

UNITED STATES OF AMERICA			
COMPETITION FRAMEWORK			
Competition Law	The Sherman Act (“Sherman”), Clayton Act (“Clayton”), FTC Act (“FTCA”) enacted on July 2, 1890.		
Competition Authority	The Federal Trade Commission (“FTC”) and the Antitrust Division of the Department of Justice (“DoJ”), started functioning on October 1, 1914. FTC Website: http://www.ftc.gov/ DoJ Website: http://www.justice.gov/atr/		
STATUS OF THE COMPETITION AUTHORITY			
Accountability			
Does the Competition Authority have obligations before the executive?	Yes	✓	Obligations to report to the executive on on-going investigations upon request. <i>See</i> FTCA, section 46(d), “Upon the direction of the President or either House of Congress to investigate and report the facts relating to any alleged violations of the antitrust Acts by any corporation.”
		X	The decisions of the Competition Authority may be vetoed by a ministry or by the executive branch.
		X	The Competition Authority has to report on an annual basis to the executive. Article 11 of FTCA states that the Competition Authority needs to report on an annual basis to the minister.
Does the Competition Authority have obligations before the legislature?	Yes	✓	Obligation to publish an annual report on its activities. <i>See</i> FTCA, section 46(f), “[FTC shall] make annual and special reports to the Congress and to submit therewith recommendations for additional legislation.”
		X	Obligation to stand before parliament and respond to congressmen on an annual basis.
		✓	Its activities are monitored by an independent auditor or by oversight committees.
Does the Competition Authority have obligations before the judiciary?	Yes	✓	Decisions of the Competition Authority are subject to judicial review. <i>See</i> FTCA, section 47, “[T]he court may, upon the conclusion of the testimony therein, if it shall be then of opinion that the complainant is entitled to relief, refer said suit to the Commission, as a master in chancery, to ascertain and report an appropriate form of decree therein.”
Independence			
Are the criteria for appointment and removal of the head/board members clear and transparent?	Yes		
Does the executive have powers to decide on specific cases based on public interest?	Yes		Through an “executive Order” the executive can review certain agency actions that fit a variety of criteria. <i>E.g.</i> “economically significant” rules.
Does the executive retain decision-making powers over the Competition Authority?	Yes		
Is the Competition Authority obliged to publish its reasoned decisions to ensure transparency?	Yes		<i>See</i> FTCA, section 45(B)(b), “If upon such hearing the Commission shall be of the opinion that the method of competition or the act or practice in question is prohibited by this subchapter, it shall make a report in writing in which it shall state its findings as to the facts and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice.”
Is there a provision of the national budget allocated by law to the Competition Authority to ensure its proper functioning?	Yes		Fiscal year Budget for 2012: FTC budget was \$135.8 million and the DoJ Budget was \$162.8 million.
Can the Competition Authority be financed by its own means (notification fees, fines, etc.)?	No		
GOVERNANCE OF THE COMPETITION AUTHORITY			
Is the Competition Authority governed by a single chairman or by a collegiate body?	Collegiate body		However, the Antitrust Division at the Department of Justice is “head” by the Assistant Attorney General—Antitrust Division.
Are the heads appointed by a minister?	Yes		<i>See</i> FTCA, section 41, “[The FTCA] shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate.”
Are the heads appointed by representatives of more than one government branch?	Yes		
Is there a fixed period during which removal is prohibited?	No		<i>See</i> FTCA, section 41, “Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.”
Is the tenure of the heads renewable?	No		<i>But see</i> FTCA, section 41, “a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified.”
Are the heads required to have certain minimum qualifications (degree in law or economics, age, experience)?	No		<i>But see</i> FTCA, section 41, not more than three of the Commissioners shall be members of the <i>same political party</i> .

