



PROGRAMA COMPAL

Proyectos para Bolivia, Costa Rica, El Salvador, Nicaragua, y Perú

Mejorando el impacto de los estudios sectoriales de COMPAL: Diagnóstico y sugerencias después de un año y medio del Programa¹

Ginebra, 5 de octubre de 2006

A. DIAGNOSTICO

I. Introducción

1. En agosto de 2006, se inició una revisión preliminar de la Guía COMPAL *"Guía práctica para evaluar el impacto potencial anticompetitivo de prácticas comerciales en mercados seleccionados en países del Programa COMPAL"* de fecha abril de 2005.
2. Esta revisión fue iniciada como respuesta al desempeño relativamente limitado de los estudios sectoriales en la identificación de prácticas anticompetitivas potenciales iniciadas en el 2005 de acuerdo a lo manifestado por los miembros del Comité de Gestión del Programa (PMC, compuesto por la UNCTAD y los coordinadores nacionales). En efecto, a pesar de los esfuerzos desplegados por el PMC y los consultores nacionales especialmente en diseñar métodos alternativos para encontrar datos sobre el mercado o el sector seleccionado, los estudios presentaron defectos metodológicos y carecieron de datos adecuados.² En este orden de ideas, podemos clasificar los problemas encontrados en los siguientes tres tipos: habilidades técnicas, problemas vinculados al marco institucional y al estructural.

a. Metodología: Habilidades técnicas

- Uso de metodologías inusuales como producto que los consultores seleccionados demostraron no tener la experiencia suficiente en el tema requerido según las expectativas del PMC.
- Uso incorrecto de la metodología apropiada (debido a la inexperiencia antes mencionada)

¹ Documento preparado por Annalisa Coward-Vallin y Pierre M. Horna, bajo la supervisión general de Ana Maria Alvarez y los comentarios valiosos de Simon Evenett y de Laurence Wilse-Samson. El primer bosquejo de este documento fue discutido en la reunión del Comité de Dirección Estratégica del COMPAL - UNCTAD llevada a cabo el martes 26 de septiembre de 2006 en Ginebra, Suiza.

² La asistencia general del Programa, presentó en febrero de 2006 las lecciones aprendidas de los estudios sectoriales realizados en el 2005. Esta presentación fue dentro del evento especial para presentar los estudios en INDECOPI, Lima - Perú.

b. Data: Problemas vinculados al marco institucional

- Problemas relacionados con la inexistencia de data: durante la realización de los estudios se pudo identificar la dificultad en obtener la data relevante para los análisis a efectuar. Ello se debió, probablemente, a que los consultores no sabían dónde encontrar tal información o simplemente la no calificación y/o valoración de su importancia.

c. Problemas estructurales

Adicionalmente al problema referido a la data y la metodología aplicada, los consultores no se ciñeron totalmente a los términos de referencia (TDR) y la Guía COMPAL, de ahí que los estudios resultaron siendo trabajos incompletos. En algunos casos los estudios no satisfacían lo estipulado en los TDRs debido a diversas circunstancias nacionales que los consultores se enfrentaron. Los siguientes son algunos de los resultados preliminares que podemos traer a colación:

- Estudios que eran específicos (Estudios que contenido era difícil de entender)
 - Estudios que eran generales (Hidrocarburos en Perú)
 - Estudios que dejaron en blanco algunas secciones de la Guía COMPAL (sea de carencia de data o falta de experiencia).
 - Estudios que no calculaban con precisión el impacto de las prácticas anticompetitivas
3. Por lo tanto, para procurar corregir algunos de estos problemas y asegurarse de que los estudios futuros sean más rigurosos, fue sugerido por algunos miembros del PMC que la Guía COMPAL sea revisada, a efectos de:³
- Refrescar al consultor la teoría relevante y la metodología apropiada que se emplean en lo que concierne al análisis económico de la competencia;
 - Proporcionar una lista no exhaustiva de las fuentes de datos sugeridas; y
 - Presentar una estructura del estudio sugerida más específica con la finalidad de que el estudio asegure mejores resultados.
4. Si bien la revisión de la Guía COMPAL es una solución posible para mejorar la calidad de los estudios sectoriales, **durante el desarrollo del presente documento, se consideró una solución alternativa**, la cual estaría vinculada a la revisión de la propia actividad en base a una serie de consideraciones relevantes. En este sentido, el presente documento contiene sugerencias en cuanto a cómo la actividad de realización de los estudios sectoriales se podría modificar a efectos de mejorar y satisfacer las necesidades inmediatas de los países beneficiarios de COMPAL. Por lo expuesto, a continuación, discutimos teórica y pragmáticamente la viabilidad de los estudios sectoriales, la oportunidad de los mismos y los resultados esperados de aquellos estudios.

³ La versión terminada de la versión revisada de la Guía COMPAL se encuentra en el anexo I en versión inglés. La versión en castellano será próximamente enviada a los coordinadores.

II. Razones por las cuales los estudios sectoriales pueden no ser el mejor tipo de asistencia técnica para ciertos países beneficiarios del COMPAL a corto plazo.

a. Investigación reciente sobre qué tipos de asistencia técnica son los más efectivas y bajo qué condiciones.

5. Hay opiniones diversas en cuanto a la efectividad de diversos tipos de la asistencia técnica (de aquí en adelante AT). Si bien en un estudio de la UNCTAD sostiene que no hay un verdadero consenso respecto a qué tipo de AT es más eficaz que otro y qué tipo de AT usada se debe basar en una fase previa de análisis de las necesidades y prioridades (UNCTAD 2004, p.1); otros estudios, sin embargo, proponen que algunas formas de AT podrían ser más relevantes que otras, atendiendo precisamente a la oportunidad y ciertos factores adicionales.
6. En efecto, mientras que estos estudios e informes no niegan la importancia de una fase previa de análisis de necesidades y prioridades, mucho de lo que se ha escrito en materia de evaluación de la efectividad de programas de AT también destaca la importancia de factores que tienen un impacto significativo en la efectividad de los diversos tipos de AT. Estos factores pueden ser el nivel de desarrollo socio-económico del país beneficiario, el grado de cultura de la competencia y las características de la agencia de competencia o de la oficina que haga sus veces.
7. En particular, dos trabajos de corte empírico recientemente se han publicado sobre el tema de evaluar la efectividad de programas de AT. El primero de ellos corresponde a Simon Evenett, en donde se concluye que *"no todas las formas de asistencia técnica son semejantes en sus efectos y el impacto en el desempeño de autoridad receptora parece variar sistemáticamente con relación a la capacidad de absorción de la misma y el nivel de desarrollo socio-económico circundante"* (Evenett, 2006, p.1). Respecto al segundo trabajo, cuya autoría responde a Nicholson y otros, se advierte que *"una lúcida conclusión sobre las características de AT es que las variables de las agencia receptoras así como las aquellas vinculadas al país donde pertenece la agencia, interactúan en forma coordinada a efectos de determinar la efectividad percibida de la AT"* (Nicholson, 2006 p.21)
8. Asimismo, Evenett agrega que las agencias de competencia que tienen una limitada capacidad de absorción⁴ de AT se benefician más de la presencia de asesores/consejeros o de consultores a corto plazo que asistan a talleres nacionales, regionales o internacionales que de consejeros a largo plazo o de visitas de estudio o pasantías al extranjero. Una nota interesante que se relaciona a nuestro tema en cuestión es que Evenett sostiene que los estudios académicos tienen un valor añadido limitado al desempeño concreto de la agencia beneficiaria (Evenett, 2006, p.7).
9. Sin perjuicio de lo anterior y teniendo en cuenta que la literatura sobre la efectividad de la AT es novedosa, algunos autores no terminan de convencerse de la veracidad de estos resultados preliminares. Sin embargo, fuentes de primera mano proporcionadas por

