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**Competition for Competition:
What Practitioners Expect from Competition
Authorities with Leadership Ambitions**

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Competition for Competition: What Practitioners Expect from Competition Authorities with Leadership Ambitions

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I. Introduction

Competition authorities¹ have regularly expressed desires to be leaders in their field. Such expressions range from one-off comments made in speeches to being embedded in strategic plans. This project seeks to shed light on ambitions of competition authorities to lead their peers on competition policy matters. While authorities' annual work or prioritization plans are often a response to more immediate needs of the economy within an authority's jurisdiction, leadership ambitions provide a glimpse into where an authority considers it has strengths that will inspire or influence others.

What this project seeks to achieve, based on an assessment of competition authorities' leadership ambitions and a survey of practitioners, is to provide input from those who are subject to competition policy. In other words, the question posed is whether these leadership ambitions are meaningful from that constituency's perspective. Ideally, in a well-functioning competition regime, competition authorities should be able to achieve their objectives following best practices while meeting the legitimate needs of their users. Given the notable shifts in approaches to competition policy in 2025, such as the European Commission's Competitiveness Compass² or the U.S.'s

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¹ We use the expression competition "authority" interchangeably with "agency" although some institutions are technically authorities, such as the US Department of Justice Antitrust Division, whereas the US Federal Trade Commission is an independent agency.

² "Competition policy is also an important lever to strengthen Europe's competitiveness. Rigorous and effective antitrust and merger enforcement in accordance with clear and predictable rules protects fair competition and incentivises companies to innovate and become more efficient. At the same time, in the global race to develop deep technologies and breakthrough innovations, competition policy must keep pace with evolving markets and tech innovation. This needs a fresh approach, better geared to common goals and allowing companies

“America First Antitrust”³, these questions are increasingly significant.

To be clear, leadership ambitions can raise the bar and lift up competition policy worldwide. As one respondent in our survey notes: *“If each agency is competing with each other, this will push them to innovate in intellectual and policy leadership, providing examples of new thinking and effective action”* The project seeks to identify what areas should be worth leading on from the users’ perspective and what best practices are sought by these users.

This topic is increasingly relevant. International competition organizations are also examining the effectiveness of competition authorities’ activities.⁴ One significant aspect of this examination, as highlighted by the OECD, is the use of Impact Assessments.⁵ According to an OECD report, Impact Assessments are a valuable tool that many competition authorities employ to quantify the expected consumer benefits of their interventions. This serves multiple purposes: it helps communicate the benefits of competition interventions to the public and stakeholders, assists authorities in maintaining accountability to stakeholders, and provides a tool to inform priority setting. By estimating the benefit of interventions, often in monetary terms, authorities can compare these figures to their budgets to demonstrate “value for money”. This produces quantifiable and intuitive data to help justify their activities and resource requests to governments. The OECD has provided practical and widely referenced guidance document to help authorities assess the expected impact of their activities.⁶ The OECD is currently considering potential revisions to this guidance

to scale up in global markets – while always ensuring a level playing field in the Single Market.” European Commission, A Competitiveness Compass for the EU, Brussels, 29.1.2025, COM(2025) 30 final, page 6, at 6, COM (2025) 30 final (Jan. 1, 2025).

³ See, e.g., GAIL SLATER ASSISTANT ATT’Y GEN., ANTITRUST DIV., U.S. DEPT. OF JUST., THE CONSERVATIVE ROOTS OF AMERICA FIRST ANTITRUST ENFORCEMENT , (Apr. 28, 2025), <https://www.justice.gov/opa/speech/assistant-attorney-general-gail-slater-delivers-first-antitrust-address-university-note>.

⁴ See OECD (2025), ASSESSING THE IMPACT OF COMPETITION AUTHORITIES’ ACTIVITIES, *OECD Roundtables on Competition Policy Papers*, No. 320, OECD Publishing, Paris, <https://doi.org/10.1787/eaafdba8-en>; INT’L COMPETITION NETWORK, AGENCY EFFECTIVENESS WORKING GROUP ANNUAL WORK PLAN 2024-2025 (2024), <https://www.internationalcompetitionnetwork.org/wp-content/uploads/2024/06/AEWG-Annual-Work-Plan-2024-2025.pdf> (project on Planning, Monitoring and Measuring Effectiveness, that will “focus on member agencies’ best practices and experiences in identifying clear objectives and strategies, assessing progress as well as evaluating effectiveness”).

⁵ See OECD, OECD ROUNDTABLES ON COMPETITION POL’Y PAPERS, No. 320, ASSESSING THE IMPACT OF COMPETITION AUTHORITIES’ ACTIVITIES (2025), <https://doi.org/10.1787/eaafdba8-en>.

⁶ See OECD, GUIDE FOR ASSESSING THE IMPACT OF COMPETITION AUTHORITIES’ ACTIVITIES (2014), OECD Publishing, Paris, <https://doi.org/10.1787/c92c2cd0-en>.

to reflect developments and ensure it remains relevant and credible.

However, in distinction to agency effectiveness or prioritization principles, which have also been the subject of research,⁷ there is little focus on whether leadership ambitions are well-considered and what metrics are required to fulfil these ambitions. Different actors (competition authorities, government, academics, international organizations, private sector practitioners, and in-house counsel of firms) may have different views on what a well-functioning competition regime looks like.

This project serves as a starting point for stimulating debate and further research on potential ways in which these features can be identified, measured and promoted. Furthermore, the conclusions from this research could also inform future guidance or best practice in international coordination and cooperation because, as markets become more global, international dynamics are increasingly important.

The report is structured around the following sections:

II. A Summary of Survey Conclusions

III. Discussion and Recommendations

IV. Additional Recommendations to Assess the Effectiveness of Thought Leadership Initiatives

V. Expressions of leadership ambitions by Competition Authorities

VI. Literature Review

VII. Survey of Practitioners: Introduction & Methodology

VIII. Results of the Survey of Practitioners

Abbreviations

ACCC	Australian Competition and Consumer Commission
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⁷ See OR BROOK & KATI CSERES, POLICY REPORT, PRIORITY SETTING IN EU AND NATIONAL COMPETITION LAW ENFORCEMENT (Sept. 28, 2021), <https://ssrn.com/abstract=3930189>.

ACM	Netherlands Authority for Consumers and Markets
AdC	French Competition Authority (Autorité de la Concurrence)
AGCM	Italian competition authority (Autorità Garante Della Concorrenza e del Mercato)
BCA	Belgian Competition Authority (Autorité Belge de la Concurrence; Belgische Mededingingsautoriteit)
CADE	Brazilian Administrative Council for Economic Defense (Conselho Administrativo de Defesa Econômica)
CCB	Canadian Competition Bureau
CCP	Competition Commission of Pakistan
CCCS	Competition and Consumer Commission of Singapore
CNMC	Spanish competition authority (Comisión Nacional de los Mercados y la Competencia)
COFECE	Mexican Federal Economic Competition Commission (Comisión Federal de Competencia Económica)
DCCA	Danish Competition and Consumer Authority (Konkurrence - OG Forbrugerstyrelsen)
DG COMP	European Commission's Directorate General for Competition
FCO	German Federal Cartel Office (Bundeskartellamt)
FNE	Chile's National Economic Prosecutor
ICN	International Competition Network
Indecopi	National Institute for the Defence of Free Competition and the Protection of Intellectual Property of Peru
JFTC	Japan Fair Trade Commission
KFTC	Korea Fair Trade Commission
MyCC	Malaysian Competition Commission
OECD	Organisation for Economic Cooperation and Development Competition Committee

RCC	Romanian Competition Council
SACC	South African Competition Commission
SIC	Superintendency of Industry and Commerce of Colombia
U.K. CMA	U.K. Competition and Markets Authority
U.S. FTC	U.S. Federal Trade Commission
U.S. DoJ	U.S. Department of Justice Antitrust Division

II. Summary of Survey Conclusions

The survey suggests that a leading competition authority earns its status through a combination of substantive excellence in its analysis and enforcement, a commitment to fair and transparent processes, and a demonstrable positive impact on competition and consumer welfare, rather than relying on superficial metrics or aggressive displays of power.

Respondents across the board emphasized that the **quality and real-world impact** of enforcement actions are paramount, far outweighing the sheer volume of cases undertaken. A leading authority is expected to conduct its analysis with rigor, thoughtfulness, and intellectual honesty, ensuring it aligns with established legal and economic principles. Simply pursuing a high number of cases is not seen as a primary indicator of leadership, nor is solely focusing on increased enforcement or high-profile cases, as quantity is not synonymous with quality.

Certain foundational attributes are considered indispensable for a leading agency. These include **predictability, transparency, and efficiency** - attributes that foster legitimacy and a stable environment for businesses.

The importance of investing in **human capital** cannot be overstated, which requires the authority to be vested with adequate resources. Survey participants believe that a leading authority is ultimately defined by the quality and skill set of its staff, including their inter-disciplinary capabilities and real-world experience. The ability to attract, train and retain staff is primordial.

While **thought leadership and exploring innovative solutions** are highly valued, respondents stressed that these must be grounded in practical realities, validated through consistent enforcement, and tailored to the authority's specific context and capabilities. Being the first to analyze new issues is less critical than the depth and insightfulness of the analysis. More important were effective prioritization mechanisms for efficient and well-focused enforcement.

Institutional independence is considered crucial, enabling the agency to act without undue influence from vested interests. Similarly, integrity and competence within the authority are fundamental. Leading agencies are also expected to engage in strategic thinking and effective prioritization of their work, taking into account the specific needs of their jurisdiction and available resources.

The survey revealed a nuanced perspective on **international engagement**. While coordination and cooperation with other jurisdictions are generally seen as beneficial, respondents also highlighted the need to maintain autonomy and prioritize local market dynamics. Actively seeking to influence the application of competition rules in other jurisdictions is viewed with more caution, with many suggesting that demonstrating domestic excellence is a more appropriate means to do so. Influence in international fora is valuable but should rather be a natural consequence of strong domestic enforcement and insightful analysis.

Conducting investigations and reaching decisions in **a timely manner** is also considered important for an authority's effectiveness and reputation. However, this should never compromise procedural fairness, transparency, impartiality, and due process. **Due process protections**, including effective internal checks and balances are deemed critical to avoid arbitrary enforcement, especially where an authority is seeking to explore new theories of harm.

There was a significant consensus around the idea that seeking to **improve consumer welfare and economic benefits** is a key indicator of a leading competition authority's positive outcomes. When it comes to measuring success, respondents favored metrics such as success in appeals before the courts, the deterrent effect of enforcement decisions, a positive impact on economic performance, and effective cooperation with other competition agencies. The imposition of significant penalties (fines) is viewed with considerable nuance. Many respondents are neutral or disagreed with its use as a primary indicator of a leading agency, arguing that the quality and justification of fines are more important than their absolute size.

Finally, **accountability** to the public, government, and courts is deemed critical for a leading authority. Furthermore, devoting resources to regular open dialogue, engagement, and cooperation with the broad range of stakeholders involved in competition policy are seen as essential for balancing potentially divergent interests and ultimately improving the outcomes of competition policy, as well as its legitimacy and enforcement.

In conclusion, the essence of leadership lies not in isolated metrics but in the virtuous cycle of intellectual rigor, effective action, respect for the rights and views of actors and demonstrable positive outcomes.

III. Discussion Section

Below we provide further discussion on some key elements that are considered critical for authorities to lead their peers, notably the quality of enforcement and effectiveness of competition policy, thought leadership, predictability, transparency and engagement, as well as the distinction between large and small authorities amongst other things. What comes out clearly from this study, is that, in order to fulfil the qualities of a leading authority many trade-offs are involved, requiring authorities to engage in a delicate balancing act. These include innovation versus certainty; speed versus rigor and due process; fact-specific cases versus general guidance; co-ordination versus autonomy. Where the balance lies depends on each authority's legal competences, procedures, resources, prioritisation and so forth.

- **Quality over Quantity in Enforcement**

Effective competition enforcement, and by extension the leadership potential of a competition authority, is fundamentally determined by the quality of its analysis and action (including soft law guidance flowing therefrom), rather than the number, size or profile of enforcement actions. This quality criterion is characterized by analytical rigor, grounded in sound economic principles and recognizable theories of harm. There is a strong consensus that investing in skilled and knowledgeable staff is vital for a competition authority's success. This includes attracting and retaining personnel with inter-disciplinary capabilities and technical skills, as well as providing a healthy and respectful work environment and opportunities for growth.

The ultimate benchmark of quality lies in the demonstrable positive impact on consumer welfare, market competitiveness, and the fostering of investment. Leading agencies should adopt a strategic and transparent approach to the prioritization of their work, ensuring that resources are focused on addressing the most significant competition concerns rather than being diluted across a high volume of potentially less impactful cases. Furthermore, adherence to due process and procedural fairness is crucial in building the legitimacy and credibility necessary for an authority to be recognized as a leader. Implementing internal checks and balances, such as peer review and the separation of investigatory and decision-making teams, is vital for ensuring sound decision-making and reducing the likelihood of errors or arbitrary actions.

Therefore, a singular focus on the volume of enforcement actions undertaken can be a misleading indicator of either effectiveness or indeed leadership. Nor is true leadership attained by necessarily being the first to act or to legislate, but rather by being substantively correct and impactful in analysis and decisions. International influence, a key effect of being a leading authority, should be a direct consequence of high-quality enforcement and

insightful analysis, inspiring other jurisdictions to adopt similar approaches. Consequently, metrics for assessing a competition authority's success should prioritize the real-world impact of interventions on the market and consumer welfare, rather than simply tracking the volume of activity. Importantly, a tension exists between an authority explaining its novel thinking in multilateral and bilateral fora (and therefore leaving it to other authorities to consider whether these innovations should be followed, given the peculiarities of their jurisdiction) and actively advocating peers to adopt a similar approach.

