actions or decisions*
- 🌀 *sanctions imposed or obtained*
- 🌀 *investigations initiated*
- 🌀 *investigations closed*
- 🌀 *complaints addressed*
- 🌀 *investigations or enforcement actions by type of enforcement (e.g., mergers, cartels)*
- 🌀 *remedies imposed or obtained*
- 🌀 *advocacy actions*
- 🌀 *studies undertaken or produced*
- 🌀 *appeals*

Indicators with 70-85% agreement

- 🌀 *intermediate investigative steps or actions; e.g., requests for information issued, raids or searches, decisions to advance phases of an investigation, statements of objections*
- 🌀 *appearances before or comments to legislative bodies, courts, sector regulators*
- 🌀 *policy statements and guidelines issued*
- 🌀 *press coverage*

A few agencies provided additional examples of activity indicators that they track and report, including communication tools such as website visits, newsletter recipients, or use of social media and measures of international interaction such as the number of instances of enforcement cooperation with international counterparts or the number of international consultations, comments or advice provided, bilateral meetings, or technical assistance missions.

Tracking activity levels, particularly enforcement activity appears to be a common and valued method of evaluating agency performance. The questionnaire did not seek to explore the limitations of such evaluation, including the challenge of weighing the unique effects and significance of different actions and the impact results-based evaluation might have on an agency's resource allocation choices.

B. Quantification of overall benefits or impact

For many competition agencies it is important to demonstrate that their enforcement activities have a positive impact and play an important role in the economy. For this reason, it is no surprise that many agencies' evaluation practices also include the quantification of some level of savings or benefits generated by all or part of the agency's actions. The attempt to estimate the impact of an agency's activity, although fraught with limitations, is in part recognition that effective performance is not based only on activity itself but rather the ultimate economic impact of that activity.

Among the responding agencies, only a slight majority of agencies (55%) attempt to quantify, estimate, or measure direct consumer benefits generated by agency actions. Replies clearly indicate that for those that do, the savings/benefit estimates relate to enforcement actions and generally do not attempt to include the impact of non-enforcement actions (e.g., advocacy). These agencies most commonly quantify observable consumer benefits for a defined enforcement area, sector, select or individual cases. Some use proxies in their benefits evaluation. In terms of cartels, for instance, consumer benefit from cracking the cartel can be based on the assumption or proxy that the cartel activity increased prices by, for example, a 10 or 15 percent overcharge. Market price comparisons before and after enforcement actions is also an operative tool for evaluation. Some agencies use sophisticated estimation formulas and case-specific data to estimate consumer savings in particular cases. Estimation formulas can be based, for example, on volume of commerce.

Agencies' methodologies to quantify the value generated by their actions vary. Even so, agencies' estimates suggest clear benefits of agency actions. Reported benefits of agency actions ranged from 5.7 million USD to 1.32 billion USD (reported as a recent public estimate by the agencies). In respect to mergers the range fluctuated from 1 billion USD to 5.59 billion USD. Some agencies stress that they use quite conservative assumptions in order to prevent an overestimation of the effects. They indicate that although the effects often need to be calculated in a relatively easy manner, effects must be quantifiable (in monetary terms) with a reasonable degree of certainty. The responses to this section all discussed impact assessment in terms of consumer savings and effect on prices – none mentioned harder to quantify impact on quality of choices, productivity, or innovation. Perhaps surprisingly, no responding agency reported that it

makes a systematic, serious attempt to estimate the deterrence effect of their actions. Rather, the focus is on direct consumer savings attributable to agency enforcement actions.

C. Qualitative review and reputational feedback

Evaluation results may also include qualitative measures of an agency's activity. There are many performance indicators or good practices that cannot be easily measured or quantified. Qualitative input reflects internal or external perceptions of agency performance rather than specific impact. Qualitative review can also seek reputational feedback. Reputational feedback can be sought in different ways, for example, through informal interactions with external stakeholders or more formal means such as surveys. It can be conducted by the agency itself or by outside parties, such as hired consultants. The practice of qualitative review recognizes that good performance may not always mean more activity, but rather better activity.

Nearly all of the responding agencies reported tracking, in some way, the "efficiency" of their performance or the use of resources. The questionnaire offered eight so-called "efficiency" measures to choose from, urging respondents to "check all that are regularly tracked."

Three factors are tracked by the vast majority of agencies (75+%):

- ✦ the length or timeliness of investigations (concerning both mergers and conduct investigations)
- ✦ whether the agency has achieved its strategic objectives and goals and
- ✦ percentage of investigations closed in an initial phase.