⁴ Evenett define la capacidad de absorción como una medida compuesta básicamente por la suposición que una autoridad de competencia es un órgano independiente, establecida por lo menos en un periodo de 5 años, en donde el mandato de sus autoridades tengan un promedio de permanencia en el puesto de por lo menos tres años y que finalmente el número de profesionales (abogados y economistas) empleados por autoridad de competencia iguale o exceda a 10.

donantes y agencias receptoras destacan su preferencia o necesidad de estos estudios a efectos de evaluar ciertos tipos de ayuda y compararlas con otros tipos. Así, en un estudio realizado por la organización para la cooperación y el desarrollo (OCDE), se observa que los tipos de AT o programas que reciben la mayoría de atención de los beneficiarios son conferencias, seminarios, pasantías y consejeros a largo plazo (OCDE 2002, p.8). También se observan con claridad la imperiosa necesidad de los países beneficiarios en fortalecer la aplicación de ley de competencia por sus autoridades. A mayor abundamiento, podemos decir que el tema que domina la agenda en materia de AT parece ser el apoyo pragmático y concreto a las actividades cotidianas de los organismos receptores, de manera que se construya las capacidades institucionales correspondientes. Lo último se cristaliza a través de la capacitación del personal, específicamente en técnicas de la investigación y métodos afines (OCDE 2002, p.7-8). De igual forma, en el informe de la red internacional de competencia (ICN, 2005) sobre la determinación de AT en materia de políticas de competencia, se pudo aseverar, como resultado de encuestas emprendidas, el valor e importancia atribuido por las agencias receptoras al perfeccionamiento de programas de entrenamiento/capacitación y a la producción de materiales conexos (ICN 2005, p.48).

10. Aunque los resultados de investigaciones recientes proporcionan una conclusión general que podría eventualmente utilizarse para evaluar diversos tipos de AT, tales como la importancia de considerar el desarrollo socioeconómico de un país y la capacidad de una agencia de absorber AT al diseñar un proyecto de TA, los resultados específicos en la eficacia de tipos de TA puede variar a partir de una fuente a otra. De esta forma, consideramos optar cautelosamente por un enfoque casuístico a efectos de valorar un tipo de AT sobre otro, desarrollando así la metodología más apropiada para determinar qué tipo de ayuda es la más apropiada.

b. Conceptos generales para la evaluación y monitoreo de los resultados de los estudios sectoriales en países de COMPAL

11. Al evaluar y monitorear resultados de un programa de AT, muchas agencias de cooperación internacional utilizan a menudo cinco categorías⁵. Estas categorías son las siguientes:

- Relevancia: referida a la legitimidad de la finalidad última del proyecto y su propósito, los mismos que deben responder a las necesidades y prioridades de los países beneficiarios
- Efectividad: responde al grado de cumplimiento del propósito del proyecto como consecuencia del cumplimiento parcial de los resultados concretos por actividad del proyecto
- Eficacia: referida a la productividad del proceso de puesta en práctica del proyecto (es decir en qué medida los insumos de las actividades se han convertido en resultados concretos)
- Impacto: la cual depende de los efectos directos/indirectos, positivos/negativos que han estado presentes durante la ejecución del proyecto o causados por el mismo.
- Sostenimiento: relativa al grado en el cual los beneficios generados por el proyecto puede ser continuado al momento de la culminación de la actividad/proyecto

12. Con respecto a los países beneficiarios, se asevera que los estudios sectoriales, en su actual forma, no satisfacen adecuadamente estos criterios. Para un análisis más específico sobre el

⁵ Según lo propuesto en 1991 por el comité de la ayuda de desarrollo (DAC) de la OCDE.

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particular, se sugiere que los coordinadores nacionales, como beneficiarios directos de los estudios sectoriales, puedan completar el cuadro siguiente:

Cuadro No. 1: Evaluación de los seis estudios sectoriales realizados en el 2005

Estudios / criterios	Relevancia	Efectividad	Eficiencia	Impacto	Sostenibilidad
Harina y Aceite Comestible (NIC)					
Transporte Terrestre (ES)					
Prendería Usada (BO)					
EPS (PE)					
Hidrocarburos (PE)					
Servicios financieros (PE)					

Sin perjuicio del análisis específico a ser otorgado por los coordinadores nacionales del Programa COMPAL, podemos indicar un análisis preliminar y general de acuerdo a los criterios antes mencionados:

- Relevancia: Dado el marco institucional, el nivel de cultura de la competencia y la capacidad de absorción de las agencias (la autoridad de competencia y/o reguladores) pareciera que los estudios sectoriales no han sido el tipo de AT más relevante.
- Efectividad: Los estudios han tenido un nivel poco satisfactorio en cuanto a su efectividad debido a que no se pudo corroborar indicios razonables de prácticas anticompetitivas en los sectores donde se especulaba en forma apriorística que existían.
- Eficacia: Los estudios sectoriales parecen no haber hecho un uso productivo de los recursos
- Impacto: actualmente, sin una clara metodología (revisión de la Guía COMPAL que se presenta en el anexo de este documento), el impacto de los estudios sectoriales se percibe como mínimo.
- Sostenimiento: Dado los problemas encontrados, se proyecta que es inverosímil que futuros estudios sean más acertados sin que medie un progreso significativo en materia de la disponibilidad de datos y el conocimiento de una metodología apropiada.

B. SUGERENCIAS POR PARTE DE LA UNCTAD

13. Tomando en consideración la discusión anterior sobre el impacto general de los estudios sectoriales; la evaluación de los mismos en COMPAL; las razones por las cuales no sean apropiados, por lo menos a esta etapa, para ciertos países de COMPAL; la capacidad de absorción; el nivel de cultura de la competencia y el marco institucional; **se sugiere que COMPAL considere una redistribución de los esfuerzos** a efectos de desarrollar las habilidades técnicas necesarias para realizar estudios sectoriales en estos países. Este enfoque destinado a resolver problemas vinculados a las habilidades técnicas se plantea

como una manera de resolver los problemas encontrados en los estudios sectoriales, según lo identificado en la sección A referida al diagnóstico del presente documento.

14. Asimismo, la segunda sugerencia que planteamos parte de la base de contar con una serie **de tipos de informes/estudios** bajo el marco del COMPAL. El punto de partida de esta sugerencia se basa en los informes nacionales sobre competencia que fueron realizados durante la fase I del programa. En este orden de ideas, el programa COMPAL considera de suma importancia definir los tipos de informes/estudios que COMPAL ha comisionado o pretende hacerlo en el futuro.