Discussion: While the emphasis on quality is strongly supported, a purely binary view of quality versus quantity might overlook some complexities. Firstly, the respondents to our survey acknowledge that the size and resources of an economy can influence an authority's capacity to build sophisticated teams and handle complex cases, potentially impacting their ability to demonstrate leadership on a global stage. This suggests that a baseline level of activity and resourcing is necessary to establish the foundation for quality work. Yet the focus should not only be on enforcement action, but also clearly on providing guidance for market players to ensure compliance with competition rules. Secondly, while respondents generally questioned a high number of cases as a metric of success, some did note that an authority's ability and resolve to address significant market challenges and run multiple high-profile cases may well be necessary if the facts call for it. Moreover, being first to analyze new issues in an insightful manner was not considered critical by a significant majority of respondents. While, some see potential benefits, the prevailing view emphasizes the importance of careful consideration, thorough analysis, and effective implementation over simply being the first mover.

Furthermore, the respondents highlight the importance of predictability, credibility, transparency, and efficiency as foundational attributes. While these contribute to the overall 'quality' of an authority, achieving them might necessitate a consistent level of engagement with market players to provide clear guidance. There is also an inherent tension between policy or legal innovation and certainty. A relentless pursuit of novel theories, even if they are of high quality, could undermine predictability and create uncertainty for businesses. A leading authority must therefore navigate this balance carefully, to minimize broad negative impact.

Finally, while international influence should ideally stem from the quality of domestic enforcement, proactively engaging in international fora and sharing best practices requires dedicated engagement in the global discourse to establish best practices. The OECD's ongoing work on Impact Assessments, including

roundtables and the potential update of its guidance, exemplifies such international engagement.⁸ By participating in these discussions and referencing international guidance, authorities contribute to and benefit from shared learning and the development of best practices. While proactive advocacy for specific national approaches is viewed cautiously by some respondents, the transparent sharing of methodologies and analytical frameworks, as occurs through the OECD's work on Impact Assessments, is seen as a positive form of influence. Updated OECD guidance, reflecting current practices and empirical evidence, has the potential to encourage a degree of harmonization where appropriate, thereby contributing to improving consistency in how competition authorities measure and communicate their impact internationally.⁹

- **Tailored and Strategic Enforcement**

A leading competition authority tailors its enforcement strategies, focusing on significant competition issues and the economic impact of its enforcement actions rather than being driven by political agendas or generating headlines. A leading competition authority distinguishes itself by tailoring enforcement strategies to the specific characteristics and needs of the markets within its jurisdiction, ensuring that interventions are relevant and effective. Rather than being swayed by political agendas or the pursuit of public recognition, leading authorities prioritize those competition issues with the potential for substantial economic impact, a route to global relevance. This strategic focus, generally structured through prioritization instruments, enables an authority to direct its limited resources effectively, addressing key areas of concern and fostering a more competitive landscape that ultimately benefits consumers. This approach not only enhances the authority's domestic effectiveness but also contributes to its standing as a thought-leader, as its well-reasoned and impactful decisions are more likely to be recognized and potentially emulated by its peers. Ultimately, a leading authority's enforcement is characterized by its thoughtful application and demonstrable positive impact, rather than simply the number of investigations or decisions it undertakes.

Discussion: Allowing political agendas to dictate enforcement priorities risks biasing decision-making and resource allocation, potentially diverting attention from more critical competition concerns that may be less politically visible. As one respondent notes, there's a danger of pursuing "exotic cases or novel theories

⁸ See OECD, OECD ROUNDTABLES ON COMPETITION POL'Y PAPERS, No. 320, ASSESSING THE IMPACT OF COMPETITION AUTHORITIES' ACTIVITIES (2025), <https://doi.org/10.1787/eaafdba8-en>.

⁹ *Ibid.*

of harm" not based on sound economics simply to align with prevailing political winds. This can lead to unpredictability and a failure to address the day-to-day work that underpins a healthy competitive landscape. Furthermore, political influence can compromise the institutional independence that is widely regarded as paramount for impartial competition law enforcement. Respondents expressed concern that political accountability could even translate into "political enforcement", further eroding trust and legitimacy.

- **Effective Deterrence and Compliance**

Effective deterrence requires credible detection mechanisms, and well-resourced teams that can deliver on successful prosecutions of anticompetitive conduct. Doing so demonstrates an authority's commitment (and capability) to uncovering infringements. However, enforcement may be insufficient to achieve a broader compliance culture without high-quality analysis in decisions that provide guidance to market players. Conversely, lengthy and unresolved investigations can drain resources and diminish the potential impact of any eventual decision, undermining an authority's ability to lead.

Respondents also indicate that the ability to design, impose, and monitor effective (and proportionate) remedies is considered a mark of a mature and leading agency. Moreover, success in appeals before the courts enhances deterrence by demonstrating the soundness of authorities' analysis and the robustness of legal arguments.

Discussion: The concept of "successful" prosecution and resolution may not be straightforward. Success need not equate to a finding of abuse. Depending on different perspectives, it may mean increased competitive market conditions, increased legal certainty, the ability to pursue damages etc. Nor will all investigations necessarily end in a finding of abuse, especially where initial competition concerns cannot be established. Authorities should have mechanisms, such as peer review panels, that can help assess whether investigations should be deprioritized and resources devoted elsewhere. Such mechanisms will help address prosecution biases or situations where authorities are deterred from taking complex cases. In instances where investigations are closed, authorities should also consider what lessons can be drawn from discontinued investigations, notably where these can help provide guidance to market players.¹⁰

¹⁰ See Mathew Heim, *The curious case of the European Commission's missing antitrust jurisprudence: lessons from abandoned Article 102 investigations*, J. EUR. COMPETITION L. & PRAC., (forthcoming June 2025).

The effectiveness of remedies is highlighted as the key criterion, implying that even if a prosecution is successful, poorly designed remedies will fail to create the desired deterrent or compliance effect. Authorities should be willing to consider proportionate remedies that genuinely address anti-competitive harm, rather than restrict themselves to, e.g. only structural remedies that limit authorities' scope of action.

As a general matter, success in appeals reinforces an authority's credibility, especially as the outcome of litigation can rarely be predicted. Yet how a court decision reflects on an authority's decision-making very much depends on the robustness of the judicial system and the specific legal framework, which vary broadly across respondents' jurisdictions. However, it is true that the nature of judicial oversight (notably whether there is a judicial review or *de novo* review, as well as judges' understanding of competition law and deference to regulatory authorities) may be a factor in authorities' decision to pursue novel cases.

Ultimately, effective deterrence and compliance require the necessary resources, expertise, and independence to conduct high-quality work, taking a holistic approach that focuses on each stage of the enforcement process, seeing investigations through to an impactful conclusion in a manner that guides market players.

- **Well-Grounded Thought Leadership**

The survey responses underscore that thought leadership is a critical characteristic of a leading competition authority. However, intellectual contribution is not considered valuable in isolation. Respondents consistently highlighted that, for thought leadership to be meaningful and impactful, it must be firmly rooted in the realities of competition enforcement and the specific context within which the authority operates. This means that innovative ideas and new solutions proposed must be validated through practical application and consistent enforcement actions. Being the first to analyze new issues, take enforcement action, or implement new legislation is not necessarily a sign of leadership. This is especially true as being the first to engage with an issue without a sound analytical framework carries significant risks of unnecessarily distorting market dynamics or of being overturned by the courts.

Importantly, the effectiveness and relevance of thought leadership are intrinsically linked to a competition authority's unique capabilities and the specific challenges within its jurisdiction. Smaller agencies, for instance, might focus their thought leadership regionally or on particular sectors where they have expertise. Ultimately, to be a thought leader requires a competition authority to be more than an enforcement body; it

must provide guidance to the market through clear communication on new approaches, so that businesses can take decisions compliant with evolving law; develop best practices; and be a significant contributor to the international competition policy discourse.

Discussion: Despite the acknowledged importance of thought leadership, the survey responses reveal a gap between innovative ideas and the effectiveness of putting such ideas into practice. Thought leadership ambitions are particularly difficult to assess, as each jurisdiction may follow thought leaders differently, depending on their legal traditions and socio-economic models. A good example is the drive, under US President Biden's administration, to promote the neo-Brandeisian school of thought, which sought to expand the goals of competition law beyond traditional consumer welfare goals. Although successful in persuading other jurisdictions to address the "bigness" of certain digital players, the change in President Trump's administration and geopolitical concerns have seen authorities focus on different issues, such as supply-chain resilience.¹¹ Leadership driven by philosophical reasons alone can be problematic. To ensure relevance and practical application, authorities should base their leadership efforts on sound economic principles and empirical evidence, rather than particular ideological viewpoints. And while testing the boundaries of the law is to be expected, this should be anchored to procedural and substantive safeguards (including evidence-based and intellectually robust theories). Future exploration into how to measure the impact and effectiveness of thought leadership initiatives will be a valuable avenue for research to understand how authorities can best leverage their intellectual contributions and advance competition policy worldwide.

- **Balancing Predictability with Flexibility**

The survey responses overwhelmingly indicate that predictability, transparency, and efficiency are considered foundational attributes of a credible leading competition authority. These features are perceived as essential for building trust with stakeholders, fostering legitimacy in the authority's actions, and creating a stable business environment where market participants can understand and comply with competition law. Transparency, in particular, is highlighted as crucial when authorities are tackling novel issues, ensuring that the process is clear and that solutions can be credibly developed from existing practice.

¹¹ See, e.g. the temporary ministerial exemptions available in South Africa intended to allow anticompetitive practices because if necessary and/or efficiency enhancing. For example, a consultation for such an exemption in the sugar sector was launched in May 2025, at https://www.gov.za/sites/default/files/gcis_document/202505/52625gon6183.pdf.

Furthermore, these attributes contribute significantly to legal certainty, allowing businesses to make informed decisions and operate with a degree of confidence regarding the enforcement landscape. By consistently demonstrating these qualities, a leading competition authority sets the standard for others to follow. However, the responses also point out that authorities should address novel issues or situations without unduly undermining predictability and legal certainty while exercising judgment, particularly in uncharted territories.

Discussion: To find the right balance between predictability and flexibility in a manner that ensures effective legal certainty, authorities need to anchor any evolution of their approach in procedural and substantive safeguards, ensuring that new theories of harm and enforcement strategies are evidence-based and intellectually robust. They should also prioritize transparency by clearly communicating the justifications for any departure from settled law and by providing guidance on novel developments to minimize uncertainty. Furthermore, engaging with stakeholders to understand the potential impact of new approaches and being open to feedback is crucial, alongside a commitment to coherent and principled enforcement that is grounded in a thorough understanding of market dynamics rather than solely driven by the desire to be first. Ultimately, the balance lies in an authority's capacity to innovate responsibly, testing boundaries while respecting due process and the rule of law, thereby fostering an environment where evolution is grounded in intellectual rigor and practical considerations.

- **Engagement with Constituents**

A leading competition authority employs a mix of advocacy and cooperation with stakeholders to engage with market players. Advocacy plays a vital role in promoting a culture of competition and ensuring a broader understanding of competition principles among constituents, market players, and the antitrust bar. By actively engaging with stakeholders through effective communication and outreach strategies, authorities can help prevent anti-competitive practices from arising in the first place. Furthermore, collaboration with stakeholders, including academics, international organizations, non-governmental organizations and the private sector, can provide valuable insights, enhance the authority's understanding of market dynamics, and improve the quality of its analysis and policy development. Regular dialogue, consultations, and feedback mechanisms can help identify areas for improvement and ensure that interventions do not have unintended consequences. This inclusive approach fosters transparency and trust, which are foundational attributes of a leading authority.

The adoption of multifaceted communications strategies has significant implications for a competition authority's effectiveness and its standing among peers. By combining enforcement with advocacy and cooperation, an authority can achieve more comprehensive and sustainable outcomes in promoting competition and protecting consumer welfare. Moreover, international cooperation, which is highlighted as beneficial, is facilitated by building ongoing relationships and open dialogue with various stakeholders. Ultimately, a leading competition authority that embraces a mix of such strategies demonstrates adaptability, a commitment to continuous improvement, and a recognition that fostering competition is a shared responsibility, rather than solely an enforcement task. This more holistic approach contributes to the authority's credibility, legitimacy, and influence both domestically and within the global competition policy landscape.

Discussion: Ensuring transparency and meaningful engagement with a diverse range of stakeholders is a resource-intensive exercise, yet a worthwhile investment to embed the authority in the policymaking community and to ensure dialogue over confrontation. It is particularly important, in order to prevent the view that an authority has particularly close relationships with only certain industry players, such as national champions or state-owned enterprises. Stakeholders are not limited to market players or non-governmental organizations, such as consumer associations. It includes sector regulators, government ministries and other competition authorities. The challenge lies in leveraging stakeholder input and cooperation without compromising the authority's impartiality and its commitment to consumer welfare and a level playing field. Accountability to the public, parliament, government, and courts remains important for a competition authority's credibility. However, this should not compromise the institutional independence necessary to stand up to vested interests.¹²

- **The Impact of Geography on a Competition Authority's Leadership Potential**

While the quality of a competition authority's enforcement output is paramount, international influence is significantly affected by

¹² See, e.g., Dave Anderson, Art. 125397, *Interview with Andreas Mundt: A decade for the ICN*, 5 CONCURRENCES 1 (2025) (comments made by Andreas Mundt, outgoing chair of the ICN, “*To be frank, the future looks a bit difficult and there are issues that we will have to address: How do we ensure the independence of competition agencies? How do we deal with political polarisation and avoid the politicisation of competition law? How do we ensure that agencies take decisions based on the law and not on political considerations? These are all issues that we will have to deal with one way or another, and since we [the ICN] are not a political organisation, they are not easy to address.*”).

the size of the economy that an authority oversees. As one respondent insightfully noted, even the most proficient authority might find its global impact limited if it operates within a smaller economy. This may be partly attributable to the greater resources typically available to authorities in larger economies, enabling them to cultivate more sophisticated teams, processes, and develop more complex theories of harm. Furthermore, larger markets are often the first to encounter novel markets and practices, providing them with more diverse experiences to draw upon.

