



WORKING GROUP SESSIONS

AGENCY EFFECTIVENESS WORKING GROUP (AEWG)

Plenary: Monitoring and Evaluating the Effectiveness of Agency Actions

Building on the 2016 AEWG Report on Agency Evaluation, the plenary session will present some of the findings of the 2024 survey and discuss trends on how different agencies monitor and evaluate the effectiveness of their actions, for instance remedies and commitments obtained (including direct consumer compensation) as well as advocacy interventions, with a view to exploring potential consensus practices or tools. The session will also look at how the findings and insights from the monitoring activity are used to improve future decisions and proposals and make them more effective.

BOS 1: Agency Performance: Best Practices and Insights

This session will discuss several aspects of agency performance in order to identify and share best practices. Some topics expected to be covered are performance indicators used by agencies, staff retention initiatives, and case management, among others.

BOS 2: Effective and friendly communications: understanding and engaging your audiences.

This session will focus on exchanging experiences on how to effectively engage and communicate with audiences bearing in mind that competition enforcers are highly specialized and technical agencies, who sometimes struggle to approach common audiences. Examples and experiences will not focus solely on advocacy efforts but in more general communications, for example communicating an enforcement decision or effective public relations strategies to engage with the general public.

BOS 3: Forming the next generation of competition officials: effective training and capacity development within agencies.

This session will explore best practices in staff training and how competition agencies can implement effective actions to ensure significant capacity building for their staff.

ADVOCACY WORKING GROUP (AWG)

Plenary: Conducting market studies to understand competition in emerging markets

The continuous advancements in technology within emerging markets pose challenges for both competition agencies and regulators. How can you enforce competition law or develop smart regulations without a good understanding of the markets and how competition works within them? In this session, panelists will share their experiences in tackling the challenges posed by ongoing technological advancements in emerging markets for both competition agencies and regulators; and (discuss how to effectively enforce competition laws and develop intelligent regulations in the face of rapidly changing technological landscapes.





BOS 1: Making Labor Market Work Better

In recent years, there has been an increasing focus globally on the role of competition in labour markets and competition agencies are often central players in these discussions. This session—“Making Labour Markets Work Better”—will explore the role of competition advocacy in ensuring competitive labor markets and in promoting worker welfare. It will focus on how competition agencies are able to use their advocacy toolkits to encourage competition that benefits labor markets, including through diverse employment opportunities, fair wages, and non-monetary benefits. It will also address the intersection between labor laws and competition.

In particular, this session will explore expanding competition policy to cover issues in labor markets; Best practices and initiatives in competition advocacy affecting labor markets; Accounting for the gig-economy and its interaction with labor competition policy; Implications of anti-competitive behavior in labor markets and its effects on worker welfare; and Strategies for advancing and institutionalizing competition in labour markets.

BOS 2: Navigating Economic Turbulence: The Role of Competition Authorities in Macroeconomic Stabilization and Growth

This session addresses the crucial intersection between competition policy and macroeconomic stability. In an environment where public perception of economic issues, such as inflation and market dynamics challenges, is becoming increasingly complex, competition authorities must be called upon to act on matters that historically were not within their purview, or rather, that are part of it but require a much more comprehensive perspective. This panorama raises the need for an in-depth analysis of the impact of competition authorities' management on macroeconomic stability.

The discussion will focus on four key areas: (i) Impact of Competition Laws on Inflation and Economic Stability; (ii) Collaboration between Competition Authorities and Ministries of Finance; (iii) Global Approaches to Balancing Antitrust Enforcement and Macroeconomic Stability; and (iv) Promotion of Economic Stability through Competition Law and Policy.

BOS 3: ICN-WBG Advocacy Contest 2024

Hear from the winners of the ICN-World Bank Advocacy contest.

CARTEL WORKING GROUP (CWG)

Plenary: A new era of cartel enforcement

Agencies around the world are taking a proactive approach to detecting and prosecuting cartels, including increased international cooperation, development of new detection tools, and advocacy campaigns, just to name a few examples. At the same time, agencies continue to face resource constraints in a time of increased public attention to competition enforcement. This session will delve into ways that agencies are adapting to meet today's challenges and prepare for the future.





BOS 1: When companies don't comply [agency-only]

Every enforcer has faced challenges with companies failing to comply with investigations, and this can often be complicated by individuals and information being located in other jurisdictions. This session will provide a forum for discussing a wide range of both legal and practical tools for dealing with non-compliance issues related to document requests, interviews, leniency cooperation, and cross-border concerns.