- **Informe nacional sobre Competencia/Protección del consumidor:** El objetivo de este informe es proporcionar el contexto económico general, el marco institucional y legal, la cooperación internacional y los problemas identificados del país bajo análisis. (según lo determinado en la fase I del programa de COMPAL 2003-2004)
- **Informe sobre la existencia de indicios razonables de prácticas anticompetitivas a nivel nacional:** Este informe sería una investigación general a nivel agregado de prácticas comerciales a nivel país. Específicamente, el foco de atención del informe podría estar en las industrias que muestran tradicionalmente prácticas anticompetitivas, tales como industrias con un número importante de asociaciones comerciales, las empresas estatales privatizadas recientemente, etc. La finalidad última de este informe sería identificar claramente sectores o mercados en los cuales existen indicios razonables no corroborados de prácticas anticompetitivas potenciales. Este informe se estima que sea útil para las autoridades de competencia u oficinas correspondientes en los países de COMPAL.
- **Estudio Sectorial:** este tipo de Informe tiene como finalidad el análisis exhaustivo de un sector particular (enfoque estructural) de acuerdo con las etapas del análisis económico de la competencia. Estas etapas son las siguientes (según la Guía de COMPAL de abril de 2005): (i) determinando el producto relevante y el mercado geográfico, (ii) midiendo las cuotas de mercado y el poder del mercado, (iii) identificación de prácticas anticompetitivas posibles de acuerdo con la ley de competencia correspondiente, y (iv) medición del impacto de la práctica anticompetitiva identificada.
- **Estudio de mercado:** este tipo de informe versa sobre un mercado particular identificado dentro de un sector, a nivel desagregado. En el segmento de mercado específico, el estudio debe analizar las prácticas anticompetitivas usando la misma metodología que el estudio sectorial arriba señalado.

15. Cabe observar que las dos sugerencias presentadas son complementarias debido al enfoque integral que se está considerando. Este enfoque integral no pretende interrumpir la ejecución general de las actividades de COMPAL. En los párrafos siguientes, explicamos las dos sugerencias.

Primera sugerencia: redistribución de los esfuerzos para consolidar actividades vinculadas al fortalecimiento de capacidades.

16. A menudo se puede observar que los tipos de programas más apropiados para un país que no cuenta con una ley de competencia o autoridad respectiva o que recientemente se haya

establecido dicha agencia, son aquellos programas que apoyan al fortalecimiento de una cultura de la competencia. Adicionalmente, según lo señalado, en general y en países sin una ley de competencia, las actividades que más apoyan a estos países son las vinculadas a aquellas destinadas a fortalecer capacidades (habilidades técnicas necesarias). Por lo tanto, una alternativa posible a la realización de los estudios sectoriales sería la posibilidad de que **COMPAL dedique recursos especiales a efectos de desarrollar las habilidades técnicas necesarias para realizar estudios sectoriales en los países beneficiarios.** A continuación presentamos las actividades concretas que podrían materializar nuestra primera sugerencia.

a. Incorporación de un módulo especial dentro de los programas académicos en curso iniciados o por iniciarse bajo el COMPAL

17. Dentro del marco de COMPAL, se han establecido programas académicos con universidades locales en Bolivia (B.1.4.), Costa Rica (CR.1.4. y 2.4). y Nicaragua (N.1.1.4). En tal sentido, sugerimos que recursos especiales sean dedicados a ampliar y consolidar estas actividades.
18. En efecto, estos programas académicos en curso (en Nicaragua se inició el 18 de septiembre de 2006!) que contienen una currícula especial o plan de estudios se deberían ampliar para incluir un módulo destinado a enseñar cómo realizar un estudio sectorial en las situaciones donde no existe necesariamente una autoridad reguladora que está supervisando el sector o el mercado. En tal sentido, el plan de estudios debería ser diseñado con la finalidad de enseñar a los estudiantes cómo buscar indicios razonables de prácticas anticompetitivas que estarían transgrediendo la normatividad vigente en materia de competencia. Acto seguido, se podría sugerir la construcción de un caso estudio que haría las veces de una evaluación final donde los estudiantes deben culminar un estudio sectorial en el sector de su opción (o de una lista de los sectores seleccionados por el PMC) en su país.
19. Al terminar el curso, todos los estudios sectoriales, así como la investigación sobre prácticas anticompetitivas serían sometidos al PMC. Si bien no habría una garantía en cuanto a la calidad de tales estudios, es posible que algunos puedan proporcionar información valiosa y ser utilizadas por el PMC como insumos importantes para futuras acciones.
20. Esta actividad tendría evidentemente un impacto en desarrollar la capacidad de conducir estudios sectoriales. Además, es importante observar el impacto secundario, de generar información en diversos sectores para la institución relevante o los reguladores sectoriales.
21. Finalmente, esta actividad específica debe apuntar, en principio, a oficiales gubernamentales implicados en la aplicación de políticas de competencia. También se prevé que esté orientado a la búsqueda de consultores potenciales que podrían ser encontrados en los círculos académicos y el sector privado.

b. Programas/Seminarios de capacitación a corto plazo para los oficiales de gobierno y los consultores potenciales

22. De ser requerido, un programa de entrenamiento/capacitación se podría diseñar, el cual esté disponible para oficiales de gobierno implicados en la aplicación de políticas de

competencia. También se prevé que esté orientado a la búsqueda de consultores potenciales que podrían ser encontrados en los círculos académicos y el sector privado

23. El entrenamiento contendría temas vinculados a la importancia de un estudio sectorial y cómo realizarlo. Debido a las particularidades de cada país beneficiario, este programa de entrenamiento debe ser específico por país a efectos de que el instructor pueda abordar los problemas exactos presentes en cada país o coyuntura. En cualquier caso, los materiales se podrían desarrollar para enseñar qué datos son importantes, a enseñar cómo y dónde encontrar los datos, la metodología a emplear, etc.

Segunda sugerencia: continuar con otros tipos de informes

24. Esta sugerencia consiste en la continuación de los informes o estudios sectoriales, tomando en consideración la definición efectuada en el párrafo 14 arriba descrito.

a. Creación del nuevo tipo de informe: Informe sobre la existencia de indicios razonables de prácticas anticompetitivas a nivel nacional

25. Pese a que los estudios sectoriales no pudieron identificar evidencias de prácticas anticompetitivas, algunas de ellos sí pudieron proporcionar información valiosa e interesante sobre el sector. Así, en los países que carecen de autoridades de competencia y de una cultura estable de competencia o donde es difícil conseguir datos, puede ser apropiado emplear consultores internacionales⁶ a efectos de encargar un informe nacional general sobre el comportamiento anticompetitivo potencial (según lo descrito en el párrafo Nro. 14 del presente documento). Esta nueva visión podría implicar una revisión de principales artículos periodísticos y entrevistas con los participantes de la industria, entre otras acciones conexas.

III. Propuesta para el Perú y Costa Rica

26. Dado que el Perú y Costa Rica tienen una experiencia considerable en términos del trabajo de sus autoridades de competencia (INDECOPI y COPROCOM, respectivamente) y no necesariamente enfrentan las mismas vicisitudes que hemos podido identificar en el presente documento, se sugiere que los estudios sectoriales pueden eventualmente ser una actividad importante. No obstante, una selección de consultores de mayor rigurosidad sería recomendable así como unos términos de referencia y guías más específicas.

C. CONCLUSION

27. En este documento hemos identificado los principales problemas que han determinado la ausencia de calidad en los estudios sectoriales realizados por los consultores. A su turno, después de una discusión sobre la determinación de la eficacia de los mismos como un tipo

⁶ La propuesta anterior respecto a la viabilidad de establecer en COMPAL un comité asesor para revisar los estudios sectoriales incluyó la participación de ex - jefes de autoridades de competencia en Latinoamérica. En este respecto, se sugiere que se consideren a las personalidades ya contactadas desde junio de 2006 a efectos de implementar las sugerencias establecidas en el presente documento, particularmente, según lo establecido en los párrafos 17 y 25.

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de AT, se propone un enfoque integral a efectos de mejorar el impacto de los estudios sectoriales en lo que resta del Programa COMPAL. Este enfoque integral contiene dos sugerencias las cuales han sido explicadas en los párrafos precedentes.