ARCHITECTURE			
Is the Competition Authority a stand-alone agency with an independent physical location or is it part of a bigger entity such as a minister?	Stand-alone agency	In addition to the headquarters in Washington DC, there are several regional offices.	
POLICY-MAKING AGENTS -DIVERSIFICATION-			
How many agencies are responsible for competition enforcement?	More than one agency	The DoJ also enforces federal antitrust statutes. States have antitrust agencies to enforce state antitrust legislation.	
What is the scope of the mandate on competition policy enforcement for each of the agencies?	The DoJ enforces the Sherman Act and the Clayton Act, which contain a prohibition of all the acts described below.		
	Horizontal Agreements	Yes	
	Vertical Restraints	Yes	
	Abuse of Dominance	Yes	
Do sector regulators have competition policy enforcement mandate?	Federal Communications Commission (“FCC”); Federal Energy Regulatory Commission (“FERC”); Food and Drug Administration (“FDA”); Consumer Financial Protection Bureau (“CFPB”); Congressional staffs--senate commerce committee, etc.		
	Horizontal Agreements	FCC	
	Vertical Restraints	FCC	
	Abuse of Dominance	FCC	
	Merger Control	FCC; FERC (FPA section 203).	
Have the Competition Authority and other agencies signed protocols or memoranda of understanding with sector regulators?	Telecommunications regulator	Yes	MoU with FCC re: Do-Not-Call list.
	Energy regulator	No	
	Transport regulator	Yes	However, the Department of Transportation has cited FTC’s guidance on false/misleading advertisements.
	Other	Yes	The FTC has signed numerous investigations specific MoU’s with relevant sector regulators.
POLICY DUTIES			
Does the Competition Authority have exclusive mandate on competition or multiple mandates?	Multiple mandates	✓	Concurrent consumer protection mandate. <i>See</i> FTCA, section 52-55 (False advertisements); FTCA, section 45(a)(1).
		X	Concurrent IP mandate. However, antitrust laws apply to anticompetitive practices with regard to IP. For example, the FTC or DoJ will take action if a company is abusing its IP rights by refusing to license IP rights, industry’s standard setting, abuse of government processes in grant of IP rights, abusive product design and development, among others.
		Other mandates: Yes concurrent with FCC; FDA; FERC; CFPB.	
PORTFOLIO INSTRUMENTS			
Law Enforcement			
Does the Competition Authority have powers to investigate cartels?	Yes	Only the DoJ.	
Does the Competition Authority have powers to conduct dawn raids at premises?	No		
Can the Competition Authority investigate <i>ex officio</i> cases?	Yes	Government can establish substantial market power by direct proof of injury to competition or circumstantial proof of the product market and geographic market.	
Does the Competition Authority have powers to accept leniency applications?	Yes	Only the DoJ.	
Does the Competition Authority have powers to accept seek criminal punishment?	Yes	Sherman Act proscribes certain antitrust violations to be “felonies.” <i>See e.g.</i> Sherman Act, section 2.	
Advocacy			
Can the Competition Authority issue opinions on draft legislation?	Yes	<i>See</i> FTCA, section 46(f), “[FTC shall] . . . submit therewith recommendations for additional legislation.”	
Is the executive and/or the legislature obliged to request the opinion of the Competition Authority when drafting legislation that may impact	No	Under the Administrative Procedures Act, a policy statement by the agency cannot be binding as a “legislative rule” and cannot have the force/effect of legislative drafted by Congress.	

competition?			
Rulemaking			
Can the Competition Authority issue guidelines or other type of secondary legislation?	Yes	X	Guidelines on the calculation of fines.
		√	Guidelines on merger control.
		X	Guidelines on the economic analysis of abuse of dominance cases.
Research & Reporting			
Can the Competition Authority carry out market studies?	Yes		
Can the Competition Authority report to the legislature on the results of market studies?	Yes		
DECISION-MAKING FUNCTIONS			
Aggregated Functions			
Does the Competition Authority make the decision to investigate and to prosecute cases?	Yes		
Does the Competition Authority make guilty findings?	Yes		
Does the Competition Authority impose punishments?	Yes		
Is there a single body that carries out the investigation and the guilty findings within the Competition Authority?	No		
Can the Competition Authority's decisions be appealed to a court?	Yes		
Disaggregated Functions—Prosecutorial Model			
Are there different authorities that make the decision to investigate and to prosecute cases?	No		
Are disputes presented for decision to a separate entity/tribunal?	No		