BOS 2: Using intelligence to make better informed decisions in cartel detection

Agencies are increasingly relying on intelligence to help detect cartels. This session will focus on what intelligence is, different ways to gather it and how it can be used to detect and prioritise cartel investigations.

BOS 3: Algorithmic collusion and other digital challenges in cartel enforcement

This session will explore latest developments in relation to algorithmic collusion, and what steps agencies are taking (or are intending to take) to tackle these and other challenges brought about by the digital era. This will include discussing (i) different ways in which the use of algorithms might result in coordinated outcomes and their prevalence; (ii) detection and investigatory techniques; (iii) whether existing competition law is sufficient to address harms caused by algorithmic collusion and (iv) other digital challenges and opportunities in cartel enforcement and the review of Chapter 1 (Dawn Raids) of the ICN Anti-Cartel Enforcement Manual.

MERGER WORKING GROUP (MWG)

Plenary: Theories of harm involving innovation, nascent and potential competition

The Merger Working Group (MWG) is updating the Recommended Practices (RP) Chapter on unilateral effects. Theories of harm involving innovation, nascent and potential competition are among the key topics that will be included in the updated chapter. Moreover, the MWG is also finalising the new RP Chapter on non-horizontal mergers in which protection of innovation, nascent and potential competition have been prominently covered. Protecting innovation is of paramount importance for society, contributing to economic growth, jobs creation and access to better products or new technologies. Both, horizontal and non-horizontal mergers may have a big impact on innovation. Moreover, transactions that eliminate a nascent or potential future rival that could have grown into a challenger to the acquirer's core market may also prevent innovation competition. This session will collect additional input valuable for the ongoing update of the RP chapter on unilateral effects and share best practices on protecting innovation, nascent and potential competition.

BOS 1: Counterfactual assessment in merger review

The MWG is updating the ICN RP with a new Chapter on Counterfactual. The counterfactual is an analytical tool that involves a comparison of the prospects for competition with the merger against the competitive situation without the merger. The latter is called the 'counterfactual'. This session will explore the more frequent consideration by national competition authorities of dynamic counterfactual situations, especially in relation to evolving markets.





BOS 2: Coordinated effects

The MWG is updating the RP Chapter on coordinated effects. This session will be an opportunity to present some of the main points that will be included in the updated draft chapter and a forum to collect additional input and share best practices on a range of highly relevant topics, including (i) theories of harm and competition analysis, (ii) empirical analysis and evidence and (iii) use of AI and algorithms to coordinate competitive conduct.

BOS 3: Tools and practices for effective and timely management of merger cases

Merger cases are time sensitive calling for its effective and timely management. This session aims to initiate a dialogue and to share experience on tools and practices used by competition authorities for the effective and timely management of merger cases. It also acts as a milestone for the project that the Merger Working Group is considering on the same topic as a work product.

UNILATERAL CONDUCT WORKING GROUP (UCWG)

Plenary: Unilateral conduct enforcement: current trends and challenges ahead

Effective competition law enforcement in unilateral conduct cases entails significant challenges, ranging from growing technical complexity to procedural issues, high standards of proof and fast-changing markets calling for swift intervention. This plenary session will allow participants to share experience on the main difficulties they are facing before discussing relevant approaches and solutions to keep competition law adequate and efficient.

BOS 1: Checklist for an efficient and effective use of urgency enforcement tools in the unilateral conduct area

Urgency enforcement tools, such as interim measures, are designed to ensure in a relatively short timeframe that effective competition is maintained and damage is averted, while proceedings on the merits are ongoing. The use of such tools has recently drawn the attention of the competition community, including in the context of abuse of dominance proceedings in the digital economy.

As many jurisdictions worldwide have the power to implement these types of tools and have acquired significant experience in this respect, this session aims to discuss what a checklist for an efficient and effective use of urgency enforcement tools in the unilateral conduct area would look like. Four main topics will be addressed during the session: the procedural framework, the standard of proof, the types of measures that could be ordered and the follow-up of an interim measure's decision. On all four topics the discussion intends to share agencies and NGAs' experiences that highlight the benefits, challenges and limits of these tools.