28. Finalmente, es importante observar que la sugerencia para redistribuir esfuerzos a efectos de desarrollar habilidades técnicas para realizar estudios sectoriales es más relevante para aquellos países que enfrentan dificultades en el fortalecimiento de su cultura de la competencia que en otros países del COMPAL.

Referencias:

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Anexo

Pautas prácticas revisadas para establecer la existencia posible de prácticas anticompetitivas en mercados seleccionados de los países del programa de COMPAL

(versión preliminar en inglés)



COMPAL PROGRAMME

Projects for Bolivia, Costa Rica, El Salvador, Nicaragua and Peru

Revised practical guidelines for establishing the possible existence of anti-competitive practices in selected markets of COMPAL programme countries⁷

Geneva, September 2006

(...)

III. Suggested structure and guidelines

Based on the aforementioned recommendations, and with a view to maximize the benefits derived from the COMPAL studies, it is suggested that all commissioned studies contain the following sections.

- I. **Executive Summary (in Spanish and recommended, in English).**
- II. **Index**
- III. **Introduction (including motivation and objective of market study)**

a. Introduction to the sector and economic context

b. Motivation for an investigation in this sector

This section must indicate and expound why the relevant sector has been selected for a sector study. This information shall first be provided by the national coordinator and secondly, be developed by the consultant. As such, in order for a sector to be approved as the subject of a sector study, COMPAL must receive answers to the following questions (also attached as a questionnaire, see Annex 2) from the national coordinator. These questions will provide the motivation for the study as they ask the national coordinator to identify the reason(s) why the particular sector is thought to contain anticompetitive practices and thus has been selected as a subject for study. Without this information, it will be impossible to initiate a sector study. These questions provide crucial background information that is necessary for the consultant to complete the study, as they provide a context for the study and starting point from which the investigation can begin.

After the national coordinator has submitted answers to these questions, it will be up to the consultant to elaborate and obtain additional details and/or clarification. However, as stated above, it is necessary that the consultant has the answers to these questions prior to initiating a study. With this information from the national coordinator, the consultant should be able to provide more compelling and insightful analysis and conclusions.

Proposed questions to be given to the national coordinator

1. Please indicate whether the following factors had any role in the selection of the sector for a sector study for the COMPAL programme. Please indicate whether they are: "not relevant", "somewhat important", "important", "very important".

- a. Reliable information on the existence of monopolistic practices, cartels, or other anti-competitive practices (please specify)
- b. Significant increases in prices (in real terms)
- c. High economic concentration
- d. Low economic performance compared to similar countries.
- e. Complaints made by competitors (please specify, if possible)
- f. Complaints made by producers (please specify, if possible)
- g. Complaints made by consumers (please specify, if possible)
- h. Complaints made by other sectors (please specify which sectors)
- i. Complaints made by government officials (please specify)
- j. Results from investigations by non-governmental organizations (please specify)
- k. Information/investigations from/by the media (newspapers, radio, television, internet)
- l. Information from experts or academic institutions (please specify)
- m. Other (please specify)

2. With respect to the "important" and "very important" factors, please explain the motivation of the investigation.

3. Please indicate if there are other sectors you believe should be the subject of a sector study. Please name the sectors and why they have been chosen.

4. Please indicate whether it is "unlikely", "probable", or "very probable" that the following results will be found through the investigation.

- a. Concrete evidence of a firm's abuse of their dominant position
- b. Concrete evidence of exclusion, or harm to their competitors
- c. Concrete evidence of a cartel
- d. The existence of barriers to entry or other distortions to competition that would be possible to remove through government action (regulatory or deregulatory)
- e. Others (please specify)

5. Please include any other information that you believe is relevant and explains why this particular sector has been suggested for a sector study.

IV. Definition of the terminology used in the study

IV. List of abbreviations used in the study

V. Core Text

It is expected that the core text will contain the following elements. Following each heading is a brief description of the necessary information to be included and the methodologies that can be employed.

Please see Annex 3 for suggestions on data sources.

a. Full description of economic sector, industry and products as well as regulatory law for the market under study

i. Description of the institutional framework

The section must include a description of the institutional framework, including:

- Legal and regulatory framework
- Producing firms (number, type, production capabilities etc.)
- Technology employed and a description of the production process
- Mechanisms for wholesale and retail distribution,
- Sales volumes,
- Concentration in the industry or along the value chain
- Patterns of consumption and other characteristics of demand,

ii. Analysis of prices

The section must also provide an analysis of prices. It should include:

- Price formation,
- Evolution of prices over time
- Differentiation or discrimination mechanisms,
- Margins

b. The relevant market (geographic and product)

i. Introduction: Importance of the relevant market

Market definition plays a key role in competition analysis, as it allows one to determine the scope, both geographically and in terms of goods/services, within which to examine the possible existence of anti-competitive practices. In general the more narrowly the market is defined the more likely a firm or firms will be found to have market power. Not surprisingly, firms tend to advocate for wider market definitions than those adopted by competition authorities.

It is important to recognise that the definition of the relevant market constitutes only a preliminary step in the assessment of the existence of possible anti-competitive practices. The definition of the relevant market is used to calculate market shares and indices of market concentration based upon those market shares, (these will be defined in the following sections).

ii. Definition of the relevant market

The relevant market within which to assess competition issues is established by the combination of the product and geographic relevant markets.

1. Product relevant market

The relevant product market, as defined by the European Commission, "comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use."⁸

2. Geographic relevant market

⁸ The European Commission's definitions of the Product and Geographic market are commonly quoted. The definitions are taken from the Commission notice on the definition of relevant market for the purposes of Community competition law Official Journal C 372 of 09.12.1997

The relevant geographic market, as defined by the European Commission, "comprises the area in which the firms concerned are involved in the supply of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas".

iii. Identifying competitive constraints

The competitive constraints of a market must first be identified in order to define the relevant market. Firms are subject to three main sources of competitive constraints: demand substitutability, supply substitutability and potential competition. Demand substitutability and supply substitutability will be discussed here, and potential competition will be addressed in the market power section.

1. Demand Substitutability

a. Quantitative and qualitative criteria to identify the relevant market

In practice, the definition of the relevant product and geographic market generally focuses on demand-side substitutability as demand substitution constitutes the most immediate and effective disciplinary force on the suppliers of a given product, in particular with respect to their pricing. A firm or a group of firms cannot significantly influence the prevailing conditions of sale, such as prices, if its customers can easily switch to substitute products or to suppliers located elsewhere. Consequently, the definition of a market consists in identifying the effective alternative sources of supply for the customers of the firms involved, both in terms of products/services and geographic location of suppliers.

A combination of quantitative and qualitative criteria can be used to assist in identifying the products that belong to the relevant markets. Substitutes can be determined by considering:

Physical and technical characteristics: In general, if a buyers places a high value of on the actual or perceived unique physical or technical characteristics of a product, then it is likely that the product will be found to be in a distinct relevant market.

End use: Functional interchangeability is generally a necessary, but not a sufficient, condition that must be met for two products to be included in the same relevant market.

The preferences, perception and behaviour of buyers: Whether buyers have substituted between products in the past can indicate whether they belong in the same market.

Trade views, strategies and behaviour: Third parties who know the industry in question may provide helpful information regarding past and likely future developments that help to define the relevant market.

Switching costs: The transaction costs (both for individual consumers and intermediate buyers) may be sufficient to make switching between products unlikely. These costs for wholesalers may be: costs incurred to repackage, adapt marketing, breach a supply contract, and learn new procedures.