Discussion: The above conclusion implicitly suggests a hierarchy where larger economies and their authorities possess a natural advantage. This raises a critical point about the potential for larger authorities to disproportionately shape the global competition policy agenda, potentially overlooking or marginalizing the specific needs and contexts of smaller economies. It also implies that these larger jurisdictions have a special responsibility to act in a manner befitting their status and with an eye to their international impact, and be prepared to explain their thinking, notably if their priorities differ from those of smaller jurisdictions.

- **The Unique Role of Smaller Competition Authorities**

Smaller, less well-resourced agencies may lack the extensive financial and human resources that are available to their larger counterparts. This naturally limits the capacity of smaller authorities to undertake large-scale investigations, develop sophisticated economic analyses, or engage in widespread international initiatives. Consequently, directly replicating the strategies and priorities of major agencies may not be feasible or effective for them. Without a baseline level of effective detection, investigation, and prosecution, the contributions of smaller agencies might lack the necessary practical weight and credibility to truly influence the broader competition policy landscape. Despite these limitations, smaller competition authorities still make significant contributions to the competition policy discourse and establish themselves as leaders in specific areas. As a result, what constitutes a "leading" agency can be context-dependent, with smaller or younger agencies often expressing leadership ambitions within their specific regional or geopolitical contexts, such as those in Malaysia or Colombia (see Section V below).

The survey outcomes propose, for example, focusing on targeted research into sectors particularly relevant to smaller jurisdictions or on unique local issues. Developing specialized expertise in niche areas may allow them to become sought-after voices on those specific topics. Collaboration with other agencies, both regionally and internationally, can also help to pool resources, share expertise, and coalesce around best practices. By adapting

global best practices to their local context and focusing on the quality and relevance of their analysis, smaller agencies contribute meaningfully to the global competition policy landscape. Further research is needed about how smaller agencies with limited resources can contribute to the competition policy discourse, perhaps through targeted research, collaboration with other agencies, or focusing on specific sectors relevant to their jurisdiction.

- **Delicate Balance of International Coordination for Leading Competition Authorities**

While international coordination is widely recognized as an important feature for competition authorities, particularly in substantive areas like merger review and cartel cases, the survey responses underscore the necessity of navigating this collaboration carefully. Respondents highlighted considerations including maintaining jurisdictional autonomy and adequately addressing local market dynamics, cautioning against the risks of overcoordination, which could potentially undermine the fairness and effectiveness of enforcement. The key takeaway is that for coordination to be truly beneficial, it must enhance, rather than detract from, the ability of individual authorities to enforce competition law effectively within their own contexts. Furthermore, while the ability to coordinate is seen as a characteristic of a leading authority, its defining impact on leadership arguably lies in the extent to which, through this coordination, a leading authority can effectively influence the processes or decisions of its peers, contributing to a more coherent and impactful global competition policy landscape.

Discussion: The line between beneficial knowledge-sharing and seeking to influence the application of rules in other jurisdictions highlights a sensitivity around jurisdictional sovereignty and the risk of ideological overreach or undue influence. While the ability to coordinate may be a necessary attribute of a leading authority, its true impact on leadership hinges on whether this collaboration genuinely enhances the global competition framework through mutual learning and respect for diverse contexts, rather than becoming a tool for imposing specific agendas or diminishing the independent decision-making of individual agencies. Achieving this balance requires competition authorities to prioritize principled and voluntary collaboration focused on the sharing of expertise, analytical frameworks, and best practices rather than pursuing harmonization for its own sake.

Respect for the distinct legal, economic, and cultural contexts of each jurisdiction is crucial, ensuring that coordination efforts are adapted to local realities and do not infringe upon national sovereignty or the specific needs of domestic markets.

Furthermore, the emphasis should be on enhancing the effectiveness and fairness of each authority's enforcement through mutual learning and information exchange, while maintaining the independence to make decisions based on their own legal frameworks and market analysis, thus preventing the risks of over coordination or undue influence. Ultimately, influence in international fora should be a consequence of robust domestic enforcement and insightful analysis, fostering a collaborative environment where authorities can learn from each other without compromising their autonomy or the specific needs of their jurisdictions.

- **Democratic legitimacy of Competition Authorities**

For a competition authority to be seen as a legitimate leader, particularly when venturing into novel areas or seeking to influence others, it must be underpinned by a clear mandate and be subject to appropriate checks and balances. Ultimately, an authority's ability to lead and inspire confidence hinges on its perceived legitimacy, which is shaped by its adherence to fundamental principles, including due process and transparency, and by eschewing politically-driven enforcement.

An authority's pursuit of leadership must be cognizant of its foundational mandate and the democratic principles of its jurisdiction, as overstepping its legislated role or appearing to be politically motivated can undermine its legitimacy and thus its influence. Aspirations to global leadership must be balanced against the primary responsibility to ensure fair competition within domestic markets. Concerns raised about authorities being driven by specific ideologies or prioritizing international recognition over domestic needs further underscore the importance of grounding leadership aspirations in a democratically legitimate role that is both accountable and independent, ensuring that any pursuit of leadership enhances, rather than detracts from, the fairness and effectiveness of competition law enforcement within its own context.

IV. Additional Recommendations to Assess the Effectiveness of Thought Leadership Initiatives

In addition to the points above, the practitioner survey yields several recommendations for measuring and evaluating the impact and effectiveness of competition authorities' thought leadership initiatives:

- a) **Formalized quality control and evaluation mechanisms:**

Implementing rigorous ex-post quality control and cost-benefit analysis of initiatives, including thought leadership efforts, can help assess their effectiveness. This could

involve public evaluations, surveys, peer reviews, and assessments by academics and other enforcers. Authorities should also be open to receiving feedback on their ideas and proposals.

- b) **Prioritization of robust evaluation programs:** To enhance effectiveness, accountability, and contribute to international best practices, competition authorities should prioritize robust evaluation programs. Impact Assessments (IAs) are a key tool for routinely measuring and demonstrating the expected consumer benefits of interventions. Authorities should aim to implement or refine their IA methodologies, drawing on existing international guidance such as the OECD's 2014 guide and considering the insights from recent international discussions on current practices and potential updates.¹³ While IA primarily focuses on direct customer benefits, authorities should also explore methods for assessing broader impacts, although the OECD notes significant challenges in quantifying aspects like deterrence, innovation, and macroeconomic effects within a simple IA framework.¹⁴
- c) **Ex-post empirical assessments:** Regular independent third-party evaluations could be conducted to understand the long-term impact of competition policy, potentially including specific thought leadership contributions, on market structure and consumer welfare. This could involve counterfactual analysis to assess the effects of particular policies or ideas championed by the authority.
- d) **Peer review and third-party feedback:** Establishing mechanisms for routine self-reflection and, importantly, peer review or third-party feedback is crucial for authorities to improve their activities and assess the impact of their contributions. International benchmarks could ideally be developed to achieve a high level of consistency in such assessments.
- e) **Measuring influence on other authorities:** While the survey shows divided opinions on actively seeking to influence other jurisdictions, the extent to which other competition authorities adopt or adapt the ideas, guidelines, or approaches pioneered by a specific authority could be an *ex-post* measure of successful thought leadership.
- f) **Assessing the impact of guidelines and reports:** If a Competition Authority exerts influence through detailed guidelines and reports, the uptake and application of these documents by market players and other authorities could be

¹³ See OECD, GUIDE FOR ASSESSING THE IMPACT OF COMPETITION AUTHORITIES' ACTIVITIES (2014), <https://doi.org/10.1787/c92c2cd0-en>.

¹⁴ See OECD, OECD ROUNDTABLES ON COMPETITION POL'Y PAPERS, No. 320, ASSESSING THE IMPACT OF COMPETITION AUTHORITIES' ACTIVITIES (2025), <https://doi.org/10.1787/eaafdba8-en>.

evaluated. Regular reviews should be undertaken of their effectiveness and the implementation of international best practices, such as OECD recommendations.

- g) **Recognition by the legal and academic community:** The extent to which an authority's ideas and analyses are cited positively in academic and practitioner publications could serve as an indicator of their influence and impact. Similarly, positive reviews of decisions based on novel or insightful analysis would be relevant.
- h) **Discussion at international gatherings:** The degree to which an authority's cases, novel approaches, or proposed solutions are discussed and debated by peers at international conferences suggests their relevance and influence within the global competition policy discourse.

V. Expressions of Leadership Ambitions by Competition Authorities

It is commonplace for competition authorities to express leadership ambitions and statements of pre-existing leadership positions.¹⁵ Such utterances have been increasing over the years, partly due to the proliferation of competition authorities around the globe who are growing in both capabilities and confidence, as well as a recognition of common issues that require thought leadership.

Below is a sample of leadership ambitions, as publicly expressed by various competition authorities. These include *ad hoc* statements, e.g. in speeches, as well as intentions set out in formal strategy documents. We assume that when such statements are made, these have been thought through and resources put behind the stated intentions.

Intentions to lead peer authorities can be expressed in broad terms. For example, in its 2013 Management Plan, the European Commission's DG COMP expressed the intention to "*to shape global economic governance*" by strengthening international enforcement cooperation and policy convergence.¹⁶ Other

¹⁵ Unsurprisingly, there is no uniform understanding of what comprises "Leadership", which this Report seeks to explore. Such ambitions may be stated differently, and we see references to "leader", "best", "first", "cutting-edge", "reputable" or "respected" etc. See *infra* Section VI.

¹⁶ See European Commission, Directorate General for Competition, Management Plan 2013, (2015) https://commission.europa.eu/system/files/2015-06/management-plan-2013-dg-comp_january2013_en.pdf. Although DG COMP's 2020-2024 Management Plan seems to pull back DG COMP's ambition somewhat, to "striving" to support global economic governance, rather than "shaping" it. See European Commission, Directorate Gen. for Competition, *Strategic Plan 2020-*

statements can be identified where authorities express “ex-post” that they hold leadership roles, for example, the European Commission’s Report on Competition Policy (2018) noted that “*The predictability and credibility of the EU’s system has made the Commission one of the leading and most influential competition authorities in the world.*”¹⁷ In 2019, a senior U.S. FTC official noted the FTC’s commitment to leading peers on procedural fairness standards; “*The US FTC continues to be a leading voice for strong procedural fairness standards that serve as models of good practice for all competition agencies, through its bilateral relations, the new ICN CAP and Recommended Practices, and in other international competition fora*”.¹⁸ Although these statements are not expressed as “ambitions” as such, they still indicate a desire to see other authorities emulate those leading aspects claimed.

Desires to drive **debate in international organizations** comes across strongly. Going back to 2010, the KFTC noted how its national reputation would be boosted by leading global discussions on competition matters in international gatherings where other major competition authorities are present.¹⁹ The CCB’s 2022-2023 Annual Plan went a step further, referring to its intention to play a leadership role in international organizations and networks, focusing on the digital economy and gender considerations (see further below).²⁰ The U.S. FTC, in its 2021 Congressional Budget Justification for Fiscal Year 2022, noted that it already had “*demonstrated its continued leadership in international fora*” and “*played important leadership roles in the ICN and the competition bodies of the OECD, UNCTAD, and APEC.*”²¹ Likewise, the UK CMA’s Chief Executive, Sarah Cardell, noted in 2022 that “*we remain focused on maintaining a leading role as a world-class competition authority through our*

2024, Ref. Ares (2020)5180558 - 02/10/2024, https://commission.europa.eu/system/files/2020-10/comp_sp_2020_2024_en.pdf.

¹⁷ See European Commission: Directorate-General for Competition, *Report on competition policy 2018 – Including Commission staff working document*, Publications Office, 2019, <https://data.europa.eu/doi/10.2763/296993>.

¹⁸ PAUL O'BRIEN, OFF. INT'L AFFAIRS, FED. TRADE COMM'N, FTC BECOMES A FOUNDING MEMBER OF ICN FRAMEWORK TO PROMOTE PROCEDURAL FAIRNESS IN COMPETITION ENFORCEMENT, (May 3, 2019), <https://www.ftc.gov/enforcement/competition-matters/2019/05/ftc-becomes-founding-member-icn-framework-promote-procedural-fairness-competition-enforcement..>

¹⁹ See Korea Fair Trade Comm'n, Press Release (Feb. 18, 2010), <https://www.ftc.go.kr/www/index.do> (available in the original Korean at hyperlink).

²⁰ See Competition Bureau Canada, *2022-2023 Annual Plan: Competition, recovery and growth* (Apr. 4, 2022), <https://competition-bureau.canada.ca/en/2022-2023-annual-plan-competition-recovery-and-growth>.

²¹ FED. TRADE COMM'N, CONGRESSIONAL BUDGET JUSTIFICATION FISCAL YEAR 2022 (2022), <https://www.ftc.gov/system/files/documents/reports/fy-2022-congressional-budget-justification/fy22cbj.pdf>.

active engagement with organisations such as the [...] (ICN) and the [...] (OECD) as well as our continued participation in the [...] (ECN) and, on the consumer side, the International Consumer Protection and Enforcement Network (ICPEN) and EU Consumer Protection Cooperation Network (CPC) networks”.

