OECD REPORT
Strengthening the Use of Market Studies in Six Latin American Countries

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Market Studies

Very important tool for competition authorities

Common component of the work portfolio of most competition authorities

Completes and integrates authorities’ enforcement powers

Helps to address concerns about the functioning of markets that seem not to arise from competition law violations
OECD Project

This report is the result of a year-long project that has involved nice competition authorities in Chile, Colombia, Costa Rica, Mexico, Panama and Peru.

Current legal and institutional frameworks and practices have been assessed and recommendations offered on how to improve them.

Recommendations are based on good practices employed in experienced OECD countries.
Areas where improvements could be made:

- Powers to undertake market studies
- Powers to compel information
- Resources
- Selection of and Prioritisation among markets
- Involvement of stakeholders
- Design of recommendations
- Commitment by Government
- Ex-post assessments
Not all of the nine authorities have express legal powers to undertake market studies.

As a result, some authorities perform them under their general competition powers.

This leaves room for confusion and legal uncertainty.
Governments should grant their competition authorities express legal power to undertake market studies and issue recommendations.
Only some authorities have express powers to compel information to conduct market studies and to impose sanctions when these requests are not complied with.

Not all authorities have in place clear rules and procedures against the public disclosure of confidential information collected for the purpose of market studies.
Governments should grant their competition authorities express legal powers to compel the provision of the information from private firms and public bodies for the specific purpose of conducting market studies.

Governments should grant their competition authorities express powers to impose adequate sanctions if compulsory information requests are not complied with.
OECD Recommendations

All authorities should have in place clear rules and procedures against public disclosure of confidential and sensitive information provided during a market study.

All authorities should ensure stakeholders are appropriately informed about these rules and procedures to encourage co-operation in gathering information.
Some authorities have very limited human and financial resources for undertaking market studies
All six governments should commit enough financial and human resources to allow their competition authorities to regularly undertake market studies.
Selection and Prioritisation of Markets

All authorities rely on specific criteria for selecting the markets to study and for prioritising amongst them.

But not all of them use these criteria in a systematic way, especially for prioritising.
OECD Recommendations

All authorities should have and regularly use a clear set of criteria for setting priorities among the problematic markets identified as possible subjects for market studies.
Involvement of Stakeholders

No agency has published guidelines that inform stakeholders on what market studies are, what their outcome could be and how they are undertaken.

Most agencies do not publish a notice to inform stakeholders every time they launch a new study.
OECD Recommendations

All authorities should publish guidelines to inform stakeholders about market studies.

All authorities should publish a press notice when they launch a new study, indicating:

– the market(s) studied
– the concerns that have led to the study
– the possible outcomes
– possibly a timetable and a point of contact for comments or information
Design of Recommendations

No agency regularly consults stakeholders when designing the recommendations that arise from market studies.

No agency systematically evaluates the expected costs and benefits of each recommendation before proposing them.
OECD Recommendations

All authorities should involve stakeholders in the design of the recommendations.

All authorities should evaluate the expected cost and benefits of recommendations before proposing them.
In none of the six countries, governments usually respond to the recommendations directed to them as a result of market studies to explain if and why they will/will not adopt them.
OECD Recommendations

Governments should commit to publicly respond to recommendations directed at them arising from market studies.

They should clearly state whether and when they intend to adopt the recommendations or, if they do not intend to, they should explain the reasons for this choice.
The nine authorities do not perform ex-post assessments of the actual impact of the recommendations adopted as a result of their market studies.
OECD Recommendation

All authorities, as their recommendations begin to be implemented, should endeavour to perform the ex-post assessment of the actual impact of the recommendations emerged from some of their market studies.
Thank you for your attention!

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