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1. Wat is concurrentieanalyse

1 Context en situering

- **Efficiënte markten** vormen een van de belangrijkste motors voor het concurrentievermogen en de sociaal-economische prestaties van een economie
- **Concurrentie** tussen aanbieders is in veel gevallen gunstig voor innovatie, ondernemerschap en economische groei, en is vaak een efficiënt middel om een gediversifieerd aanbod aan goederen en diensten tegen lagere prijzen te bekomen



- **Belemmering van de concurrentie** heeft in veel gevallen een sociale en economische kostprijs onder de vorm van hogere prijzen, verminderde koopkracht, verschraling van het aanbod en minder kwaliteitsvolle dienstverlening

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1. Wat is concurrentieanalyse

1 Context en situering

- **Marktregulering** omvat **drie taken**:
 - Controle op de mededinging en voorkomen van misbruik van economische machtpositie door regelgeving en het organiseren van adequaat en onafhankelijk markttoezicht (**mededingingsbeleid**);
 - De regulering van monopolies, markttoegang, toegang tot (infrastructuur)netwerken, prijzen, informatieasympmetrieën, enz. (**marktordening**);
 - Het inventariseren van de publieke belangen zoals universele dienstverlening, bescherming van (gebonden) klanten, leveringszekerheid, kwaliteit, milieu, veiligheid en volksgezondheid enz. en het vertalen van deze **publieke belangen** in randvoorwaarden die door de betrokken bedrijven in acht moeten worden genomen.

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Instrumenten van marktregulering

Mededigingsbeleid

- Kartelverbod
- Anticompetitief gedrag en misbruik van economische machtspositie
- Concentratietoezicht
- Staatssteun
- **Concurrentieanalyse van regelgeving**

Publieke belangen

- Kwaliteit, veiligheid en leveringszekerheid
- Milieubescherming
- Universele dienstverlening
- Sociale maatregelen
- Consumentenbeleid

Liberalisering en regulering van nuts-/netwerksectoren

- Concurrentie in de markt
- Concurrentie voor de markt
- Informatie en transparantie
- Benchmarking of maatsafconcurrentie
- Prijsregulering

Markttoezicht en sectorale regulering

- Mededingingsautoriteiten
- Andere centrale overheidsdiensten
- Sectorale regulatoren
- Toezicht op de marktwerking

1. Wat is concurrentieanalyse

Sterk door overleg



Sociaal-Economische Raad van Woerden

2 Definitie

- Analyse (ex ante, ex post) van de (verwachte, reële) effecten van (voorgenomen, bestaande) wetgeving op de marktwerking/concurrentie
- "A review of the competitive effects of public policies including consideration of alternative and less anti-competitive policies" (OECD recommendation)
- "A tool for evaluating policies to find those that unnecessarily restrict competition and developing alternative policies that achieve the same objectives, with lesser harm to competition" (OECD brochure)
- "The evaluation of whether one or more potential policy alternatives may unduly restrict competition. The goal is to identify those policy measures that would achieve the regulatory objectives with least harm to competition". (OECD toolkit)



1. Wat is concurrentieanalyse

3 Doelstellingen

- Regulation often substantial effects on competition, even when aimed at other policy objectives
- In absence of considerations of competition effects, laws and regulations may inhibit competition unnecessarily
- Competition Assessment can promote increased focus on alternatives that achieve a given regulatory objective but have less detrimental effects on markets

BELANGRIJK: Concurrentie is geen doel maar een middel

- Er zijn situaties waarin (meer) concurrentie niet het beste middel is om de voormelde doelstellingen te bereiken (cf. marktfalen, werkzame mededinging...)
- of waarin een markt wel tot een efficiënte uitkomst kan leiden, maar dat de *verdeling sociaal* niet gewenst wordt geacht

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2. OESO-initiatieven

1 Competition Assessment Toolkit

Problem

- Restrictions on competition are often costly and ineffective in promoting public interests and should be avoided
- Public policies that unduly restrict competition often may be reformed in a way that promotes market competition while achieving the public policy objectives
- Until now, materials that guide policy makers on how to assess market impacts of regulation have been lacking

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2. OESO-initiatieven

1 Competition Assessment Toolkit

Objective

- Fill this gap
- Integrate and develop a best practice methodology for competition assessment that is freely available
- Make the approach simple and limited in information and resources required
- *"The OECD's Competition Assessment Toolkit is a practical methodology to help decision-makers identify and evaluate existing and proposed policies to see whether they unduly restrict competition. Where a detrimental impact is discovered, the toolkit assists in the development of alternative ways to achieve the same objectives, with minimal harm to competition"*

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2. OESO-initiatieven

1 Competition Assessment Toolkit

Target Audience

- Government officials who are part of the decision-making process and implementation process
- Regulatory gatekeepers, regulatory ministries, competition authorities

Envisioned use

- Can become part of policy development process (RIA°) for new laws and regulations
- Can be used as part of an overall review of the existing stock of laws and regulations
- Governments can adopt and adapt the materials for domestic use.