However, younger or smaller authorities often define their ambitions differently from longer-standing peers, with aspirations often being **regional in scope**. The Colombian authority (SIC) noted, in 2022, its intention to remain regional and “hopefully” global leaders, based on its enforcement, promotion of a compliance culture, success before the courts and competition advocacy.²² In a document celebrating the 10- year anniversary of the Singapore authority (CCCS), its Founding Chairman, Lam Chuan Leong, was able to state that: “*regionally, CCS has been recognized as a credible and reputable competition authority and, I dare say, one of the leading competition authorities in Asia*”²³. In the Caribbean, the Jamaican Fair Trade Commission noted in 2021 that one of its strengths is that it is “*Recognized as the most experienced and leading Competition agency among CARICOM member states*”.²⁴

Of course, there are leadership ambitions that focused on **specific topic areas** and in recent years, digital markets have stood out in particular. In 2021, the CMA Chair, Jonathan Scott, noted not only that there was a “*clear opportunity for the UK to lead the way and to support competition and innovation in digital markets*” and that the CMA’s influence was already taking effect, with US congressional discussions on digital regulation “*paying close attention to the CMA’s work on digital markets, and with the tailored regulatory approach mapped out in our Taskforce advice garnering broad praise at home and abroad*”. Scott concluded that “*All of this reflects how we are helping to influence and shape digital regulation, at home and abroad, helping to lead thought in this area.*”²⁵ Similarly, Canada’s Competition Bureau has expressed a similar ambition to “*become a world-leading*

²² See Andrés Barreto, Opinion, *Ojo con el* 2022, PORTAFOLIO (2021), <https://www.portafolio.co/opinion/andres-barreto/ojo-con-el-2022-columnista-portafolio-560209>.

²³ See Competition Comm’n of Singapore, *10 Years of Championing Growth and Choice*, 2016. See https://www.cccs.gov.sg/-/media/custom/ccs/files/media-and-publications/publications/10-years-of-championing-growth-and-choice/ccs_10years_website.pdf.

²⁴ See Jamaican Fair Trade Comm’n, 2021 – 2025 Strategic Business Plan (2020). See <https://iftc.gov.jm/wp-content/uploads/2021/03/Strategic-Business-Plan.pdf>.

²⁵ Jonathan Scott, Chair, Competition & Mkts. Auth., *Keynote Speech to the Law Society Competition Section International Antitrust Conference* (June 24, 2021), <https://www.gov.uk/government/speeches/jonathan-scott-keynote-speech-to-the-law-society-2021>.

competition agency, one that is at the forefront of the digital economy.”

In 2020, the CCB launched a Strategic Vision for 2020–2024 with the ambition of being “*a world-leading competition agency, one that is at the forefront of the digital economy and champions a culture of competition in Canada*”.²⁶ To achieve this ambition, the CCB embarked on a series of reforms, many linked to addressing challenges in the digital economy. For example, the CCB’s Commissioner, Matthew Boswell, noted that the agency’s 2022-2023 achievements (enforcement action, competition advocacy, investing in the CCB) were consistent with that vision and that the appointment of a Chief Digital Enforcement Officer in 2020 was “*a part of the bureau’s overall focus on being a world-leading competition agency in terms of all that we do in the digital economy*”.²⁷ As the CCB noted in a 2023 contribution to the OECD Competition Committee, to achieve its leadership vision, “*the Bureau embarked on a series of wide-ranging enabling and structural changes. Many were linked to the need for a different approach to enforce and promote competition in a digital economy – including the need for new skills and new tools*”.²⁸ The three pillars of the CCB’s 2024 Strategic Vision²⁹ (“*protecting Canadians through enforcement, promoting competition in Canada, and investing in our organization*”) would help the CCB achieve this vision. On the latter point, the CCB expressed its intention to “*Play a leadership role, both domestically and internationally, in adapting to the impact of the digital economy on competition policy*”.³⁰

In the UK CMA’s 2023/2024 Annual Plan (reflecting its *Vision, Values and Strategy* dating back to 2014), the CMA noted that “*...our overall ambition is consistently to be among the leading competition and consumer agencies in the world*” by delivering

²⁶ Canada Competition Bureau, *Strategic Vision for 2020-2024*, (Feb. 11 2020). See <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/competition-digital-age>.

²⁷ *Hearing on Evidence Before House of Commons Standing Comm. on Industry, Sci. & Tech.*, 43rd Parliament, 2d Sess. (Can. Dec. 3, 2020), <https://www.ourcommons.ca/DocumentViewer/en/43-2/INDU/meeting-9/evidence..>

²⁸ See Canada Competition Bureau, Note to working party,, Optimal Design, Organisation and Powers of Competition Authorities, OECD Competition Committee Working Party No. 3 on Co-operation and Enforcement, DAF/COMP/WP3/WD(2023)33, (Nov. 27, 2023), [https://one.oecd.org/document/DAF/COMP/WP3/WD\(2023\)33/en/pdf](https://one.oecd.org/document/DAF/COMP/WP3/WD(2023)33/en/pdf).

²⁹ See Canada Competition Bureau, *Competition Bureau to focus on leveraging new enforcement and promotion tools in 2024-2025* (2024), <https://www.canada.ca/en/competition-bureau/news/2024/04/competition-bureau-to-focus-on-leveraging-new-enforcement-and-promotion-tools-in-2024-2025.html>.

³⁰ See Canada Competition Bureau, *2022-2023 Annual Plan: Competition, recovery and growth*, April 4, 2022. See <https://competition-bureau.canada.ca/en/2022-2023-annual-plan-competition-recovery-and-growth>.

effective enforcement, extending competition frontiers (including staying at the forefront of international understanding of markets), refocusing consumer protection, achieving professional excellence and developing integrated performance e.g. work in multidisciplinary teams and choosing the most appropriate enforcement tools).³¹ Importantly, the UK's withdrawal from the European Union saw UK institutions seek to carve out a new role at the international level, with the CMA being no exception. For example, the CMA's Chief Executive, Sarah Cardell, noted in 2022 "*On the other hand, there may be some real benefits to loosening the ties [with the EU] in terms of allowing UK institutions the freedom to depart from current or future EU case law where that is considered appropriate and creating the platform for the UK regime as a whole to develop a global position as a thought leader in the evolution of competition law enforcement. Either way, the CMA's assessment will be informed by a baseline of economic principles which are broadly shared by the wider competition community.*"³²

As indicated above, competition authorities may infer leadership, *ex-post*, from the outcome of their actions. And while authorities claiming leadership ambitions do not appear to methodologically assess if these ambitions were realized, we do see statements recognizing successful enforcement as a criterion. For example, the US FTC asserted its thought leadership after multiple successes in prosecuting reverse payments and hospital mergers in the healthcare sector.³³ The US DoJ similarly saw a leader role following enforcement against criminal price fixing, bid rigging, and market allocation activities.³⁴ The German Federal Cartel Office noted, for example, "*We secured a number of significant outcomes in the Federal Court during 2020–21. These included our world-first enforcement action against Google*".³⁵ Its 2023/24 Annual Report the FCO noted; "*The Bundeskartellamt*

³¹ See Competition & Mkts. Auth., *CMA Annual Plan 2023 to 2024* (Mar. 23, 2024), <https://www.gov.uk/government/publications/cma-annual-plan-2023-to-2024/cma-annual-plan-2023-to-2024>.

³² Sarah Cardell, *CMA General Counsel, Reflections on the past; ambitions for the future*, 22 February 2018. See <https://www.gov.uk/government/speeches/reflections-on-the-past-ambitions-for-the-future>.

³³ See Maureen K. Ohlhausen, Comm'r, Fed. Trade Comm'n, *How to Measure Success: Agency Design and the FTC at 100*, at 6-9.

³⁴ CHRISTINE A. VARNEY, ASSISTANT ATT'Y GEN., ANTITRUST DIV., U.S. DEPT. OF JUST., *VIGOROUSLY ENFORCING THE ANTITRUST LAWS IN THE OBAMA ADMINISTRATION*, (July 12, 2011), <https://www.justice.gov/archives/atr/file/518286/dl#:~:text=resources%20and%20a%20major%20priority,rigging%2C%20and%20market%20allocation.>

³⁵ Australian Competition & Consumer Comm'n, *Annual Report 2020-21* (2021), <https://www.transparency.gov.au/publications/treasury/australian-competition-and-consumer-commission-accc/australian-competition-and-consumer-commission-annual-report-2020-21>.

has already concluded numerous landmark proceedings relating to the digital economy, which makes it one of the internationally leading competition authorities.”).³⁶

One of the clearest examples of leadership, is when the title of “leader” is bestowed by a peer authority. For example, in 2022, the UK CMA’s then Chief Executive, Andrea Coscelli, noted that: “*The ACCC has continued that legacy of leading from the front. Under the Chairmanship of Rod Sims, it has done pioneering work on digital markets, and competition and consumer protection more generally, that has significantly influenced the CMA’s own work*”.³⁷ The same year, Jonathan Kanter, AAG for Antitrust at the DoJ noted that “*I have been incredibly impressed with the leadership of the UK CMA in building out its data unit and in sharing its learning with partner agencies*”. Particularly insightful, however, are validating comments from international organizations. For example, the OECD’s 2019 Peer Review of Brazil’s Competition Law and Policy noted “*CADE is well-regarded within the competition practitioner community both nationally and internationally, the business community, and within the Government administration due to its technical capabilities. It is considered one of the most efficient public agencies in Brazil and its international standing as a leading competition authority both regionally and globally reinforces this domestic view that it is a model public agency*”.³⁸

This snapshot provides context to the study and helps to demonstrate the broad leadership ambitions of many competition authorities over the years.

³⁶ Bundeskartellamt, Press release, *Bundeskartellamt presents its Annual Report for 2023/24*, Press release, (June 26, 2024). See https://www.internationale-kartellkonferenz.de/SharedDocs/Meldung/EN/Pressemitteilungen/2024/26_06_20_24_Jahresbericht.html.

³⁷ Andrea Coscelli, Chief Exec., Competition & Mkts. Auth., *Ahead of the curve* (Bannerman Competition Lecture) (Feb, 9, 2021), <https://www.gov.uk/government/speeches/andrea-coscelli-ahead-of-the-curve-bannerman-competition-lecture>.

³⁸ OECD, OECD PEER REVIEWS OF COMPETITION LAW AND POLICY: BRAZIL 2019 (2019), www.oecd.org/daf/competition/oecd-peer-reviews-of-competition-law-and-policy-brazil-2019.htm. See also OECD, COMPETITIVENESS IN SOUTH EAST EUROPE 2021 (July 5, 2021), https://www.oecd.org/en/publications/competitiveness-in-south-east-europe-2021_dcbe2ea9-en.html (comments relating to the Serbian Commission for Protection of Competition, that “*has been performing positively over the last few years, confirming its place as a leading competition authority in the region*” with the report suggesting that “*Increasing the number of infringement decisions and the amount of fines levied against anti-competitive behaviour would further strengthen its reputation, thus fostering deterrence and competition compliance and making the leniency programme more effective*”).

VI. Literature Review

While there has been considerable academic discussion on the qualities that make a *good* leader – such as effectiveness, capability, and charisma³⁹ – there is far less scholarship on what it means to be recognized as *the* leader within a peer group – the most effective, preeminent, or dominant – whether as an individual, firm, agency, or authority. In other words, much has been said on the traits that go into a leader, but much less has been said on who deserves to be considered “the best of the best”. In many areas of economic and regulatory competition, the “leader” can be intuitively, albeit crudely, measured by market forces; market caps, sales, movement of assets, or amount of investment attracted can separate the leaders from the laggards. For competition authorities, a similar mechanism for assigning leadership does not really exist.

The debate around the nature of “leadership” – the definition and how ensuing influence should be gauged – reveals an inherently mercurial and amorphous concept. Oran Young describes leadership as “a complex phenomenon, ill-defined, poorly understood, and subject to recurrent controversy.”⁴⁰ David Laitin and Ian Lustick characterize leadership “as a kind of residual category – a handy, or bothersome, exogenous variable.”⁴¹ In his general survey of the subject, Keith Grint concludes that leadership is an “essentially contested concept,” meaning different things to different groups and varying by context.⁴² This is likely to be because different constituents will have their own appreciation of what value is derived from leadership.

Yet, despite this overarching ambiguity, a general consensus has emerged regarding the *qualities* and *best practices* that the most “competent,” or – for the purposes of this paper – “leading”

³⁹ McKinsey & Company, a management consultancy firm, conceives leadership as a set of skills, mindsets, and behaviors that “enable[es] others to accomplish something they couldn’t on their own.” See *What is leadership?*, McKinsey & Co. (Sept. 2024), <https://www.mckinsey.com/featured-insights/mckinsey-explainers/what-is-leadership>; see also *What is leadership & how is it evolving?*, INST. FOR MGMT. DEV. (Nov. 2024), <https://www.imd.org/blog/leadership/what-is-leadership-how-is-it-evolving/> / <https://www.ccl.org/articles/leading-effectively-articles/what-is-leadership-a-definition/> (“the ability to influence and guide a group of people towards achieving a common goal.”); *What Is Leadership?*, CTR. FOR CREATIVE LEADERSHIP (May 15, 2024), <https://www.ccl.org/articles/leading-effectively-articles/what-is-leadership-a-definition/> (“a social process that enables individuals to work together to achieve results that they could never achieve working alone.”).

⁴⁰ See Oran Young, *Political Leadership and Regime Formation: On the Development of Institutions in International Society*, 45 INT'L ORG. 281, 281 (Summer 1991).

⁴¹ See David Laitin & Ian Lustick, *Leadership: A Comparative Perspective*, 28 INT'L ORG. 89, 89 (Winter 1991).

⁴² See KEITH GRINT, *LEADERSHIP: LIMITS AND POSSIBILITIES* (Palgrave Macmillan 2005).

authority should strive for. Baldwin, Cave, and Lodge identify “Five Criteria for Good Supervision”. These are legislative mandate; accountability; due process; expertise, and efficiency.⁴³ Arie Freiberg lists eleven “Evaluating Criteria” to measure a public agency’s performance, adding predictability; clarity; flexibility, correctability, and proportionality to analogs of Baldwin, Cave, and Lodge’s framework.⁴⁴ Meanwhile, Udaibir Das and Marc Quintyn of the International Monetary Fund describe “Four Fundamental Pillars of Good Supervisory and Governance” that are essential for effective financial regulation; independence, accountability, transparency, and integrity.⁴⁵ While some of these criteria are similar or overlap, it shows that leadership comprises a multiplicity of criteria and that are subjective to each particular constituency.