Price relationships and relative price levels: If no strong correlation in price movements between two products (or geographic areas) over a significant period of time is found, this generally suggests that the products are not in the same relevant market. On the other hand, if the prices of one firm have constrained the price movements of another in the past, this is an indication that the two firms' products compete in the same market.

Transportation costs: In general, when prices have been higher in a distinct area than prices in the relevant geographic area by an amount greater than the transportation costs, this is usually an indication that the other area does not belong to the relevant geographic market.

Shipment patterns: Significant shipments from one region to another generally suggest that the two regions are in the same geographic market. However, past trading patterns can be a poor indicator of the extent to which sellers in one area constrain sellers in another area, particularly where there is an absence of shipping.

Foreign competition: While the above-noted principles apply equally to domestic and international sources of competition, there may be other considerations when examining the influence of foreign-based suppliers. These include tariffs, quotas, regulations, antidumping complaints or duties, government procurement policies, intellectual property laws, exchange rate fluctuations, and international product standardization.

Entry barriers: see the discussion below under market power (pg. 20)

b. The SSNIP test: Accepted standard in merger guidelines

As for concrete, quantitative tests, the SSNIP⁹ test (also commonly referred to as the 'hypothetical monopolist test) has been widely accepted as the appropriate tool used to define a relevant market. Though the test may not be precise, it is often the most useful way to probe the boundaries of the product and geographic markets.

The SSNIP test is an iterative process that seeks to identify the smallest market (thus relevant market) within which a hypothetical monopolist or cartel could profitably impose a small but significant, non-transitory increase in prices. Beginning with the narrowest possible product definition (or geographic area) the test asks whether a monopolist or cartel could profitably sustain a price increase of x%¹⁰ (5% is most common) for at least one year on a *ceteris paribus* assumption that the terms of sale of all other products are held constant. If a sufficient numbers of consumers are likely to switch to alternative products as to make the price increase unprofitable, then the firm or cartel lacks the power to raise price. The relevant market therefore needs to be expanded. The next closest substitute is added and the process is repeated until the point is reached where a hypothetical cartel or monopolist could profitably impose a 5% price increase. The range of products or the geographic area so defined constitutes the relevant market.

How to apply the SSNIP Test:

- Start with smallest possible market and ask if x% price increase would be profitable
- If not, then firm does not have sufficient market power to profitably raise prices. Relevant market not defined.
- Next closest substitute is added to the relevant market and test repeated.
- Process continues until the point is reached where a hypothetical monopolist could profitably impose a 5% price increase.
- Market is then defined (product or geographic market)

c. The cellophane fallacy

In defining both product and geographic one must assess the extent to which prices would likely be lower than prices that would prevail in the absence anti-competitive acts. This means that sometimes, the current price may not be the appropriate tool to use in defining the relevant market in

⁹ The term SSNIP test comes from the wording of the formulation of the test in the US Guidelines.

¹⁰ Though the value may vary across jurisdiction and none of the merger guidelines acknowledge the existence of a single correct percentage, a 5% price increase is the standard and most popular benchmark for the SSNIP test. However, It may be true that a higher, or lower percent is appropriate. For example, the EC merger guidelines refers to a 5-10% range whereas Brazil to a 5, 10 or 15% range depending on the circumstances. In addition, the Canadian, U.K (CC) Guidelines and U.S. Guidelines indicate that a larger or smaller price increase may be used where the application of a 5% increase would not reflect market realities.

which a firm competes. If there are anti-competitive practices in place, it is possible that some products that appear to be in the market would not be included in the market at price levels that would have existed in the absence of the anti-competitive practices. From an antitrust perspective, to include these products in a market definition would effectively overstate the product market. This occurs because these products do not discipline the market but rather enter the market only at price levels that are higher than normal competitive levels. A similar situation occurs in defining the geographic scope of the market. If the market is defined in terms of price levels reflecting a dominant player, the geographic scope of the market will be overstated, as they will include areas that could not be included if competitive price levels prevailed¹¹.

The right way to avoid the cellophane fallacy depends on the type of anti-competitive practice one is concerned with.

In a merger case, one is typically concerned with whether the merger enhances the firm's market position in a way which could be abused. The correct question is then whether the firms involved in the merger are likely to be able raise prices as a result of the merger and earn higher profits. To answer this question, one may apply the SSNIP test to existing market prices. That is, to ask whether, as a consequence of the merger, an x% increase in prices above the current level can be sustained by the merged firm. If so, the merger will clearly enhance the firm's market power; if not, then the market that the merged firms operate in must include other products, areas and/or suppliers, and its competitiveness must be assessed when its exact boundaries have been ascertained

In a so-called monopoly inquiry, where one is exploring whether one or more firms have, or have abused, a monopoly position, it is unwise to use prevailing market prices as the basis from which to consider a hypothetical x% price rise since there is at least a chance that those prices will already reflect an element of monopoly power. A better procedure is to start by determining what level of prices might prevail if the market were competitive, and then use that as the basis of the SSNIP test. If prevailing prices appeared to be sustainable and were x% or more higher than this level, then it would follow almost immediately that the firm(s) in question had at least some market power.

2. Supply Substitutability

Supply-side substitutability may also be taken into account when defining markets. Supply substitution is relevant in situations where the effects are equivalent to those of demand substitution in terms of effectiveness and immediacy. Supply substitutability requires that suppliers are able to switch production to the relevant products and market them in the short term without incurring significant additional costs or risks in response to small and permanent changes in relative prices. When these conditions are met, the additional production that is put on the market will have a disciplinary effect on the competitive behaviour of the companies involved.

c. Assessing market power and competition through an analysis of market structure, participation shares and concentration

i. What is market structure and why is it important?

Market structure refers to the number, relative size and distribution of firms in a market. The market structure is often quantified by two related indicators, market shares of participant firms and market concentration indices. (See below for definition)

¹¹ This problem of measuring markets where it is alleged that dominance prevails, was first identified in the context of a famous US anti-trust case against cellophane producer, Du Pont in 1956. As a result, it is referred to as the "cellophane fallacy." Du Pont argued that cellophane was not in itself a separate market, since at prevailing prices there appeared to be a high cross elasticity of demand between cellophane and aluminium foil, wax paper and polyethylene. This meant that what seemed to be a near monopoly of "the cellophane market" was more likely a modest share of a market that could be called "the wrappings market".

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The importance of market structure (and thus market shares and concentration indices) in competition analysis is partially derived from the traditional (see alternative below) view that it is the structure of a market that determines the conduct of the firms within that market, and in turn, this determines the nature of the market outcomes that will be observed. This relationship is developed by the SCP (structure-conduct-performance) paradigm¹². This theory propounds there is a causal relationship between structure, conduct and performance. It posits that structure influences conduct and both structure and conduct influence performance. Therefore, though market outcomes (such as the level of prices) are the primary concern of competition authorities, market structure is seen as an important indicator of the likely nature of those outcomes.

Structure-Conduct-Performance Paradigm

Structure: refers to market structure defined mainly by the concentration of market shares in the market.

Conduct: behavior of firms - competitive or collusive (pricing, R&D, advertising, production, choice of technology, entry barriers, predation...)