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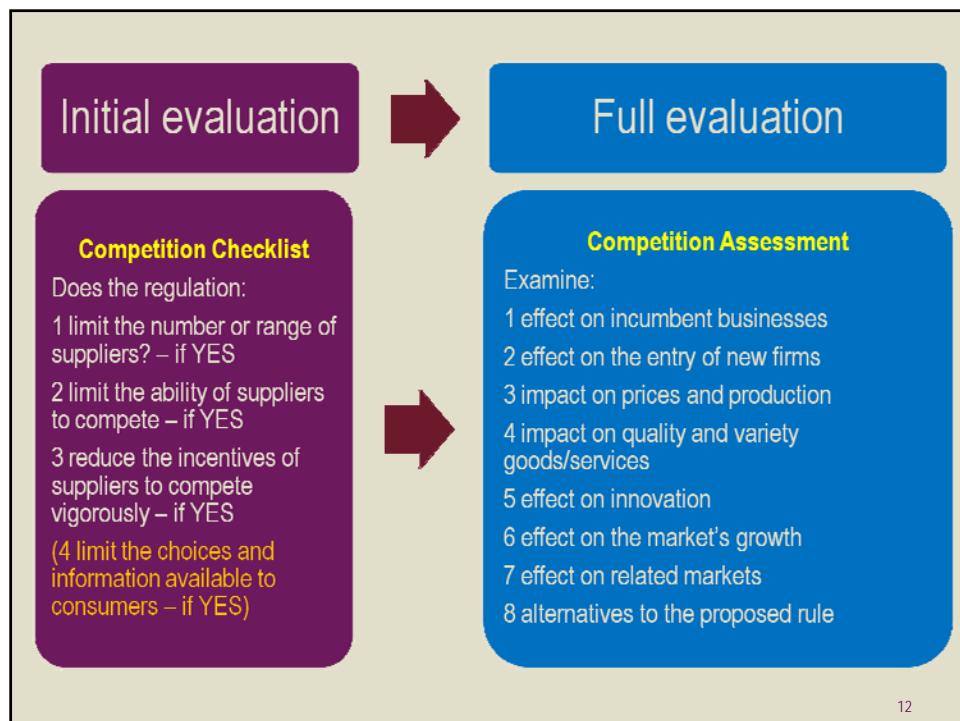
2. OESO-initiatieven

1 Competition Assessment Toolkit

Elements of the Toolkit

- Introduction to Competition Assessment
- Competition Checklist
- Detailed reference manual "Guidance"

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2. OESO-initiatieven

Competition Assessment Checklist

1. Beperking van het aanbod

Gaat het om regelgeving die:

- *Exclusieve rechten toekent om een bepaald product of dienst te leveren?*
- *Erkennings- of vergunningsvereisten bevat?*
- *De mogelijkheid om goederen en diensten te leveren beperkt tot bepaalde aanbieders?*
- *De kosten van toetreding of uittreding aanzienlijk verhoogt?*
- *Het internationale of interregionale verkeer van goederen en diensten beperkt?*

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2. OESO-initiatieven

Competition Assessment Checklist

2. Beperking van de mogelijkheden van aanbieders om te concurreren

Gaat het om regelgeving die:

- *De prijzen regelt waartegen goederen en diensten worden verkocht?*
- *Beperkingen oplegt voor adverteren en marketing?*
- *Onnodig hoge productnormen of specifieke kwaliteitseisen oplegt?*
- *De kosten van sommige aanbieders verhogen en van andere niet?*

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2. OESO-initiatieven

Competition Assessment Checklist

3. Beperking van de prikkels voor aanbieders om te concurreren

Gaat het om regelgeving die:

- *De vorm heeft van zelfregulering of coregulering?*
- *Onnodig de transparantie over prijzen, productie, verkopen en investeringen vergroot?*
- *Sectoren vrijstelt van de mededingingswetgeving?*
- *De verandering van aanbieder door consumenten belemmt door de kosten van switchgedrag te vergroten?*

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2. OESO-initiatieven

Competition Assessment Guidance

Central concepts
Regulatory interventions
General Framework for Competition Assessment

How to examine the

- effect on incumbent businesses
- effect on the entry of new firms
- impact on prices and production
- impact on quality and variety goods/services
- effect on innovation
- effect on the market's growth
- effect on related markets
- alternatives to the proposed rule

Sample Competition assessment

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2. OESO-initiatieven

Competition Assessment Samples

Overall situation

- Background
- Description of existing regulations and current environment
- Alternatives
- Competition Assessment checklist

Competition Assessment

- Objectives of the regulation
- Regulatory options
- The affected market
- Competition assessment
- Conclusions

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2. OESO-initiatieven

2 Institutional options for implementation

- Which policies merit a competition assessment?
- When should a competition assessment be performed in the policy development process?
- Who would be responsible for drafting and reviewing a competition assessment?
- How can policymakers without responsibility for regulatory quality or competition be given incentives to prepare an appropriate assessment?
- What resources are required for competition assessment?

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2. OESO-initiatieven

2 Institutional options for implementation

Which policies merit a competition assessment?

- Most individual laws or regulations do not
- Use Competition Checklist for a quick screening
- Depth of a competition assessment should be proportional to the extent of the potential negative competitive effects of a policy

- Laws, regulations and rules
- New and existing policies
- National, regional, local

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2. OESO-initiatieven

2 Institutional options for implementation

When should a competition assessment be performed in the policy development process?

- early in the policy development process before a determination has been made by policymakers
- consult government competition experts or regulatory gatekeepers as early in the policy development process as possible
- identify prioritize and review existing government policies that limited competition

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2. OESO-initiatieven

2 Institutional options for implementation

Who would be involved with drafting and reviewing a competition assessment?

- The governmental bodies preparing a policy should complete a competition assessment of that policy
- Review by external party (the regulatory gatekeeper, officials with competition expertise such as those located in competition authorities or by some combination of the two)
- Consultation of or support by competition authorities

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2. OESO-initiatieven

2 Institutional options for implementation

How can policymakers without responsibility for regulatory quality or competition be given incentives to prepare an appropriate assessment?

- Including competition assessment in Regulatory Impact Analysis (RIA)
- Financial rewards
- Best-practice training by competition authorities or regulatory gatekeepers

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2. OESO-initiatieven

2 Institutional options for implementation

What resources are required for competition assessment?

- limit the need for detailed scrutiny of existing or new government policies (see checklist)
- benefits of high levels of resource commitment
- Resource requirements highest at the initial implementation stage (e.g. best practice training)

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2. OESO-initiatieven

Linking Competition Assessment and RIA

Objectives and approach reflect a high degree of congruence

- 2005 OECD Guiding principles for Regulatory Quality and Performance "when analyzing alternatives, consideration must take account of their costs, benefits, distributional effects, impact on competition and market openness, and administrative requirements"
- Analytical approach is very similar (problem, objective, options, analysis...)
- Best practice guidelines are very similar (integrated, early, proportionate...)

Competition Assessment can benefit from RIA

- Ensures that competition assessment is widely performed by policymakers: RIA is already widespread in OECD and non-OECD countries; institutions, procedures and resources are there.

RIA can benefit from Competition Assessment

- RIA often compares likely outcomes (benefits/costs) based on the existing economic and regulatory environment: Competition Assessment can be particularly valuable in improving the dynamic component of the analysis

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2. OESO-initiatieven

3. OECD Recommendation on Competition Assessment

(1) Identify existing or proposed public policies that unduly restrict competition and (2) Revise them by adopting more pro-competitive alternatives

- appropriate process
- develop specific and transparent criteria and screening devices (cf. checklist).