Specifically in relation to market and competition regulatory agencies, Hancher, Larouche, and Lavrijssen name ten “Principles of Good Market Governance” including transparency, independence, clear legal mandate, flexible powers, proportionality, consistency, predictability, and accountability. While Annetje Ottow, in her book, *Market and Competition Authorities*, proposes the “LITER” framework; “Legality, Independence, Transparency, Effectiveness, and Responsibility for “good agency behaviour”, in other words the basic minimum best practices.⁴⁶

Synthesizing the criteria and principles of the academics cited above⁴⁷ and work carried out by the ICN and national authorities (e.g. the United States’ FTC and the U.K.’s CMA),⁴⁸ Ottow devised a framework that considers both the internal perspectives of competition agencies and the perspectives of the external stakeholders agencies interact with.⁴⁹ Together, her work puts forward a set of best practices that a competition agency can follow to establish credibility and efficacy in the market, along with various tradeoffs required when promoting one principle relative to others.⁵⁰

⁴³ See BALDWIN, CAVE, & LODGE, UNDERSTANDING REGULATION. THEORY, STRATEGY, AND PRACTICE, 25-34 (Oxford University Press, 2nd ed. 2012).

⁴⁴ See ARIE FREIBERG, THE TOOLS OF REGULATION, 258–68 (Federation Press 2010).

⁴⁵ See Udaibir Das & Marc Quintyn, *Crisis Prevention and Crisis Management: The Role of Regulatory Governance* 8-12 (IMF, Working Paper 02/163, 2002).

⁴⁶ See ANNETJE OTTOW, MARKET AND COMPETITION AUTHORITIES: GOOD AGENCY PRINCIPLES 69 (Oxford University Press, online ed. 2015).

⁴⁷ *Ibid.* at 47, 51.

⁴⁸ *Ibid.* at 58-69

⁴⁹ *Ibid.* at 48.

⁵⁰ *Ibid.* at 70.

In so many words, Ottow boils down what academics, agencies, and other stakeholders consider as the best practices that any “good” competition authority (“leading” or not) should follow as they carry out their mandate. Even so, Ottow (and the ICN) recognizes there is no “one-size-fits-all”, universal set of qualities that makes a good or effective authority.⁵¹

Frameworks defining the attributes of a leading competition authority often emphasize principles such as effectiveness and accountability.⁵² While theoretical concepts provide a foundation, competition authorities require practical tools to operationalize and demonstrate these principles. The OECD's work on Impact Assessments (IA) provides a prime example of such a tool.⁵³ IA is a methodology used by an increasing number of authorities to provide clear and measurable estimates of the expected benefit of their interventions, typically focused on quantifying direct customer benefits in monetary terms. This process of assessing the savings to customers from avoided price increases (mergers) or expected price decreases (cartels or abuse of dominance) serves as a concrete mechanism for authorities to demonstrate the value of their work and maintain accountability to stakeholders. The OECD's 2014 guide provided a foundational set of principles and potential assumptions for conducting these assessments, fostering a degree of consistency based on the experience of authorities already undertaking this regularly.⁵⁴ Thus, IA represents a significant operational method by which authorities seek to measure and communicate their effectiveness and fulfil aspects of their accountability obligations.

Beyond authorities' best practices, Oran Young's work on international regime formation – agreements like the Montreal Protocol – looks to how actors lead their peers in negotiations and

⁵¹ *Ibid.* at 94; see INT'L COMPETITION NETWORK COMPETITION POLICY IMPLEMENTATION WORKING GROUP, SEMINAR ON COMPETITION AGENCY EFFECTIVENESS 31 (Int'l Competition Network, 2009).

⁵² See Keith Grint, *Leadership: Limits and Possibilities* (Palgrave Macmillan 2005), 18; Baldwin, Cave, & Lodge, *Understanding Regulation. Theory, Strategy, And Practice*, 25-34 (Oxford University Press, 2nd ed. 2012), 19; Arie Freiberg, *The Tools of Regulation*, 258-68 (Federation Press 2010), 20; Udaibir Das & Marc Quintyn, *Crisis Prevention and Crisis Management: The Role of Regulatory Governance* 8- 12 (IMF, Working Paper 02/163, 2002). 21; Annetje Ottow, *Market and Competition Authorities: Good Agency Principles* 69 (Oxford University).

⁵³ OECD (2025), “Assessing the impact of competition authorities' activities”, OECD Roundtables on Competition Policy Papers, No. 320, OECD Publishing, Paris, <https://doi.org/10.1787/eaafdba8-en>.

⁵⁴ OECD (2014), *Guide for assessing the impact of competition authorities' activities*, OECD Publishing, Paris, <https://doi.org/10.1787/c92c2cd0-en>.

building consensuses.⁵⁵ Here, a leader is one who can influence, establish, or develop the ultimate terms of an agreement in three ways.⁵⁶ Structural leadership involves an actor successfully leveraging its material resources and relative advantage into influence.⁵⁷ Entrepreneurial leadership involves an actor fashioning mutually beneficial agreements that captures and maximizes available surplus among the bargainers.⁵⁸ Intellectual leadership guides agreements and standards through persuasive ideas, hypotheses, and well-founded arguments.⁵⁹

Still, Young's definition does not serve to define when an actor can be said to be the best, exemplar, most cutting edge, *primus inter pares*, or *the* leading firm. International agreements and regimes are subject to the confounding variables and strictures inherent in political economy and negotiation.

However, Young's discussion on the emulation, imitation, or adoption of a leader's views, ideas, and techniques bleeds into what academics variously describe as the exportation or promotion of competition law abroad.⁶⁰ Relevant studies consider whether national competition authorities have opted to emulate the European Union's system of competition rules or that of the United States'.⁶¹ As studies show, the European Union's style of regulation and enforcement has come to predominate international competition policy.⁶² If imitation is synonymous with leadership, then these papers make a convincing argument that it is the EU rather than its peers in the United States or United Kingdom that should be considered *the* leading agency. Indeed, this is reflected in our survey results (see answers to survey Question 4 below).

Yet, Bradford et al. posit that the reason for the EU's dominance is mainly due to the "Brussels Effect"; approaches that are easy to copy and compatible civil law rules, as well as the EU's active inclusion and insistence on having competition concerns

⁵⁵ See Oran Young, *Political Leadership and Regime Formation: On the Development of Institutions in International Society*, 45 INT'L ORG. 281, 282 (Summer 1991).

⁵⁶ *Ibid.* at 287-88.

⁵⁷ *Ibid.* at 288-93.

⁵⁸ *Ibid.* at 293-98.

⁵⁹ *Ibid.* at 298-302.

⁶⁰ See Bradford et. al, *The Global Dominance of European Competition Law Over American Antitrust Law*, 16 J. Empirical Legal Stud., 731 (Dec. 2019); William E. Kovacic & Marianela Lopez-Galdos, *Lifecycles of Competition Systems: Explaining Variation in the Implementation of New Regimes*, 79 LAW & CONTEMP. PROBS. 85 (2016).

⁶¹ *Ibid.*

⁶² *Ibid.*

addressed in trade agreements.⁶³ They also point out how the EU has been more open to embracing concerns other than consumer welfare in its enforcement structure, imparting a flexibility that developing countries may be more interested in pursuing, as their economies mature.⁶⁴

This again does not really answer what agency is the most cutting edge, innovative, or effective. Rather it answers why more national competition authorities have opted for EU-style rules, a part of which *may* be that the EU is better or leading its peers in quality, innovation, or efficacy. For the most part, however, there is more emphasis on how the EU has affirmatively leveraged its size and economic weight to disseminate its style of market regulation and enforcement.⁶⁵

William Kovacic is the one commentator to most directly address what it means to be a “leading agency” in the sense that this report is exploring. He, like others, points to intellectual leadership and the ability to export ideas and practices abroad.⁶⁶ Kovacic contends much of this depends on following the best practices mentioned above and building credibility in the eyes of academics, courts, and peer agencies by winning a significant portion of cases brought, providing guidance, and producing thought-provoking research.⁶⁷

Kovacic and others suggest that building such credibility is achieved not only through financial and institutional capacity, but also a demonstrated willingness to take *calculated* risks. Kovacic and Hyman also highlight the many competing motivations – such as public recognition, post-government employment prospects for official, and political pressure – can over-incentivize enforcement action, in effect spreading resources too thinly and the application

⁶³ See Bradford et. al, *The Global Dominance of European Competition Law Over American Antitrust Law*, 16 J. Empirical Legal Stud. 731, 735-39 (Dec. 2019).

⁶⁴ *Ibid.* at 736; see also ANU BRADFORD, *The Brussels Effect* 25-27 (Oxford University Press, 2020) (Bradford posits that the Brussels Effect is an affirmative political choice in part possible due to the European Union’s large market size. In other words, there could be comparable ‘Washington’ or ‘Beijing’ Effects if those large economies so desired to export regulatory standards abroad); Anu Bradford, Adam Chilton & Katerina Linos, *The Gravity of Legal Diffusion*, 2023 U. CHI. LEGAL F. 35 (2023) (empirical confirmation of previous assertions relating diffusion of EU style antitrust regulation).

⁶⁵ *Ibid.* at 761-63; see also Dir Auer, Goeffrey A. Manne, & Sam Bowman, *Should ASEAN Antitrust Laws Emulate European Competition Policy*, 67 SINGAPORE ECON. REV., 1637 (authors seek to dispel myth that EU style competition laws are inherently superior to the United States antitrust laws).

⁶⁶ WILLIAM E. KOVACIC, *THE FEDERAL TRADE COMMISSION AT 100: INTO OUR 2ND CENTURY*, 4, 68, 97, (FTC, 2009); see also Maureen K. Ohlhausen, Comm’r, Fed. Trade Comm’n, *How to Measure Success: Agency Design and the FTC at 100*, at 6-8.

⁶⁷ *Ibid.* at 120, 128, 155, 173.

of underdeveloped theories of harm.⁶⁸ Philip Weiser emphasizes that many of the most widely heralded regulatory programs have emerged from initiatives that were, by their nature, “entrepreneurial” and inherently risky.⁶⁹ Former FTC commissioner, Maureen Ohlhausen, after speaking at length about the importance of institutional capacity and human capital, pointedly concluded that “*a leading competition agency like the FTC must have the courage to fail from time to time.*”⁷⁰

In another paper Kovacic concludes – though inherently difficult to do in practice – if agencies are to be evaluated and ranked, the criteria should be based on whether the agencies are responsible for e.g. contributing to improving economic performance and increasing social welfare.⁷¹ However, given the difficulty in measuring such improvement, Kovacic is adamant in that performance should not be measured by relying on metrics like the number of cases initiated, as this ignores substantive improvements in e.. welfare and economic performance.⁷²

Not surprising, the practitioner survey we undertook mirrors many of the conclusions that academic literature has pointed to. However, many benchmark or criteria identified in the literature review are not elements for authorities to aspire to but a basic minimum, without which leadership will not be achieved or will be undermined e.g. transparency and due process or highly qualified staff. Other elements that came out strongly in the survey did not feature in the literature, for example the critical importance of advocacy and engagement with the broader competition community, as well as the importance of creating legal and commercial certainty.

⁶⁸ William E. Kovacic & David A. Hyman, *Consume or Invest: What Do/Should Agency Leaders Maximize*, 91 WASH. L. REV. 295, 308-13 (March 2016). See also William E. Kovacic, *Great Antitrust Enforcers - Lessons From Regulators*, Concurrences, 2023.

⁶⁹ Philip J. Weiser, *Entrepreneurial Administration*, 97 B.U. L. REV. 2011 (December 2017); see also Ludwig Siegels. *Antitrust regulators face vibrant competition—with each other*, THE ECONOMIST (Nov. 8, 2021), <https://www.economist.com/the-world-ahead/2021/11/08/antitrust-regulators-face-vibrant-competition-with-each-other> (highlighting the various approaches competition authorities have taken in regulation big tech).

⁷⁰ Maureen K. Ohlhausen, Comm'r, Fed. Trade Comm'n, *How to Measure Success: Agency Design and the FTC at 100*, at 11 (Nov. 6, 2014).

⁷¹ William E. Kovacic, *Rating the Competition Agencies: What Constitutes Good Performance*, 16 GEO. MASON L. REV. 903, 907 (Summer 2009).

⁷² *Ibid.* at 907-08; see also William E. Kovacic & David A. Hyman, *Consume or Invest: What Do/Should Agency Leaders Maximize*, 91 WASH. L. REV. 295 (March 2016) (case studies underscore how the motivations for public recognition and quantifiable enforcement results negatively affect authority performance).

VII. Survey of Practitioners: Introduction & Methodology

GWU CIL conducted a broad survey of senior competition practitioners around the world to assess perception of what “leadership” criteria entails.

The online survey, closed in October 2024. The questions largely focused on what characteristics these constituents valued in authorities and wished to see replicated. We structured the questionnaire in a manner to look at leadership criteria from different angles, including looking at notions of leadership, requisite criteria, desired outcomes and performance indicators. We chose to avoid questions on specific jurisdictions or areas particular debate e.g. the regulation of technology or labor rights. Respondents were free to mention those in their responses. Each question generally has two elements; one that reflects a score and one that seeks qualitative comments. Response rates to the first element was pretty much 100%. Thereafter, the detailed written responses scored somewhat lower, as described in each section.