Fewer, but still a majority of responding agencies (~50-70%), also assess these four factors:

- ✦ percentage of investigations that lead to enforcement actions.
- ✦ win rate on appeal
- ✦ cost of investigations studies or enforcement actions, and
- ✦ success rate for advocacy efforts (i.e. results that lead to change).

The eighth factor identified – assessing the burden imposed by (or utility of) requests for information – was confirmed by only 15% of the respondents.

The questionnaire also asked about other types of "efficiency" measures. Questions in this line of inquiry focused on whether and how agencies monitor and evaluate their investigations or litigation processes, decision quality, communication, ethics, staff training, and employee job satisfaction. The message from the replies is mixed. When combined with the results from earlier questions about quantitative evaluation, the responses appear to support a conclusion that agencies favor close scrutiny of their substantive results as opposed to the more abstract performance of their processes.

To start from factors of unanimity, almost all of the responding agencies evaluate or assess the level or quality of training opportunities provided to staff. Also a clear majority evaluate their communication or awareness levels with companies or the public. A notable

majority (77%) evaluates or assesses the level of job satisfaction of its employees. Notably, the two practices that deal with human resources – agency staff – were in this top response category.

However, there is more variation with other factors. Slightly less than half of the responding agencies indicated that they routinely evaluate the efficiency of their investigative process or litigation. In addition, only approximately 43% of the responding agencies regularly evaluate the “quality” of their decisions. The word “regularly” is relevant here as a few responses noted that quality control is an ad hoc or situational activity. Lastly, approximately half of the agencies evaluate or assess the level of compliance with ethics rules and the number of ethics violations.

Reputational Feedback

The other arm of the qualitative part in the questionnaire concerned reputational feedback. Reputational feedback, by its nature, includes more subjective judgements. Its strength is in its value to provide greater detail and insights into how an agency’s actions are perceived by outsiders. Seeking outside opinions can help check any potential self-bias that may occur when an agency only engages in self-assessment. Consultations (formal or informal) with outside stakeholders can evidence a willingness to learn about the impact and perception of an agency’s actions.

The vast majority of responding agencies (82%) seek qualitative or reputational feedback from non-governmental stakeholders as part of evaluation practices. Differences exist though for how such feedback is carried out, how often, by whom, and who are the key stakeholders.

- ✿ How? A slight majority of responding agencies use formal surveys or interviews, others compile feedback from stakeholders informally.
- ✿ How often? Half of the agencies carry out their feedback exercise regularly, the other half on an ad hoc basis.
- ✿ By whom? Mostly by the agencies. Feedback was gathered twice as often by the agency itself as by hired third parties.
- ✿ Who? For a significant majority of agencies, companies (93%) and the legal community (78%) are the key stakeholder targets in terms of feedback. For approximately half of the responding agencies, feedback also is gathered from academics, consumers and press.

(These percentages refer to the subset of responding agencies that seek reputational feedback from stakeholders.)

Reputational feedback can spur two-way interaction, i.e. after receiving feedback or some other relevant reactions from stakeholders, the agency prepares a document identifying or explaining potential changes to its practices. This does not mean that feedback should always generate a policy change. Even so, this can be an interesting technique to involve and motivate stakeholders to take part in evaluation surveys if they see that their opinions matter.

V. What is done with the results of evaluation

Internally, evaluation results can help inform an agency's strategic planning, priority setting, institutional changes, and choices about the allocation of agency resources (e.g., agency workload). Externally, the results can impact how the agency is viewed by other entities such as courts, consumers, other parts of the government, and the private sector and inform or spur institutional or legal reforms to the agency or competition laws. Agency evaluation also can contribute to transparency about an agency's mission and performance – a key outlet for agency accountability.

Nearly all of the responding agencies confirmed that they use the results of evaluation to:

- ✿ shape agency's strategic planning,
- ✿ set future priorities or
- ✿ consider and make internal changes, if evaluation results calls for that.

Evaluation results can help determine changes that may be useful. Agencies may have an internal evaluation mechanism in place to monitor and safeguard factors as diverse as the timelines of decisions, employee job satisfaction, or the appropriate allocation of resources and workload. Some of the responding agencies noted that they have an agency evaluation officer(s), a dedicated person inside the authority with responsibility to make sure that past evaluations – whether external or internal – are fed into strategic planning and the consideration of changes within the authority.