Performance: efficiency, mainly defined by extent of market power where greater power leads to lower efficiency)

Efficiency Hypothesis

Reverse causal relationship

Performance determines structure

The Efficiency structure hypothesis and the Simultaneity problem

However, it is important to note that the SCP paradigm ignores the possibility of reverse causal links in the relation between structure, conduct and performance. In the SCP hypothesis, there is a positive relation between concentration and performance (efficiency), however the efficiency hypothesis, developed in the 1970's, suggests that there is a negative relation between the two. This alternative theory suggests that it is the level of efficiency that determines the market structure. The critical difference between the two is that in the SCP the market structure is assumed to be exogenous and performance, endogenous. However, the reverse is also possible, as argued by those who suggest that it is performance (efficiency) that determines structure (market share). In practice, as posited by the simultaneity problem, it is likely that both the direct and reverse effect of the SCP paradigm are important,

As such, it is important to remember that a concentrated market does not necessarily imply that the market harbours anti-competitive practices and is inefficient. Market structure may determine the market performance, but the reverse may also be true.

ii. Market shares: How to calculate

The definition of the relevant product and geographic market allows for the identification of the **market participants**, the suppliers and the consumers active on that market. In turn, each suppliers total **market size** and **market shares** can be calculated on the basis of their sales of the relevant products on the relevant area. In practice, the total market size and market shares are already available

¹² The SCP paradigm was the dominant paradigm in industrial organization from 1950 till the 1970s. The framework is based on the seminal work by Mason and Bain.

See Mason, Edward S. "Price and Production Policies of Large Scale Enterprise" *American Economic Review* 29 (1939): 61-79

Mason, Edward S. "The Current State of the Monopoly Problem in the United States" *Harvard Law Review* 62 (1949): 1265-1285

Bain, Joe S. *Barriers to New Competition*. Cambridge, MA: Harvard University Press, 1956

Bain, Joe S. *Industrial Organization*. New York: John Wiley & Sons, 1959

from market sources, i.e. companies' annual reports, studies commissioned to industry consultants and/or trade associations.

Market shares are important in the analysis of potential anti-competitive practices for if firms belonging to the market all have low market shares (that is, each serves a relatively small segment of the market) there is little or no chance that any will have market power. If however one or more firms have a higher market share, there will be a greater risk that these firms have at least some market power and competition may therefore be weaker.

Although sales are usually the indicator used to calculate market shares, there are nevertheless other indicators that, depending on the specific products or industry in question, can offer useful information. Examples would be: capacity, the number of players in bidding markets, units of fleet (as in aerospace), or the reserves held in the case of sectors such as mining.

iii. Market Concentration: How to calculate (using market shares)

Market concentration is a function of the number of firms in a market and their respective market shares. As an economic tool, market concentration is useful because it reflects the degree of competition in the market. There are various methods used to measure concentration, each will be discussed below.

1. Coefficient C_m : m-firm concentration ratio

The m-firm concentration ratio (C_m) is calculated based on the market shares of the largest m firms in the sector. The most commonly used is the C_4 , which is simply the sum of the market shares of the *four* largest firms in the market in question. For example,

$$C_4 = \sum_{i=1}^4 s_i$$

The value of the C_m varies between 0 (minimum concentration) and 1 (maximum concentration). However, it is important to note that the C_4 only provides limited information about actual market structure. For example, in a market where the largest four firms each had a market share of 20 % , the C_4 would be .8 (80%). On the other hand, a market in which one firm had a market share of 50% and the other three firms with 10% each would have the same C_4 . Yet, a firm's behavior may differ greatly in these two situations and thus create different competitive outcomes.

2. Herfindahl-Hirschman Index ("HHI")

An alternative measure of market concentration is the Herfindahl index (HHI). The HHI is calculated by summing the squares of the individual market shares of all the participants. Unlike the four-firm concentration ratio, the HHI reflects both the distribution of the market shares of the top four firms and the composition of the market outside the top four firms. It also gives proportionately greater weight to the market shares of the larger firms, in accord with their relative importance in competitive interactions. However, it is more difficult to compute as it requires knowledge of the market shares of all firms in the industry.

This index is defined as follows:

$$H = \sum_{i=1}^N s_i^2$$

where the summation is over all N participants in the market and s refers to the market share of each. The share can be expressed in per unit (in which case the maximum value of H is 1) or more commonly, in percent (in which case the maximum value of H is 10000). A larger value of H indicates greater market concentration (and therefore the potential for greater market power) than a smaller value.

The thresholds for different level of concentration vary from country to country. A general benchmark are the US guidelines. The U.S. Department of Justice considers a market with a HHI of less than 1,000 to be a competitive marketplace; a HHI of 1,000-1,800 to be a moderately concentrated marketplace; and a HHI of 1,800 or greater to be a highly concentrated marketplace. As a general rule, mergers that increase the HHI by more than 100 points in concentrated markets raise antitrust concerns.

iv. Market power and competition

Market power is the ability of an individual firm (or group of firms) to raise and maintain prices above the level that would prevail under perfect competition. The highest degree of market power is associated with a monopoly, although all firms except those in perfectly competitive markets possess some degree of market power.

The traditional approach to assessing the extent of competition is structural, and involves computing market shares in search of high levels of concentration or positions of market dominance (the specific methodologies will be defined below). However, as noted earlier, large market share may just reflect superior efficiency. Thus, to fully assess whether a firm has market power, one needs to understand how independent the leader(s) is with respect to other firms in the market, how strong their incentives are to try to take share away from the leader and whether they have the ability to do so. Clearly, assessing such details goes beyond the use of simple structural measures of competition, and into an assessment of likely modes of market behaviour. As such, in addition to providing information on how to calculate traditional quantitative measures of competition (ie. concentration ratios), the following section also includes qualitative indicators that should be addressed.

1. What does degree of market power depend on?

a. Countervailing Buyer power.

The power of buyers is the impact that customers have on a producing industry. When buyers are small in number and well organized, price setting becomes more like a bargaining process and less like a unilateral posting of prices. The power of buyers (or suppliers) to affect the methods by which prices are set is as important as their ability to exercise exit options. Furthermore, well organized buyers are often in a position to affect the degree of intra-market rivalry, effectively setting one firm against another, or to encourage new entry. In general, when buyer power is strong, the relationship to the producing industry is near to what an economist terms a monopsony - a market in which there are many suppliers and one buyer. In reality few pure monopsonies exist, but there is frequently some asymmetry between the producing industry and buyers.

Some factors to take into account when addressing buyer power are:

- Bargaining leverage
- Buyer volume
- Quantity and quality of buyer information
- Strength of brand identity

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Price sensitivity¹³
Threat of backward integration
Scope of product differentiation
Buyer concentration (small in number, or well organized)
Available substitutes

b. Countervailing Supplier Power

A producing industry requires raw materials - labor, components, and other supplies. This requirement leads to buyer-supplier relationships between the industry and the firms that provide it the raw materials used to create products. Suppliers, if powerful, can exert an influence on the producing industry, such as selling raw materials at a high price to capture some of the industry's profits.

Some factors to take into account when addressing supplier power are:

Supplier concentration
Importance of volume to supplier
Differentiation of inputs
Impact of inputs on cost or differentiation
Switching costs of firms in the industry
Presence of substitute inputs
Threat of forward integration
Cost relative to total purchases in industry

c. Barriers to entry:

Rivals do not actually have to be present in a market to exert an effect on the degree of competition in that market, the threat that new firms may enter the industry may, in some circumstances, discipline the behavior of firms who might otherwise enjoy monopoly power. Barriers to entry are unique industry characteristics that define the industry. Barriers reduce the rate of entry of new firms, thus maintaining a level of profits for those already in the industry. From a strategic perspective, barriers can be created or exploited to enhance a firm's competitive advantage.