We reached out to practitioners who were in-house, external advisers (legal, economic, policy) with no particular weighting in terms of jurisdiction, sector or practice area. We received 64 responses, drawn from external competition counsel, economists and policy consultants, as well as in-house counsel. We identified experienced, well-regarded, practitioners in the field of international competition enforcement. Academics, including CIL Senior Scholars, also volunteered their views. Respondents were located around the world, principally the EU (and member states), North and South America, as well as APAC. Although the pool of potential respondents was identified largely by their activity in the competition policy sphere, we had no hand in who chose to respond or not. As this is the first study of its kind, we preferred to come to the issue with no preconceptions and so did not target specific types of respondents. Responses were confidential and anonymized. It does mean that each response is give equal weight, no matter the respondent’s background or expertise.

In terms of breakdown, 50% of respondents were external legal advisers, 20.3% were academics in the field of competition policy and 10.9% were in house representatives. The remainder were drawn from economists, consultants and/or former enforcers. When asked to describe what particular sectors or practices/ respondents focused on, 28.3% said that there were not focused on any particular sectors and the remainder were evenly spread across various sectors or practice areas (e.g. merger review, behaviors etc.).

In terms of jurisdictional focus, a handful focused on just one jurisdiction; the majority covered a number (usually within one region, but not exclusively). For example, of 55 respondents, 20 identified the European Union and certain European states, notably Germany, Italy, Greece, Spain, as well as the UK and Turkey; 9 mentions North America (USA and Canada) although a number of those were also focused on EU or South American competition matters. Three had an Asia-Pacific coverage (specifically Australia, Japan and South Korea) and 3 covered Africa (mainly South Africa).

VIII. Results of the Survey of Practitioners

The results below do not include any analysis, that is found in the preceding sections. We changed the numbering of the survey questions and well as shortened some the questions, for ease of reading.

1. Generally, what do you consider to be the top characteristics that make a competition agency a "leading" agency?

At the outset, respondents were asked what they considered to be the top characteristics that make a competition agency a "leading" agency. Purposely, the question provided no particular context nor were types of characteristics suggested. Responses can be bundled into thirteen different characteristics, although most respondents usually provided a combination of characteristics that make up a "leading" agency.

These are:

- **Analytical Rigor:** A key factor noted by respondents was the quality and rigor of enforcement analysis, with thoughtful, well-reasoned and intellectual honest decisions, that correspond to both theory and practice.
- **Efficiency:** The timeliness of processes and efficient decision-making was also stressed, although this should be seen against the significant comments on procedural fairness issues.
- **Procedural Fairness:** Often mentioned in the same context of transparency (see below), procedural fairness and respect for due process were regularly cited as key elements that are a prerequisite for effective high-quality competition policy and enforcement.
- **Professionalism of Staff:** Obviously, analytical rigor and efficiency requires with highly qualified, skilled personnel with inter-disciplinary capabilities and technical skills. Respondents also stressed that, in order to retain and attract high quality staff, a healthy and respectful work environment that fosters growth and team building is needed, as well as training and maintenance of staff and case handlers.
- **Decisional Practice:** A small number of respondents made the point that leadership still requires a foundation of jurisprudence, with a sufficient volume of decisions across the different competition laws, though only one respondent suggested "strong enforcement".

- **Impact of Competition Laws:** A number of respondents highlighted the importance of effective, consumer-focused and structurally oriented results, including generating deterrence through the enforcement. This requires agencies to be able to demonstrate the impact of their work on consumer welfare.⁷³
- **Independence:** Institutional independence (including adequate resources or the nomination of agency heads on technical merit) was highlighted by many respondents, in order for agencies to stand up to vested interests even when this is politically unpopular.
- **Transparency:** Transparency of agency operations and approach was flagged as a key criterion of leadership. In particular, it includes the need to set out a clear and cogent theory of harm, communicating to the market its justifications for a departure from settled law, providing guidelines on novel developments (e.g. on environmental, labor or data-driven markets) or to avoid inhibiting investment and innovation (especially when an agency introduces new regulations or revises its understanding of a topic). Transparency requiring meaningful engagement and an openness to receive the views of stakeholders with an open mind.
- **Priority Setting:** Effective (and transparent) prioritization was also stressed by respondents notably the need for thought-through, coherent policies. This requires leading agencies to engage in strategic thinking, looking at both the longer-term consequences of competition policy actions and balancing their focus on strategic sectors while being responsive to real-time market conditions. This was deemed important given the limited resources available. As noted by one respondent *“leading competition agency is one that knows how to select the right cases in consistency with the context of the country's needs and to apply the right theories while analyzing those cases”*.
- **Flexibility, Novelty and Innovation:** A number of respondents noted that leading authorities should be flexible in order to adapt to changing market circumstances, such as those generated by the Covid19 pandemic, new technologies or other areas of interest. A significant number of respondents identified openness to “new ideas” or “ways of thinking”, being forward-thinking and “up to date” with new trends as leadership criteria. This requires investment and capacity building to have the ability to identify innovative solutions to

⁷³ OECD, *supra* note 4.

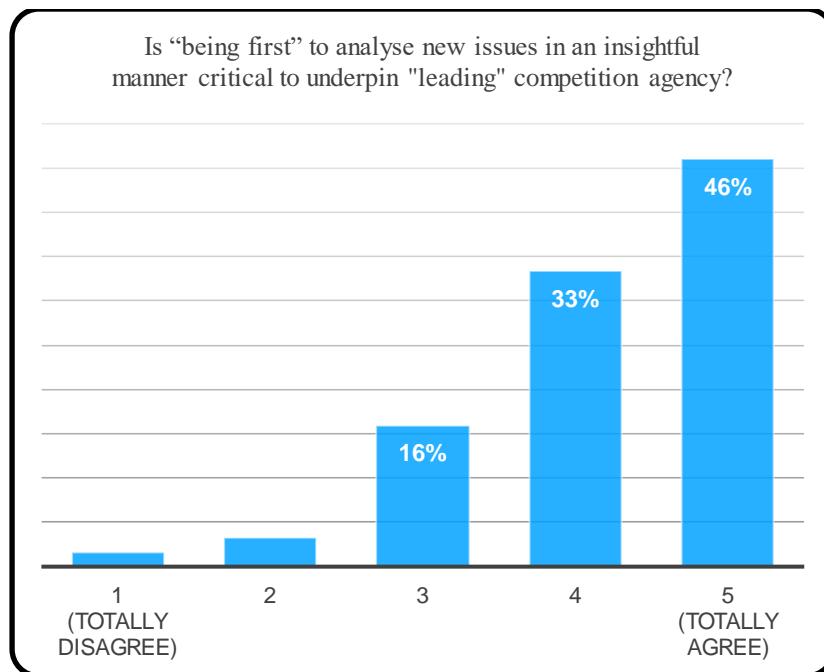
new situations but also lead in the analysis of cutting edge topics, as well as issue innovative decisions even if possibly controversial. Being in the vanguard of competition practice, as one respondent noted, requires coherent policies. The willingness to tackle challenging issues, and doing so quickly and creatively, was also flagged although analytical rigor was still needed. Three further respondents noted that agencies should seek to innovate in a responsible manner and be bounded by predictability and the rule of law, requiring coherent and principled enforcement. This counterbalance is the foundation of legal certainty, another principle of leadership flagged by respondents.

- **Legal Certainty:** One leadership criterion identified by many respondents is the need for authorities to institute practices that ensure predictability and consistency in enforcement, in order to provide legal and commercial certainty. This included adherence to legal principles and enforcement methodologies that operate within the confines of the law, notably in the face of new developments in market. As one respondent put it, a leading authority should have “the desire, commitment and perseverance to faithfully enforce the legal mandate required of it”.
- **Competition Advocacy:** Meaningful engagement initiatives towards an agency’s constituents are considered key to leadership, which requires effective communications and outreach strategies. Leading agencies should seek to ensure an understanding of its (sound) competition principles, notably in priority areas and thinking as well as challenges discussed by the international competition community. Effective advocacy is closely linked to fulfilling the criteria of transparency. However, advocacy extends beyond engaging with “users” of the systems, establishing fruitful relationship with other in-country regulatory agencies and peer competition agencies.
- **International relations and influence:** Promoting international cooperation and maintaining good relations with other agencies, mainly through active engagement in regional competition networks, such as COMESA Competition Commission or the ASEAN Experts Group on Competition as well as international networks, the ICN and the OECD Competition Commission. Beyond, prioritizing international engagement, however, some respondents focused more on the relevance of an agency’s decision and guidelines for peer agencies, inspiring the policies and enforcement priorities of agencies and provoking discussion amongst practitioners or academics in those jurisdictions. Notably, respondents did not comment on enforcement cooperation between agencies,

although one respondent noted that, in the absence of enforcement tools enabling one agency to exercise power over another, a leading agency should be able to exercise influence over the decisions (not policies) of another agency.

A final caveat should be noted to this section of the survey. A few respondents noted that agencies should stand on their record, rather than “repeatedly speak publicly” about leadership. Other respondents noted that that competition law is not a race. Rather than an agency’s visibility or popularity, it is the substance of the of their decisions and whether these are referenced by other authorities that establishes leadership. In other words, an authority can aspire to leadership, but it is only ex post - if followed - that leadership can be claimed. This is also connected to the scope of leadership; is it sufficient that an agency is an inspiration or role model, or does leadership impose some constraints on those authorities that follow?

2(a) Is “being first” to analyze new issues in an insightful manner critical to underpin “leading” competition agency?



Respondents overwhelmingly (79%) agreed or totally agreed that being the first agency to analyze a new issue in an insightful manner was a critical criterion of “leadership”. However, the written responses give a more nuanced perspective.

It is obvious that agencies should be able to explore how best to respond to evolving market realities and develop new ways of thinking. Agencies should proactively anticipate challenges presented to ensure effective regulatory responses. The ability to

react and adapt to deter anticompetitive behaviour in new or evolved markets, is considered an important leadership characteristic.

Staying up to date with new trends allows an agency to seek intellectual leadership, on the most relevant and impactful topics. The insights and analysis that agencies are able to develop in new areas are valuable to market players, especially if the analysis reflect business realities. Agencies and the private sector are therefore able to rely on solid analysis of a new issue, influencing their decision-making.

Being the first authority to analyze in depth an innovative issue involves a certain risk, given lack of experience especially in dynamic market. That risk is increased in the context of enforcement decisions. Yet, if done right, developing substantive theories of harm and applying them to new issues can serve as a model for others. In addition, decisional practice gives that agency more authority to guide discussions amongst their peer agencies in bilateral or international fora.

Yet while agencies may need to act with speed to match the fast-paced markets they need to move with caution and balance in order to avoid that hastily concluded positions. No matter how well-intentioned intervention may be, misaligned actions may have unintended chilling or distorting effects. The survey therefore exposed a series of caveats to “being first”. A number of respondents flag the importance, not of an agency being first to analyze new issues, but to do so in an insightful manner. The substantive nature of an agency’s contributions was deemed more important than speed. Being “the first” to analyze or address an issue may therefore not be a necessary nor sufficient condition for leadership. Rather it is an authority’s analysis and insight into market dynamics that is the key contribution to advancing the frontiers of international competition policy. For example, South African competition law jurisprudence influences competition law the rest of the African continent while not necessarily being the first to consider certain legal principles. In other words, an authority can be an influential regional lead, adopting the approaches of the global leader and adapting it to regional specificities. Intellectual leadership must be based on objectivity and rigor. These characteristics enable agencies to effectively test new theories of harm and methods of analysis. Innovating competition law assessments must be based on serious grounds and not only for the sake of seeking recognition by others.

It is unavoidable that the ability to identify new issues and analyze them effectively requires agencies to be able to recruit and retain talented and, increasingly, specialized staff, as well as have the resources to dedicate to such exercises. It is more likely that

countries with a significant economy have such resources, which may explain why it is more likely that agencies from developing countries will reference decisions from developed countries' agencies, while the opposite may not be so true.

However, many respondents expressed concern that, while novel issues or theories could appear attractive, they may not result in tangible competition concerns (e.g. the discussions on competition issues in blockchain)⁷⁴. And agencies need to have effective prioritization system⁷⁵ to avoid the temptation to follow competition “fashions” drain agency resources and distract an agency from addressing vast majority of competition restrictions that originate in more traditional sectors or practices.

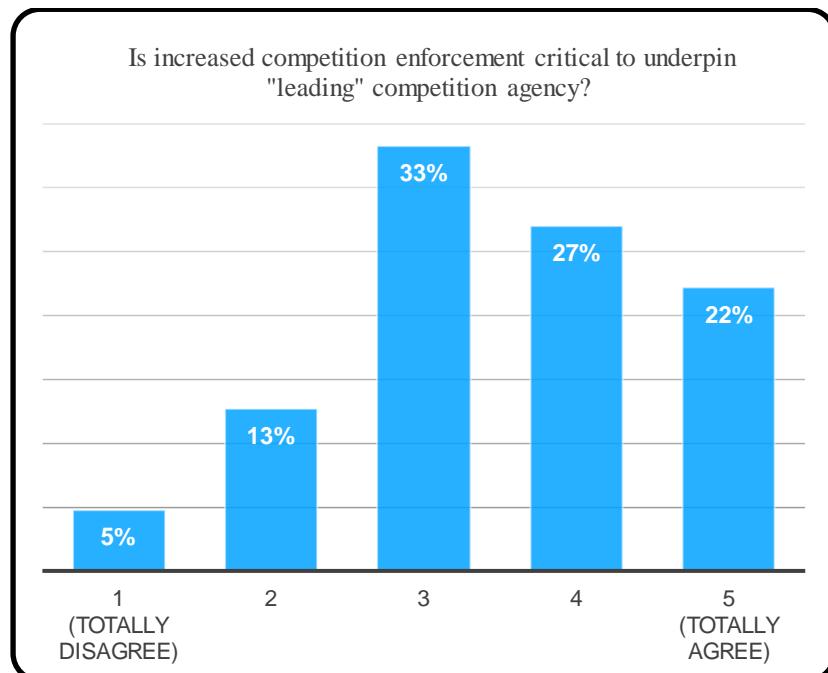
For this reason, many respondents warned that agencies' incentives need to be focused on addressing issues effectively, rather than being ““the first” for the sake of getting out in front and being seen as rushing to decision was a concern. This is especially true where remedies are applied, or sector effectively regulated before market dynamics are fully understood.