Based on the replies, many responding agencies use their evaluation results to monitor their previous years' enforcement preferences and assess whether they were the right ones. Many of the replies emphasized that evaluation can go hand in hand with strategic planning, informing the consideration of agency priorities and guiding choices about use of resources. Some agencies focus evaluation on tracking and reporting the 'most appropriate and meaningful' outcome of their performance goals to show effectiveness, efficiency, and results. Another area mentioned in the replies where evaluation results (e.g., awareness surveys) have been used to make improvements is in the shaping and planning of agency communications strategy. The aim is to ensure effective and transparent communication of agency's activities. This can provide those outside the agency with better understanding of the agency's enforcement priorities and policy views, perhaps influencing market behavior in line with those priorities and policies.

All in all, for the majority of agencies the aim of the evaluations is to increase effectiveness of the agency and thereby the competition policy itself. Evaluation highlights areas where improvements are needed.

ANNEX 1 – Agency Examples and Resources

OECD Competition Committee work on Agency Evaluation and other evaluation-related exercises

- [Evaluation of the Actions and Resources of Competition Authorities](#) (2005)
- [Evaluation of Competitive Impacts of Government Interventions](#) (2014)
- [Impact Evaluation of Merger Decisions](#) (2011)

Links to member agency & other organizations' materials on evaluation

Australia

<http://www.accc.gov.au/publications/accc-aer-annual-report> \
<http://www.accc.gov.au/publications/acccount>
<http://www.accc.gov.au/publications/small-business-in-focus>
<http://competitionpolicyreview.gov.au/final-report/>

Austria

<http://www.bwb.gv.at/Fachinformationen/Taetigkeitsberichte/Seiten/default.aspx>
<http://www.en.bwb.gv.at/FactualInformation/AnnualReport/Seiten/default.aspx>

Barbados

http://www.ftc.gov.bb/library/2014_ftc_annual_report.pdf
http://www.ftc.gov.bb/library/2013_ftc_annual_report.pdf

Brazil

Relatório de Gestão
http://www.cade.gov.br/upload/Cade_Relatorio_de_Gestao_2014.pdf

Chile

http://www.fne.gob.cl/wp-content/uploads/2015/11/Cuenta_Publica_Propuesta-Final.pdf
http://www.fne.gob.cl/wp-content/uploads/2014/11/Estudio_percepcion.pdf
http://www.fne.gob.cl/wp-content/uploads/2016/01/Indicadores_Transversales_2015.pdf

Czech

Annual reports: <http://www.uohs.cz/en/information-centre/annual-reports.html>

Denmark

<http://www.kfst.dk/~media/KFST/Om%20os/Maal%20og%20styring/Aarsrapport/Aarsrapport%202014%20%20Konkurrence%20og%20Forbrugerstyrelsen.pdf>
<http://www.kfst.dk/~media/KFST/Publikationer/Dansk/2014/20141222%20RapportEffen%20af%20KFSTs%20arbejde.pdf>
<https://www.kfst.dk/~media/KFST/Publikationer/Dansk/2014/20140604%20Liberaliseringen%20af%20bilsynsmarkedet.pdf>

<https://www.kfst.dk/~media/KFST/Publikationer/Dansk/2013/20131113%20Liberaliseri%20af%20bogmarkedet%20nov.pdf>
<http://www.kfst.dk/Indhold-KFST/Nyheder/Pressemeddelelser/2015/~media/3E91F90E365742CA81C32C09D45685E3.ashx>

EU DG Competition

Annual Competition Report:

http://ec.europa.eu/competition/publications/annual_report/index.html

Annual Activity Reports and Management Plans:

http://ec.europa.eu/dgs/competition/index_en.htm

Stakeholder Surveys:

http://ec.europa.eu/competition/publications/reports/surveys_en.html

DG Competition evaluations:

http://ec.europa.eu/dgs/competition/evaluation_en.htm

<http://ec.europa.eu/competition/publications/>

Finland

https://www.tem.fi/files/21926/TEM6_09.pdf

<http://www.kkv.fi/Tietoa-KKVsta/toiminnan-suunnittelu-ja-seuranta/>

Hong Kong

http://www.compcomm.hk/en/media/reports_publications/annual_reports.html

Indonesia

http://eng.kppu.go.id/?page_id=49

Italy

<http://www.agcm.it/en/annual-report.html>

Japan

Policy Evaluation: http://www.jftc.go.jp/en/about_jftc/policy_evaluation.html

[Annual Report of FY 2014\(Summary\)](#)

http://www.jftc.go.jp/en/about_jftc/annual_reports/index.files/AnnualReportFY2015.pdf