Examples of barriers to entry are:

High levels of vertical Integration

Research and Development: massive upfront investment in technology may deter potential entrants

Patents and IP Rights

Economies of scale

Access to key inputs/Supplier agreements: exclusive agreements with key suppliers can make it difficult for other manufactures to enter into the industry.

Distributor agreements: exclusive agreements with key distributors or retailers can make it difficult for other manufactures to enter in the industry.

Advertising/Brands: Developing consumer loyalty by establishing branded products can make successful entry into the market by new firms much more expensive.

Sunk costs: Sunk costs cannot be recovered if a firm decides to leave a market. They therefore increase the risk and deter entry.

Government regulation

Natural Monopolies

2. Quantitative Measurements of market power

Although a precise economic definition of market power can be put forward, the actual measurement of market power is not straightforward.

¹³ Evaluating price sensitivity requires further calculations of elasticities

a. The Lerner Index (also called the price cost margin)

The Lerner Index attempts to measure classical market power directly by subtracting a firm's marginal cost from its price, and then dividing the result by the firm's price. Lerner ratios range from 0 to 1. Firms that lack market power show ratios close to zero. As the distance between price and marginal cost increase, the ratio increases from zero to one and it is more likely that the firm possesses significant market power. However, in practice the Lerner Index is difficult to calculate as marginal costs can be difficult to obtain (an alternative is to substitute average variable cost).

b. Concentration measures: the Herfindahl-Hirschman Index ("HHI"):

Because application of the Lerner index may be difficult or inaccurate, competition authorities have typically employed measures of concentration as a means of estimating the market power of market participants. The Herfindahl-Hirschman index (as defined above) is the most common index for measuring market power.

c. Market share

Market share, the percentage of sales or capacity that a firm controls in a relevant market is also sometimes used to estimate market power.

However, as mentioned above under the Simultaneity problem of the SCP paradigm, one must be careful in directly linking market share to market power. Instead, it may be the reverse (market power determines market share) that is true.

Please see annex 4 for a summary of the methodology

d. Identification of possible anticompetitive practices performed by the actors previously identified

Whether or not the study finds that market power exists, there are numerous sources that can be utilized to gather information on the possibility of anti competitive actions, including:

- Interviews with industry participants (sector regulators, consumer groups, private sector consultants, managers, government, etc.)
- Searches of relevant media reports
- Examination of recent mergers and acquisitions,
- Information about contracts with suppliers and buyers,
- Information about the structure of ownership in the industry,
- Commission payments,
- Consumer complaints,
- Pricing behaviour,
- Range of prices,
- Possible bundling and tying arrangements.

The following sections (e and f) are ***expected additional work*** to be included. If not included, the consultant should indicate *why* they were unable to do these sections.

e. Measurement of the impact of the identified anti-competitive practices and the potential harm to consumers, competitors and the development of the affected sector or industry.

f. Identification of appropriate policy responses by national authorities. This would provide material for the section VII on public policy recommendations

- VI. **Conclusions on the analysis of the sector**
- VII. **Public policy recommendations,**
- VIII. **Suggestions for future research and general conclusions (in English and Spanish).**
- IX. **References.**
- X. **Data, and tables summarizing the assumptions formulated for the study (including summary of periodical and academic sources as well as the critical evaluation of sources and evidence presented, which will be the basis for the elaboration of the conclusions and recommendations).**

Annex 1:

Document (up to 3-pages), to be presented by the consultant within the first two weeks of his/her consultancy.

1. In order to define the scope and parameters of the study, formulate the fundamental problem(s) to be resolved in the study. Secondary questions of the investigation.
2. Briefly indicate value added value of the study and its relevance for public policy makers
3. Describe the relationship, if any, between the study and other related studies within the framework of COMPAL.
4. Describe the methodology and other tools to be used (it could include: legal analysis, econometrics or other quantitative measurements, interview techniques, research from primary sources)
5. In the case of empirical analysis, provide details on the quality of the information or data to be used, including dependent and independent variables, as appropriate
6. Provide a tentative proposal of the possible conclusions of the study taking into consideration the expected benefits and lessons of the target audience of the study which should also be described
7. Finally, describe the problems or main obstacles that could vary the contents and objectives of the final study including reformulating the methodological approach if necessary.

Annex 2: Questionnaire for the competition authorities

1. Please indicate whether the following factors had any role in the selection of the sector for a sector study for the COMPAL programme. Please indicate whether they are: "not relevant", "somewhat important", "important", "very important".

- a. Reliable information on the existence of monopolistic practices, cartels, or other anti-competitive practices (please specify)

- b. Significant increases in prices (in real terms)
- c. High economic concentration
- d. Low economic performance compared to similar countries.
- e. Complaints made by competitors (please specify, if possible)
- f. Complaints made by producers (please specify, if possible)
- g. Complaints made by consumers (please specify, if possible)
- h. Complaints made by other sectors (please specify which sectors)
- i. Complaints made by government officials (please specify)
- j. Results from investigations by non-governmental organizations (please specify)
- k. Information/investigations from/by the media (newspapers, radio, television, internet)
- l. Information from experts or academic institutions (please specify)
- m. Other (please specify)

2. With respect to the "important" and "very important" factors, please explain the motivation of the investigation.

3. Please indicate if there are other sectors you believe should be the subject of a sector study. Please name the sectors and why they have been chosen.

4. Please indicate whether it is "unlikely", "probable", or "very probable" that the following results will be found through the investigation.

- a. Concrete evidence of a firm's abuse of their dominant position
- b. Concrete evidence of exclusion, or harm to their competitors
- c. Concrete evidence of a cartel
- d. The existence of barriers to entry or other distortions to competition that would be possible to remove through government action (regulatory or deregulatory)
- e. Others (please specify)

5. Please include any other information that you believe is relevant and explains why this particular sector has been suggested for a sector study.

Annex 3: Data Sources

There are many different sources of data and information that can be utilized in a sector study. The following list is only meant to be a suggestion of possible sources and should not be considered to be all-inclusive.

1. General economic and social data:

- Economic Commission for Latin American and the Caribbean (ECLAC) statistical information, **www.eclac.org**, such as the Statistical Yearbook for Latin America and the Caribbean
- United Nations Statistics Division, **www.unstats.un.org/unsd/default.htm**
- United Nations Common Database (UNCDB), **www.unstats.un.org/unsd/cdb**
- UNCDB provides selected series from numerous specialized international data sources for all available countries and areas.
- World Bank Data, **<http://www.worldbank.org/data>**
- The World Bank site contains a vast database of economic, social and other development statistics for all countries of the world.
- United Nations Industrial Development Organization (UNIDO) **www.unido.org/en/doc/3474**

2. Additional price and production data

- FAOSTAT, Food and Agricultural Organization of the United Nations, **www.faostat.fao.org**
FAOSTAT provides access to over 3 million time series and cross sectional data relating to food and agricultural. FAOSTAT contains data for 200 countries and more than 200 primary products and inputs, just in its core.
- IMF Primary Commodity Prices, **www.imf.org/external/np/res/commod/index.asp**
Includes spot prices for about 80 primary commodities with annual, quarterly and monthly prices. The commodities covered include items in the general categories of food, beverages, agricultural raw materials, metals, fertilizers, and energy. Coverage: from 1990 to present
- INFOCOMM, **www.unctad.org/infocomm**
- Market information in the commodities area