BOS 2: Theories of harm and Design of Remedies Concerning Unilateral Conduct with Dominance/Substantial Market Power in Digital Markets

This session is framed in the context of the Unilateral Conduct Working Group work towards drafting a Follow up Report on Theories of Harm and Design of remedies concerning unilateral conducts in digital markets (continuation from the Report led by the JFTC in 2023). Following the distribution of a questionnaire to ICN members and a compilation of the responses in Q1 2024, the moderator would share the main findings so the speakers may contribute to the debate.

The speakers may share their experiences and reflect on theories of harm to be applied in digital markets, the specific challenges of new cases (specificities of the analysis when dealing with platforms), and the main questions and solutions found to design proper remedies in these markets. The ideas and conclusions of this debate will enrich the final report to be drafted by the UCWG.

BOS 3: Exclusive Dealing, Tying and Bundling: How should the UCWG workbook be updated in light of the latest developments?

The ICN Workbook compiled the approaches used by ICN Members to analyze unilateral conducts. In that regard, Workbook Chapters on ‘Exclusive Dealing’ and ‘Tying and Bundling’ have been published in 2013 and 2015 respectively. Yet, since then, new versions of these conducts have emerged.

Firstly, as exclusive dealing practices continue to evolve, it's vital to understand their manifestations in digital markets. Jurisdictions worldwide are grappling with the implications of exclusive dealing arrangements, particularly when used by dominant actors on two sided markets. Questions abound regarding whether these practices result in exclusionary effects and harm innovation or whether it can, to some degree, result in efficiency gains (e.g. by preventing “free riding”). This breakout session aims to gather insights into contemporary exclusive dealing practices and, thus, facilitate discussions on potential updates to the Workbook.

Secondly, while different means of tying/bundling may have emerged in traditional markets, agencies have detected new versions of tying in digital markets as well. On one hand, several jurisdictions had already assessed whether default settings and pre-installed applications/software by the dominant platforms lead to exclusionary effects or not. On the other hand, there is ongoing discussion about some theories of harm within the tying context, such as providing different services on the same platform or providing a service in condition to signing in another separate account. This session aims to collect experiences on the contemporary tying and bundling practices so as to update the Workbook, if necessary, providing a practical guide for competition law enforcers.





SIDE SESSIONS

INTRODUCTION TO THE ICN

BOS: Are you or your agency new to the ICN or the annual conference? If so, please join us for a warm welcome and an informal introduction to all things ICN: its work, processes, and opportunities for new participants. In a relaxed setting, we will describe the network, the annual conference, and how to get involved – in addition to answering any questions about the ICN. Maybe you are already active in the ICN but have an unresolved question or two about the network? You are welcome too! Feel free to stop by during the session at any time. We will ensure that you have time to find your seat in the plenary room for the opening session at 09:00, newly informed with insights about your network!

HEADS OF AGENCY SESSION: STATE OWNER ENTERPRISES

BOS: To discuss about how the SOEs are legally defined in different countries and whether they are exempt from competition law; cases and experiences regarding SOE and competition law and why it should not make distinction among SOEs; when to regulate an SOE; and how sanctions from breaching competition law might benefit consumers.

HEADS OF AGENCY SESSION: ARTIFICIAL INTELLIGENCE

BOS: Large-scale AI has had a breakout year in terms of capabilities, economic impact, public attention, and regulatory scrutiny. The mass introduction of AI is a key moment of technological innovation that can transform markets. This session will begin with a brief presentation on AI and competition. A room discussion will follow to explore what competition agencies are doing to understand AI, its economic features, and potential competitive implications.

COMPETITION CONCERNS IN FOOD & AGRICULTURE MARKETS

Plenary: How global markets and local needs interact in agricultural and food markets?

The international agricultural and food markets are concentrated at various levels and in various activities. This includes key inputs such as genetic material, fertilizers, farming equipment and services such as trading. The state of global competition in agricultural and food markets has come into focus considering recent global food price spikes and the profits earned by large global players. Global competition and concentration have a profound impact on how competition agencies approach their work in mergers, cartel, and abuse of dominance. Furthermore, global players who have market power in their respective industries or activities can also shape domestic access to food and prices.

The session will consider how authorities can respond to competition dynamics and concentration at the global level and their impact on domestic markets, and the panellists will discuss the interaction between global markets (in which there is global market power) and vulnerable economies and how healthy competition in global food markets can contribute to food security; and the role competition authorities may play in bringing about a more stable local market environment.