(3) Establish institutional mechanisms for undertaking such reviews

- integrated in the policy making process at an early stage
- integrated in the review of public policies (not an extra layer of bureaucracy)
- competition bodies or officials with expertise in competition should be associated with the process of competition assessment.
- the principles of competition assessment are relevant to all levels of government

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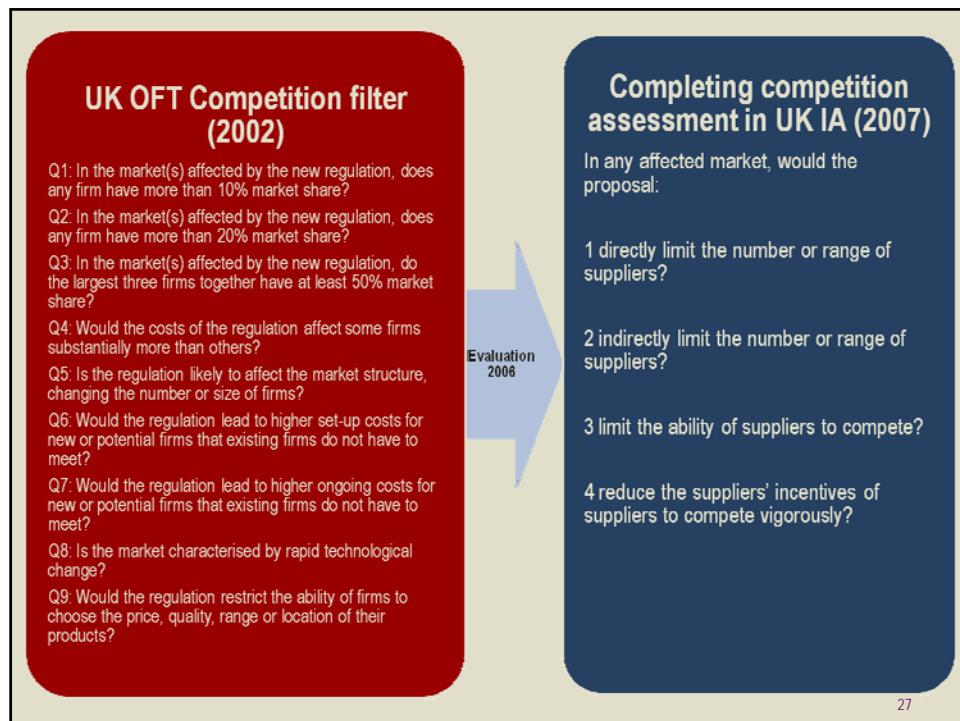
3. Praktijk in de OESO-lidstaten

1 Some form of Competition Assessment...

- Tot dusver beschouwden de meeste mededingingsautoriteiten (tussenkomende) "content regulation" niet als hun taak. Bijgevolg werkten ze weinig preventief naar de kwaliteit van wetgeving toe om verwachte effecten op de marktwerking en mededinging te inventariseren en indien nodig te evalueren
- "Economies with some form of recommended market or competition assessment in place or under trial include at least: **Australia***, the **United Kingdom***, the **United States**, Canada, the European Commission, Korea, Japan, Mexico, Turkey... (Brazil, Chinese Taipei...)"
- "In addition, competition assessment materials have been circulated in the Czech Republic, Finland, Hungary, Italy, Norway, Spain... (Russia, Singapore and Indonesia, Israel, Romania...)"

* ^OECD toolkit

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Sterk door overleg

SERV Servaas-Economische Raad van Vlaanderen

3. Praktijk in de OESO-lidstaten

2 België/Vlaanderen?

- Lange tijd weinig aandacht
- Recent op **federaal** niveau eerste sectorale analyses van regelgeving en aanpassingen van een aantal concurrentiestorende regels
- **Vlaanderen**: nog geen enkel (goed) voorbeeld gezien
- Lokale overheden ?

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3. Praktijk in de OESO-lidstaten

2 België/Vlaanderen?

Kansen door:

- De Europese Commissie die selectiever is in haar mededigingsbeleid
- De toegenomen gevoeligheid van politici
- Liberalisering en rol van toezichthouders (onafhankelijke regulatoren)
- Stijgende prijzen en economische crisis
- *Europese dienstenrichtlijn?*
- *RIA (in Vlaanderen)*

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3. Praktijk in de OESO-lidstaten

2 België/Vlaanderen?

Belemmeringen

- Algemeen
 - *Ex ante evaluatie van regelgeving blijft ondermaats*
 - *Federaal geen RIA-systeem (enkel Kafka-test en DOEB)*
 - *Vlaamse RIA is er nog (lang) niet aan toe*
- Federaal
- Vlaanderen
 - *Weinig/geen expertise*
 - *Bevoegdheidsverdeling?*
 - *Toezichthouders/onafhankelijke regulatoren?*
 - *Economien?*
 - *Adviesraden?*

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