As agencies will regularly look to peers' experiences when having to address a similar issue, leading agencies should also consider approaches by other agencies in their region (not just globally). There is a responsibility on trailblazing agencies to explain their experiences, both positive and negative, so that best practices are fostered, and errors are not compounded. It is intellectual leadership that is therefore primordial.

⁷⁴ See, e.g., OECD, COMPETITION COMMITTEE, BLOCKCHAIN TECHNOLOGY AND COMPETITION POLICY, DAF/COMP/WD(2018)47 (Apr. 26, 2018), https://www.oecd.org/en/publications/blockchain-technology-and-competition-policy_55f347f1-en.html.

⁷⁵ Brook, *supra* note 7.

2(b) Is increased competition enforcement critical to underpin "leading" competition agency?



This question asks respondents to rate, on a scale of 1 to 5, the importance of increased competition enforcement as a criterion for a leading competition agency. The responses indicate that a significant number of respondents consider increased competition enforcement to be a critical attribute of a leading competition agency, with a combined 49.2% selecting either 4 or 5 on the scale. This suggests a general agreement that active enforcement is a characteristic of a leading competition agency. However, the written responses indicate a nuanced perspective on the role and nature of enforcement.

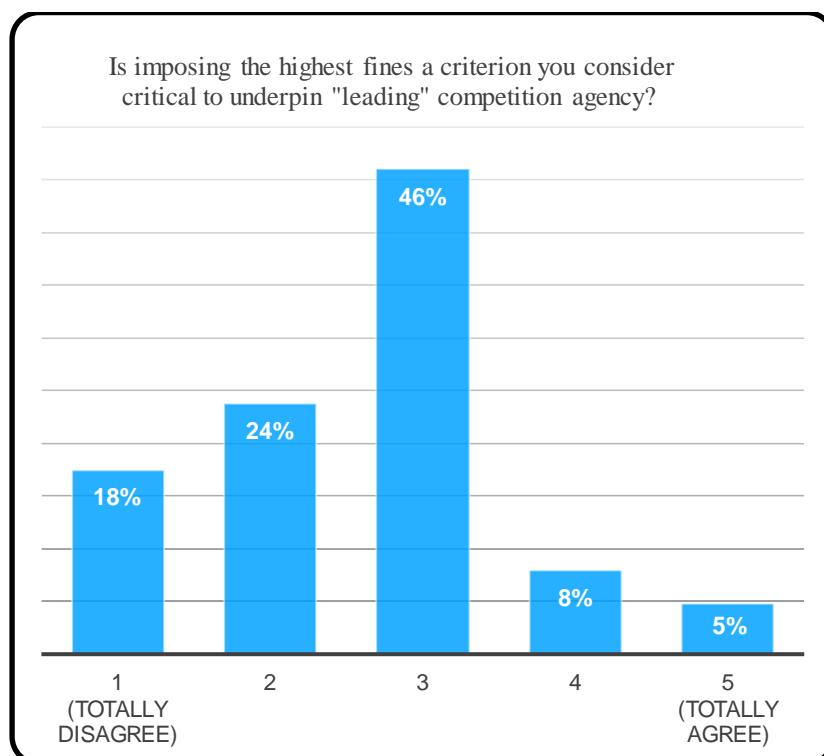
Specifically, several written responses indicate that increased enforcement is not a goal in itself. A higher quantity of enforcement actions does not necessarily equate to higher quality or better outcomes. The quality of the analysis driving enforcement is considered more important than the level of intervention, suggesting that the effectiveness and appropriateness of enforcement actions are key considerations.

Some answers also suggest that enforcement should be targeted towards significant competition issues, with the aim to minimize type I and type II errors and focus on the economic impact of enforcement actions, rather than merely generating headlines.

Likewise, some responses suggest that enforcement may not always be appropriate. A willingness to enforce when a valid case exists, and alternative avenues have been exhausted is more

important. Furthermore, increased enforcement can be influenced by local or regional political agendas, as well as the maturity of the relevant competition authority. The effectiveness of a competition authority can also be diminished, if significant pending investigations remain unresolved. Therefore, it is further suggested that competition authorities can be more effective by focusing on advocacy or working cooperatively with stakeholders.

2(c). Is imposing the highest fines a criterion you consider critical to underpin "leading" competition agency?⁷⁶



A significant portion of respondents do not consider imposing the highest fines to be critical, with 17.5% totally disagreeing (rating it as 1) and 23.8% rating it as 2. The largest group (46%) rated this criterion as a 3, indicating a neutral or moderately important stance. Only a minority viewed it as highly critical, with 7.9% rating it as 4 and 4.8% rating it as 5. A deeper analysis of the written responses reveals several key thematic clusters and points of contention that challenge the simplistic notion of "highest fines equals best agency."

A central theme across many responses is the assertion that the ultimate goal of a competition agency should be deterrence of

⁷⁶ See also Mathew Heim & Penny Giosa, *Competition Between Antitrust Agencies*, GEO. WASH. UNIV. COMPETITION & INNOVATION LAB (Jan 8, 2025), <https://competitionlab.gwu.edu/competition-between-antitrust-agencies>.

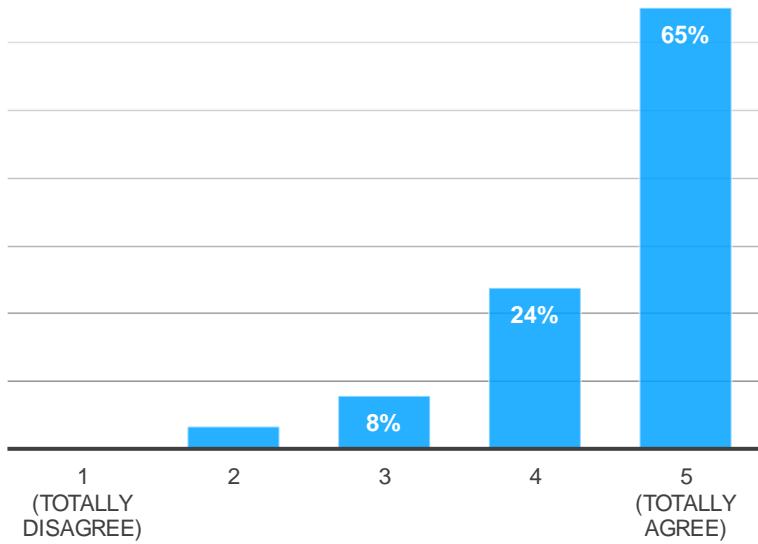
anti-competitive conduct, and that high fines are merely one tool (and not necessarily the most important one) to achieve this. Several respondents explicitly state that fines are a consequence of enforcement, not an end in themselves. They argue that effectiveness should be measured by the impact on the market and consumer welfare, not just the size of the penalties imposed. Several respondents also express concern that focusing on imposing the highest fines can create a counterproductive "race to the top" that is not tied to any objective rationale. Hence, there's a worry that this emphasis can distract from the fundamental goals of promoting competition and deterring harmful conduct effectively.

Another significant cluster of arguments revolves around the appropriateness and proportionality of fines in relation to the infringement, the scale of conduct, and the impact on competition. The respondents stress that fines should be "just", "relevant and dissuasive", and based on a "transparent policy". Several respondents' express concerns that excessively high or poorly justified fines can lead to legal challenges, potentially being overturned by courts and thus damaging the credibility of the competition authority.

Also, many respondents actively reject the notion that the level of fines is a reliable indicator of a leading competition agency. They argue that leadership is demonstrated through other means, such as the quality of analysis, technical influence, advocacy efforts, and the issuance of clear guidelines. Some respondents also point out that the size of fines can be influenced by factors unrelated to the agency's effectiveness, such as the size of the investigated company or the jurisdiction's market size.

2(d) Is providing thought leadership amongst peers and proposing new solutions to new challenges critical to underpin "leading" competition agency?

Is providing thought leadership amongst peers and proposing new solutions to new challenges critical to underpin "leading" competition agency?



A significant majority (65.1%) of respondents "Totally Agree" (rated 5) that providing thought leadership and proposing new solutions is critical for a leading competition agency. An additional 23.8% "Agree" (rated 4), bringing the total of those who agree or totally agree to 88.9%. Only a small percentage selected 2 (3.2%) or 3 (7.9%). This shows a very strong consensus among respondents that thought leadership is a key attribute. The written responses add important qualifications and reveal a detailed understanding of what constitutes thought leadership.

Several respondents emphasize that proposed solutions and thought leadership must be rooted in established legal principles and factual evidence. This grounding provides a foundation of legitimacy, assuring stakeholders that the competition authority's actions are not arbitrary or capricious. A rigorous and defensible foundation also ensures that the competition authority's decisions can withstand scrutiny and judicial review. In the same vein, several respondents highlight the importance of tailoring thought leadership to the competition authority's capabilities and the specific challenges it faces.

It is also highlighted that leading competition authorities should proactively address new challenges, develop innovative enforcement practices and adapt their thinking to address evolving firm strategies and changing legal/economic contexts. This means that a leading authority doesn't wait for problems to emerge but instead actively seeks out new and emerging challenges in the competitive landscape. This may involve monitoring

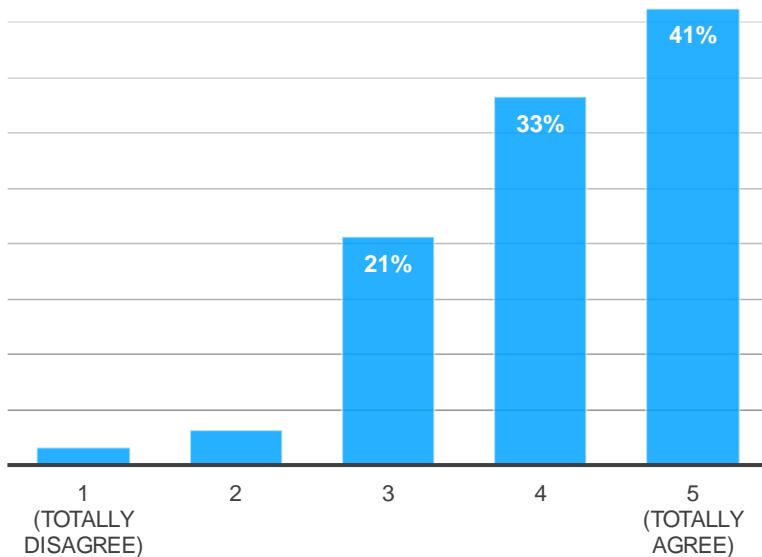
technological advancements, changes in business models or evolving market structures. Also, by proactively addressing challenges, the authority can develop innovative enforcement practices that are fit for purpose given the new contexts. This may involve applying existing laws in novel ways or advocating for legal reforms to address emerging issues. Hence, according to the respondents, continuous learning and adaptation are vital.

Regarding new solutions, many respondents underline that new solutions should not be pursued merely for the sake of being new; critical thinking is vital. The focus should be on whether solutions are effective in addressing competition issues and meeting consumers' needs. This underscores the idea that quality and purpose are more important than simply generating new ideas. Also, if solutions are reasonable, other competition authorities will follow.

Another important point that is raised by respondents is the emphasis they give on the alignment of thought leadership with consistent enforcement. Some respondents stress that thought leadership must be validated through consistent enforcement and its practical application in order to be considered truly effective. Without enforcement, what may appear to be insightful ideas remain theoretical and may not translate into tangible benefits for competition or consumers. However, it is also mentioned that thought leadership can take various forms. Competition authorities can exert influence through detailed guidelines and reports.

2(e) Is providing thought leadership to national ministries or other regulatory agencies on competition and consumer issues critical to underpin "leading" competition agency?

Is providing thought leadership to national ministries or other regulatory agencies on competition and consumer issues critical to underpin "leading" competition agency?



The survey data indicates a positive view on the importance of a competition agency providing thought-leadership within its jurisdiction to national ministries and regulatory bodies (although it didn't score as highly as the importance of thought-leadership amongst peers). A significant majority of respondents rates this criterion highly, with 41.3% selecting "5 (Totally Agree)" and 33.3% choosing "4".

In their written responses, most respondents emphasize the competition authorities' responsibility to defend competition law principles within the broader national regulatory framework. Competition authorities can play a key role in removing regulatory barriers to competition and can become influencers of sound policies. In order to achieve this goal, the effective communication within government is emphasized to prevent policies, including populist ones, that may weaken competition law enforcement. Indicatively, responses also suggest that communication with government is about actively shaping the regulatory environment to foster competition and protect consumer interests. A competition authority's ability to communicate effectively with government bodies is, therefore, deemed to be a key indicator of its influence and thought leadership within its jurisdiction.