Mexico

COFECE's Institutional Planning and Evaluation website:

<https://www.cofece.mx/cofece/ingles/index.php/transparencia/planning-and-evaluation-of-institutional-performance>

2015 Quarterly Reports:

<https://www.cofece.mx/cofece/index.php/transparencia/planeacion-y-desempeno>

Netherlands

<https://www.acm.nl/en/publications/publication/14113/2014-ACM-Annual-Report/>

<https://www.acm.nl/nl/publicaties/publicatie/15111/Brief-van-ACM-aan-de-Minister-van-Economische-Zaken-over-de-externe-evaluatie/>

Pakistan

Annual Reports:

http://cc.gov.pk/index.php?option=com_content&view=article&id=254&Itemid=190

Russia

Annual report on competition policy development in the Russian Federation 2013

http://en.fas.gov.ru/reports-and-analytics/reports-and-analytics_31119.html

South Africa

<http://www.compcom.co.za/strategy/>

<http://www.compcom.co.za/annual-performance-plans/>

<http://www.compcom.co.za/annual-reports/>

<http://www.compcom.co.za/quarterly-reports/>

<http://www.compcom.co.za/the-15-year-review/>

<http://www.compcom.co.za/wp-content/uploads/2014/09/On-measuring-the-economic-impact-savings-to-the-consumer-post-cement-cartel-burst-CC-15-Year-Conference.pdf>

Sweden

2014 Annual Report - <http://www.konkurrensverket.se/globalassets/english/publications-and-decisions/annual-report-2014.pdf>

Taiwan

<http://www.ftc.gov.tw/internet/english/doc/docList.aspx?uid=374>

<http://www.ftc.gov.tw/upload/2952a206-d1db-41cc-9735-aa018af651aa.pdf>

UK

<https://www.gov.uk/government/publications/cma-annual-report-and-accounts-2014-to-2015>

<https://www.gov.uk/government/publications/cma-impact-assessment-2014-to-2015>

<https://www.gov.uk/government/publications/competition-and-markets-authority-better-regulation-report-2014-to-2015>

<https://www.nao.org.uk/report/the-uk-competition-regime/>

US FTC

[2014 One Page FTC Performance Snapshot](#)

[Strategic Plan: Fiscal Year 2014 Through Fiscal Year 2018](#)

[FY 2015-2016 Performance Plan and FY 2014 Performance Report](#)

[FY 2014 Summary of Performance and Financial Information](#)

ANNEX 2 - Questionnaire

Questions seeking member input:

Is your agency subject to external performance assessment(s)? 85% Yes

If so, please answer the following questions. If your agency is subject to multiple external assessments, please indicate any relevant differences in those assessments in the responses:

It the evaluation required by statute or rule? 71% Yes

Has your agency ever hired external evaluators for an assessment? 32% Yes

Who is the assessment for? (check all that apply)

- legislative body (9)*
- ministry or executive office (19)*
- government audit office (16)*
- external, non-governmental stakeholders (8)*
- international organizations (6)*
- general public (17)*
- internal use by the competition agency (23)*

Are there stated objectives or criteria for the review? 67% Yes

Does the assessment lead to written report? 97% Yes

Is the performance assessment made public? 86% Yes

*Does the external assessment exercise include feedback or recommendations for the agency?
81% Yes*

Internal assessment – assessment done by the competition agency

*Does your agency have an internal process or practices to evaluate its performance?
97% Yes*

If so, please answer the following questions:

Do your agency's internal evaluation efforts include:

- tracking activity or workload measures (27)*
- assessment of enforcement activity in specific sectors or enforcement areas (21)*
- assessment of both enforcement and non-enforcement activity (e.g. advocacy) (26)*
- assessment of specific units within the agency (21)*
- assessment of individual employees' performance (24)*
- lessons learned sessions on decisions or policy initiatives (22)*

Does your agency's internal evaluation include a written report(s) of results or an institutional plan? 88% Yes

Does your agency make public its internal assessment? 45% Yes 55% No

Does your agency provide all or part of its internal assessment to other government entities, e.g. a legislative body or other ministry? 67% Yes

Comparative assessment or benchmarking

*When evaluating its performance, assessing its goals, or considering changes to policies or practices, does your agency consider the performance or practices of its **international peers** as a comparison point? 85% Yes*