BOS: Reflections on pro-active research, monitoring, and price observatories and competition enforcement in food markets.

Several competition authorities (e.g. South Africa, Canada, the UK, Malaysia, Kenya, Ghana, Hungary, Nigeria and Greece) responded to cost-of-living pressures with research, investigations, or special projects to better understand the drivers of food inflation and whether the state of competition could explain price increases. These projects took on different forms in terms of the data that they relied on, engagements with industry players and other policymakers, and the scope of their probes. For this session, we propose a presentation of the initial results of the survey that was recently circulated to ICN members. Insights and case studies will be constructed from the survey results, affecting each area of enforcement, be it proactive or reactive.

COOPERATION/FRAMWORK FOR COMPETITION AGENCY PROCEDURES

BOS: From soft cooperation to joint enforcement

The session shall focus on positive examples of soft cooperation and how these may lay the ground for cooperation in enforcement / market studies. The discussion shall consider to what extent soft cooperation is necessary, possible challenges (e.g. sustainability of results, knowledge sharing, finding partners and funding), joint enforcement tools.

NGA ENGAGEMENT SESSION

BOS: The Structuring of Competition Agencies in Latin America: Past, Present, and Future

The session aims to examine the development of competition agencies within our region, exploring their historical evolution, current operations, and future endeavours. It presents a platform for each agency to share its stories and insights. We believe your contribution will be invaluable in illustrating the evolution and future challenges faced by competition agencies in Latin America.

PORTUGUESE LANGUAGE SESSION

BOS: The role of competition policy and the main challenges to its enforcement in 2024.





ANNEX 1

HEADS OF AGENCY SESSION





STATE-OWNED ENTERPRISES

State-Owned Enterprises (SOEs) exist in different jurisdictions under different institutional arrangements and positions regarding the application of antitrust regulations.

According to the Organization for Economic Co-operation and Development (OECD) there are several countries in which SOEs are not exempt from the application of competition law; for example: France, Pakistan, Switzerland, Australia, Brazil, Kenya, Republic of Korea, Malaysia, Mauritius, Mexico, United States (US) and the European Union (EU), among others.

Nevertheless, it is worth noting that SOEs may also benefit from exceptions or immunity from the competition law in certain jurisdictions or under certain conditions.¹

As such, the following points should be interesting to discuss in the Head of Agency Session:

-  How are SOEs legally defined in different countries and whether they are exempt from competition law?
-  Regarding competition in the market, explaining in which cases it could be important to subject an SOE to competition law without granting any special status with respect to other competitors. That is, explaining why competition law should not make any distinction among SOEs and other firms competing in the same market?
-  Discussing when it might be desirable to regulate an SOE; for example, when considering certain characteristics, such as, controlling essential assets or having the status of legally protected monopolies. It might be important in former cases to regulate an SOE by establishing norms that may guarantee access to assets they control or to apply norms that subject them to specific obligations (e.g. asymmetric regulation)?
-  Another point which would be important to address, is explaining how sanctioning SOEs for breaching competition law might benefit consumers or, if any, in which cases it might be justified granting exemptions to an SOE regarding antitrust law enforcement?

¹ As an example, in Mexico the SOE in the electricity sector maintains a legal monopoly on the distribution and transmission activities (although it is subject to norms that guarantee access to competitors).





ARTIFICIAL INTELLIGENCE & COMPETITION CONCERNS

Throughout the session we encourage agency heads to share any agency expertise or experience with AI.

A key objective of this discussion is to share and learn what agencies are doing or planning to do in the consideration of the competition implications of AI.

Theme one: What are our agencies doing?

Do agencies have public cases or investigations related to AI? Any ongoing research or studies or other AI-related work at your agencies?

Have your agencies started to identify how AI might be a competition issue, both in the AI market and markets that will be impacted by AI? Considered AI partnerships and interaction with big tech firms?

Theme 2: Impact of broader AI policy discussions?

How are your agencies navigating broader government attention to AI?

Does your agency have a plan to ensure clear messaging on the competition implications of AI? What challenges do you face?

Theme 3: AI as a test of competition agency awareness?

In what ways did our agencies see the rise of AI and its competitive implications coming? How would you grade your agency (or all of us collectively) in terms of keeping pace with this new technology and its competitive implications? More generally: how do your agencies follow technologies, new business models, and extensions of existing technologies into new digital markets? Are there examples or lessons from the emergence of AI?