3. Country specific statistical sites:

Bolivia

Instituto Nacional de Estadística, **www.ine.gov.bo**

Agencia Para el desarrollo de la Sociedad de la Información en Bolivia, **www.adsib.gob.bo/enlaces**
(Links to: Gobierno Central, Ministerios, Prefecturas, Superintendencias, Entidades Publicas, Municipios, Universidades, Prensa Escrita)

Costa Rica:

Instituto Nacional de Estadística y Censos, **www.inec.go.cr**

El Salvador:

Dirección General de Estadística y Censos, **www.digestyc.gob.sv**

Nicaragua:

National Institute of Statistics and Censuses, **www.inec.go.ni**

Peru:

Instituto Nacional de Estadística e Informática (INEI), www.inei.gob.pe/home.htm

4. Other sources of sector and firm data and information:

- Company Annual Reports
- Reports issued by Governmental Industry regulators
- Interviews with industry participants
- Marketing Surveys
- Trade/Industry associations reports

5. Media and Journal reports (for research on existence of possible anti-competitive)

Newspaper articles:

- Lexis-Nexis Professional
Lexis-Nexis has access to over 11,000 news publications (English and other languages)

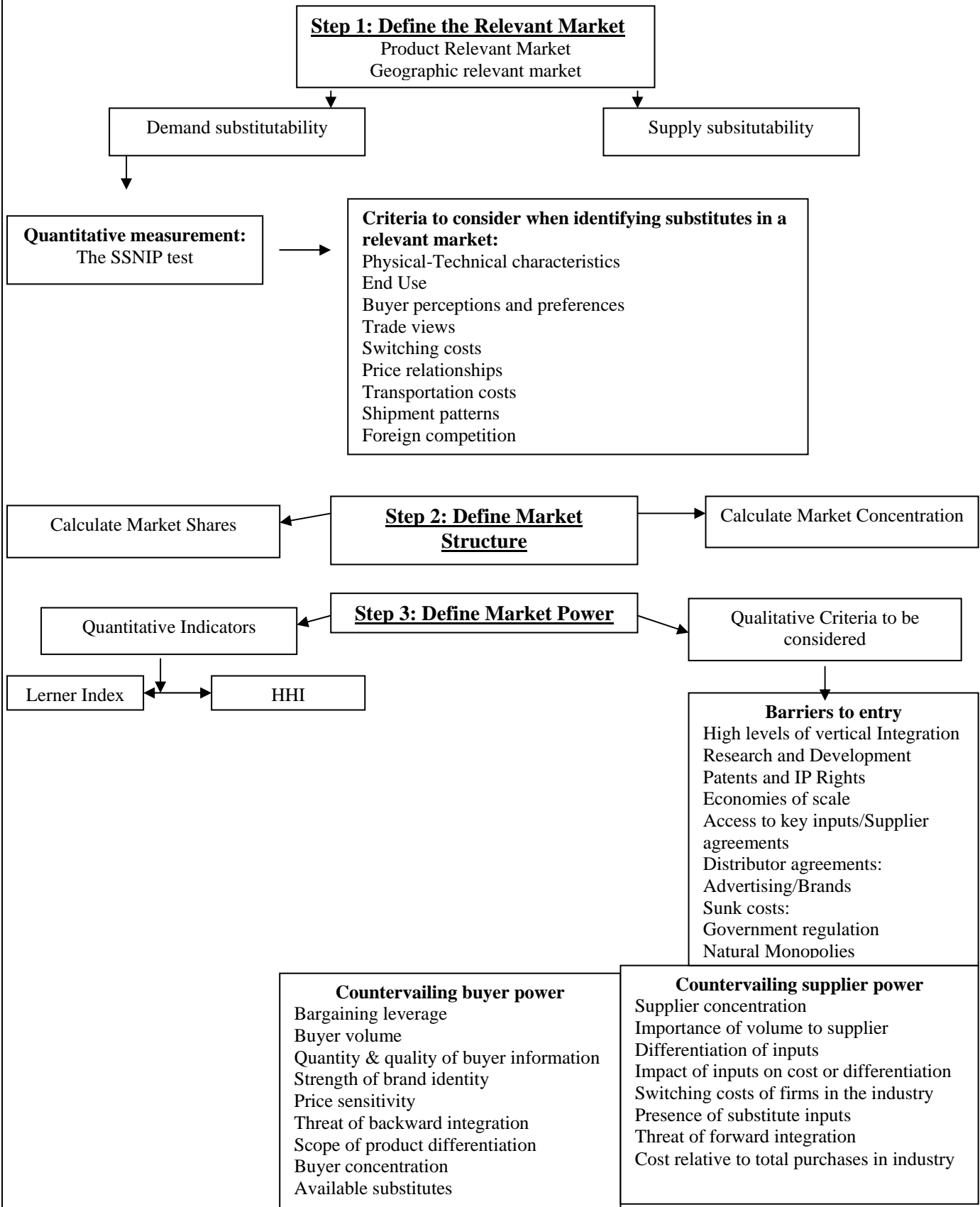
Journal article search sites:

- Business Source Premier, Econpapers, Google Scholar, Jstor.org, NERA, Highbeam, SSRN.com

Annex 4: Outline of procedure to be employed in section

a. “The relevant market” and

b. “Assessing market power through an analysis of market structure, market participation, market shares and market concentration”



Annex 5: Basic Outline of the suggested structure and guidelines

Please note, all headings in **bold** make up the suggested structure for the sector study. All subheadings that are **not bolded** are background information on the relevant economic theory and/or instructions on methodology for the consultant.

- I. **Executive Summary (in Spanish and recommended, in English).**
- II. **Index**
- III. **Introduction (including motivation and objective of market study)**
 - a. **Introduction to the sector and economic context**
 - b. **Motivation for an investigation in this sector**
- IV. List of abbreviations used in the study
- V. Core Text
 - a. Full description of economic sector, industry and products as well as regulatory law for the market under study
 - i. **Description of the institutional framework**
 - ii. **Analysis of prices**
 - b. **The relevant market**
 - i. The importance of the relevant market
 - ii. Definition of the relevant market
 1. Product relevant market
 2. Geographic relevant market
 - iii. Identifying competitive constraints
 1. Demand Substitutability
 - a. Quantitative and qualitative criteria to identify the relevant market
 - b. The SSNIP test: Accepted standard in merger guidelines
 - c. The cellophane fallacy
 2. Supply Substitutability
 - c. **Assessing market power through an analysis of market structure, market participation, market shares and market concentration**
 - i. What is market structure and why is it important
 - ii. Market shares: How to calculate
 - iii. Market concentration
 1. Coefficient Cm: m-firm concentration ratio
 2. Herfindahl-Hirschman Index
 - iv. Market power and competition
 1. What does market power depend on
 - a. Countervailing buyer power
 - b. Countervailing supplier power
 - c. Barriers to entry
 2. Quantitative measurements of market power
 - a. The Lerner Index
 - b. Concentration measures: the HHI
 - c. Market share
 - d. **Identification of possible anti-competitive practices performed by the actors previously identified.**
 - i. Types of information to consider

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Note: The following 2 sections (e and f) make up **expected additional work** to be included. In not included, the consultant should indicate *why* they were unable to do these sections.

- e. **Measurement of the impact of the identified anti-competitive practices and the potential harm to consumers, competitors, and the development of the affected sector or industry.**
- f. **Identification of appropriate policy responses by national authorities (this would provide material for the section VII on public policy recommendations).**

VI. **Conclusions on the analysis of the sector**

VII. **Public Policy recommendations**

VIII. **Suggestions for future research and general conclusions (in English and Spanish)**

IX. **References**

X. **Data and tables**