Does your agency exchange operational experiences with international peers? 85% Yes

Does your agency exchange policy ideas with international peers? 97% Yes

*When evaluating its performance, assessing its goals, or considering changes to policies or practices, does your agency consider the performance or practices of **other domestic agencies** as a comparison point? 51% Yes*

Does your agency exchange operational experiences with other domestic governmental agencies? 70% Yes

Has your agency been the subject of a peer review at an international organization? 67% Yes

Did your agency introduce significant changes as a result of the recommendations of the peer review? 82% Yes

*If so, did such changes include
new agency public guidelines or rules, (11)
legislative amendments, and/ or (9)
new internal agency practices?(8)*

Annual or Activity Reports

Does your agency produce an official written report of its activities? e.g., an annual or activity report. 100% Yes

*How often is it produced?
annually (31) other: (6)*

Is the report (or its results) made public? 100% Yes

Does it report on both enforcement and non-enforcement activity? 100% Yes

Does it include workload statistics? 97% Yes

Does it include descriptions of agency decisions reached and interventions made? 100% Yes

*Does it include an agency's own analysis, explanation, or assessment of its performance?
85% Yes*

Quantification of productivity

Does your agency track and/or report the number or scope of: (check all that apply)

- complaints addressed (31)*
- investigations initiated (33)*
- investigations closed (32)*
- intermediate investigative steps or actions; e.g., requests for information issued, raids or searches, decisions to advance phases of an investigation, statements of objections (26)*
- enforcement actions or decisions (33)*
- investigations or enforcement actions by type of enforcement (e.g., mergers, cartels) (31)*
- remedies imposed or obtained (31)*
- sanctions imposed or obtained (32)*
- appeals (30)*
- advocacy actions (31)*
- studies undertaken or produced (31)*
- appearances before or comments to legislative bodies, courts, sector regulators (24)*
- policy statements and guidelines issued (28)*
- press coverage (27)*

Quantification of overall benefits or impact

Does your agency quantify, estimate, or measure direct consumer benefits of agency actions over a given time period (either for all, or a portion of, agency activities)? 52% Yes

If so, does your agency quantify such benefits (mark the one that best applies):

- in the aggregate (all agency actions); (3)*
- only for enforcement actions; (5)*
- in specific sectors; (4)*
- in specific enforcement areas; or (8)*
- in a limited number of specific cases? (6)*

If so, does your agency's estimate include enforcement actions (100%) and non-enforcement activity (e.g., advocacy)?

Does your agency estimate the benefits of the deterrence effect of its actions? 100% No

Qualitative review and reputational feedback

Does your agency track the efficiency of its performance or its use of resources in any way? 94% Yes

- For example, efficiency measures might include (check all that are regularly tracked):*
- 🌀 length or timeliness of individual investigations (26)*
 - 🌀 % of investigations closed in an initial phase (25)*
 - 🌀 % of investigations that lead to enforcement actions (23)*
 - 🌀 burden imposed by (or utility of) requests for information (5)*
 - 🌀 win rate on appeal (22)*
 - 🌀 success rate for advocacy efforts; results that lead to change (16)*
 - 🌀 cost of investigations, studies, or enforcement actions (20)*
 - 🌀 whether the agency achieved prior strategic objectives or goals (25)*

Does your agency evaluate the efficiency of its investigative process or litigation in other ways? 45% Yes

Does your agency regularly evaluate the quality of individual enforcement decisions? 43% Yes

Does your agency evaluate its communication or awareness levels with companies or the public? 71% Yes

Does your agency evaluate or assess its level of compliance with ethics rules or the number of ethics violations? 55% Yes

Does your agency evaluate or assess the level or quality of training opportunities provided to staff? 91% Yes

Does your agency evaluate or assess the level of job satisfaction of its employees? 77% Yes

Does your agency seek qualitative or reputational feedback from non-governmental stakeholders? 82% Yes

If so:

Is the feedback gathered 50% regularly (e.g., annually) or 50% on an ad hoc basis?

Is the feedback gathered 48% informally and/or 52% via surveys or interviews?

Is the feedback gathered by 69% the agency or 31% third parties?

Do these stakeholders providing feedback include (mark all that apply) (21) legal community, (16) academics, (25) companies, (20) consumers, (13) press?

What is done with the results of evaluation

Does your agency use the results of its evaluation to shape strategic planning, set future priorities, or make internal changes? 94% Yes