Several responses also emphasize the importance of aligning policies to reduce conflicts or tensions between competition policy and other key national policies. It also enables competition authorities to influence sound policies and maintain consistency with broader governmental policies. Hence, a "whole-of-

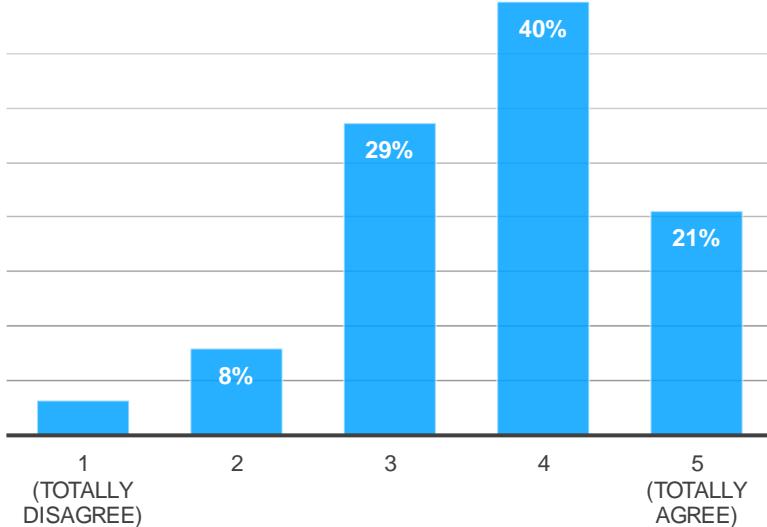
government" approach is considered essential, particularly when competition policy might be sidelined due to other considerations. However, the respondents do not specify to what degree alignment was appropriate with broader governmental objectives may impact the agency's independence or impartiality. They also do not clarify that competition authorities must remain committed to enforcing competition law fairly and consistently, regardless of political considerations or external pressures.

On the other hand, a few respondents suggest that influencing other governmental bodies is a natural extension of a competition authority's role. They argue that providing thought-leadership, while relevant, does not necessarily define a leading competition authority. It is an expected activity for all competition authorities rather than a distinctive feature of leading ones. Some respondents also view providing thought leadership to national ministries or other regulatory agencies as merely meeting basic expectations or "table stakes".

There are also some responses pointing out potential limitations and challenges. For instance, national legislators may sometimes have a higher influence than national ministries or regulatory agencies. Also, the institutional model of each country and the extent of collaboration and advocacy among authorities can influence the approach to thought leadership. One respondent points out that in certain emerging jurisdictions, particularly South Africa, national ministries may take the lead in thought leadership due to industrial policy initiatives. Similarly, there are responses questioning the appropriateness of competition authorities providing thought leadership to national ministries. This is because competition authorities are often independent of the government, and their leadership may be better directed towards their peers.

2(f) Is being first to take enforcement action, including e.g., remedy design, in new areas critical to underpin "leading" competition agency?

Is being first to take enforcement action, including e.g., remedy design, in new areas critical to underpin "leading" competition agency?



The survey data reveals a lack of consensus on the importance of being the first to take enforcement action. While a large percentage consider it important, many others are neutral or disagree, highlighting the complexity and nuance of this issue.

The highest percentage of responses falls under "4" (39.7%), indicating that many respondents find being first to take enforcement action as a considerably important, but not necessarily critical, attribute of a leading competition authority. A notable percentage (20.6%) goes even further to rate it as "5", underscoring strong agreement. However, it's important to acknowledge that a substantial combined percentage (39.7%) selected 1, 2, or 3. This shows that the responses are somewhat polarized, with a considerable number of respondents at both ends of the spectrum (1 and 5). This polarization suggests differing views on whether being first is a crucial aspect of leadership.

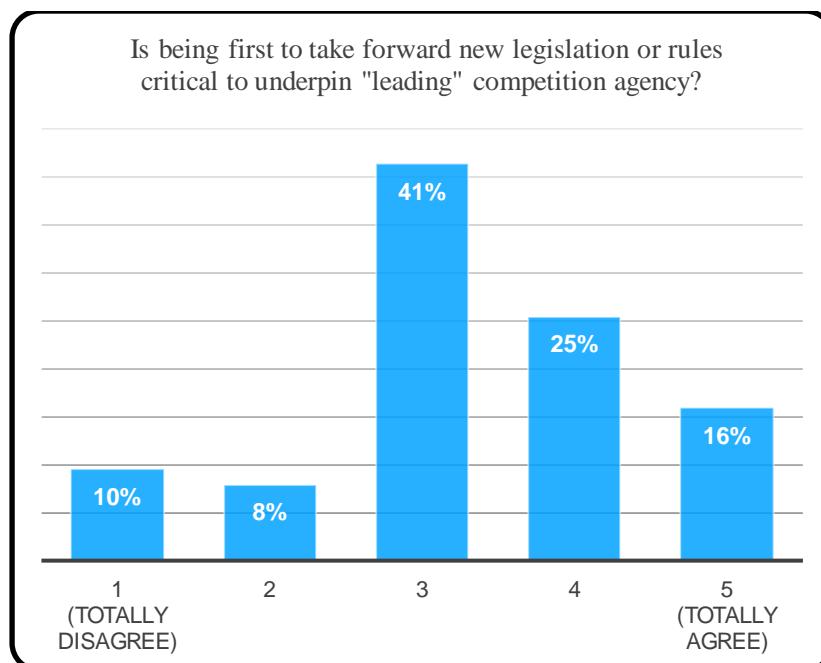
Similarly, the responses suggest a nuanced view on the importance of being first, with many emphasizing that being the first is not as important as other factors such as the quality and soundness of the enforcement action. Though several respondents acknowledge that taking enforcement actions first can influence authorities in other countries, particularly when they originate in larger jurisdictions such as the EU, the quality of decision-making matters more than speed, especially as speed can sometimes be detrimental to the soundness of analysis. Actions must also be well-justified to avoid undermining the credibility of the competition authority. Enforcement is key for a competition authority's reputation, but only if the decision is of high quality.

One respondent views the confirmation of decisions by higher authorities, such as courts, as a true mark of a leading competition authority.

Enforcement actions should be well-considered and based on a well-constructed regime. As several respondents highlight, there can be unintended consequences if a remedy has not been thoroughly studied, and cases can be open and then closed if enforcement is unnecessary. Hence, competition authorities should step back and take the necessary time to fully understand and address issues rather than rushing to be first. As one respondent points out, sound competition enforcement and policy can result from conscious inaction, as well as action.

The importance of being first depends on the context and the applicability of new remedies may vary, with smaller jurisdictions potentially addressing uniquely local issues.

2(g) Is being first to take forward new legislation or rules critical to underpin "leading" competition agency?



The ratings indicate a lack of consensus among respondents regarding the importance of a competition agency being the first to take forward new legislation or rules. The highest percentage of responses falls under "3" (41.3%), indicating that many respondents have a neutral view on whether being first to take forward new legislation or rules is critical for a leading competition authority. The combined percentage of those who rate 1 or 2 (17.4%) is not insignificant, and those who rate 4 or 5 combined accounts for 41.3%. This polarization suggests differing views on whether being first is a crucial aspect of

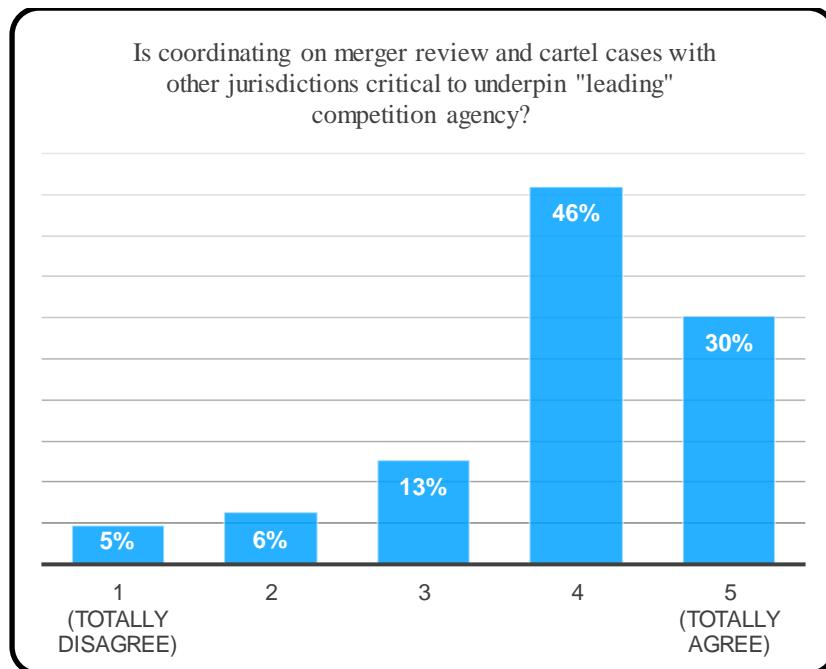
leadership. While a portion of respondents consider it important, a larger group is neutral, suggesting that other factors play a more significant role in determining the effectiveness and leadership of a competition agency.

Similarly, the written responses reveal diverse opinions on whether being first to implement new legislation or rules is critical for a leading competition agency. The dominant point of view is that being right is more crucial than being first. Several respondents highlight the danger of rushing into new legislation without proper consideration and analysis, while others express concern about the potential downsides of hasty legislation. Likewise, there are respondents who share their concern that being first also poses challenges such as navigating an uncertain regulatory space and meeting resistance from stakeholders. Thus, their point of view suggests that a cautious approach is preferred, with thorough impact assessments being crucial before implementing new rules.

Several respondents also question whether competition agencies should even be at the forefront of creating new legislation. This emphasizes the importance of democratic accountability and the potential for agencies to overstep their mandates. Their role is seen more as enforcing existing laws, not creating them. In the same vein, there are respondents arguing that developing competition law through case law is preferable to constant legislative innovation. This suggests that agencies should focus on effectively using the legal tools they already have and developing a body of case law that clarifies and interprets those laws, rather than constantly seeking new legislation.

On the other hand, a minority hold that there are benefits to being first. Indicatively, one respondent points out that "being the first to take forward new legislation or rules presents opportunities. These include establishing a proactive role, setting standards, addressing market failures earlier than anticipated, developing business and investment confidence, facilitating collaboration with other agencies and establishing novel or unique standards not found internationally or regionally." Some respondents also argue that introducing new legislation may impact the application of rules in other jurisdictions. The initiative to propose new legislation or rules can influence other authorities. The influence of the EU's regulatory power is also recognized, but its relevance to other jurisdictions is questioned. Indicatively, there is a quote saying that "the "Brussel's effect" is more relevant due to the size of the European economy than to be the first legislation to pass an ex ante digital markets regulation". While the size of the EU market is undoubtedly a factor, the "Brussels effect" also stems from the EU's regulatory approach and its influence on global standards.

2(h) Is coordinating on merger review and cartel cases with other jurisdictions critical to underpin "leading" competition agency?



A significant majority of respondents rate this criterion highly, with 46% selecting 4 and 30.2% selecting 5. This suggests that coordinating on merger review and cartel cases with other jurisdictions is generally considered important for a leading competition authority.

The written responses largely indicate that coordination on such is critical for a "leading" competition authority. However, some respondents also highlight the potential pitfalls of "over-coordination" and the need to maintain autonomy and consider local market realities.

The benefits of coordination most frequently cited include minimizing burdens for companies, avoiding divergent outcomes, ensuring consistency, streamlining procedures, increasing legal certainty, reducing transaction costs, and enhancing enforcement effectiveness. Indicatively, one respondent points out that "Coordinating on merger review and cartel cases with other jurisdictions reduces potential conflict in decision making and enhances robust and effective enforcement, particularly where mergers or cartels have a regional effect." Similarly, respondents acknowledge that coordination allows agencies to share experiences, learn from each other, and develop best practices.

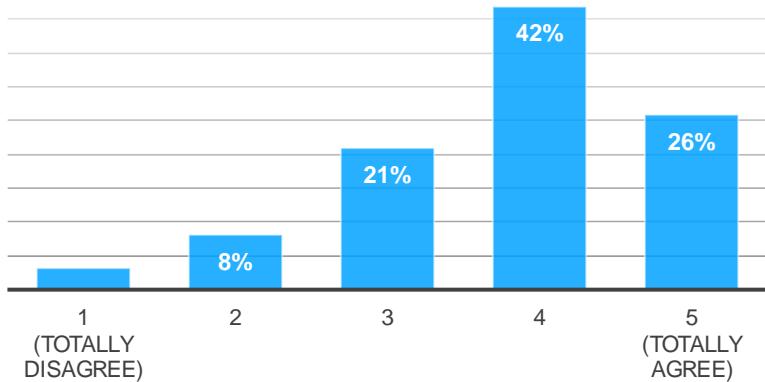
On the other hand, a significant minority considers that coordination, while desirable, is not critical to being a leading

competition authority. Some respondents even stress the importance of maintaining autonomy and considering local market realities, as circumstances may be different in different countries and those differences should be considered in the investigation. A few respondents express concern about "coordinated actions to strategize and effectively block deals that courts would be unlikely to block," implying that coordination should not be used to circumvent legal processes or to pursue political agendas.⁷⁷ One respondent also suggests that coordination should be voluntary rather than mandatory, while another respondent highlights the need for procedural safeguards to protect confidentiality and due process during coordination.

2(i) Is coordinating on other investigations (e.g., unilateral conduct) with other jurisdictions critical to underpin "leading" competition agency?

⁷⁷ See, e.g., H. Comm. on Oversight & Accountability, *The Federal Trade Commission Under Chair Lina Khan: Undue Biden-Harris White House Influence and Sweeping Destruction of Agency Norms* (Oct. 31, 2024), <https://oversight.house.gov/wp-content/uploads/2024/10/HCOA-Majority-Staff-Report-FTC-Investigation.pdf>, ("the FTC also has relied on European authorities to effectuate its enforcement goals where its authorities under US law likely do not provide the FTC's desired outcomes").

Is coordinating on other investigations (e.g., unilateral conduct) with other jurisdictions critical to underpin "leading" competition agency?



While a significant number of respondents consider coordination on investigations beyond mergers and cartels (e.g., unilateral conduct) with other jurisdictions to be important for a "leading" competition authority and rated it highly (4 or 5), a notable percentage selects 3 or lower. Specifically, a combined 75.7% of respondents rate coordination as either a 4 or a 5, indicating general agreement on its importance, while 24.2% rate it as 3 or below. This suggests that there are reservations about the necessity or feasibility of coordination in all cases of unilateral conduct.

The primary themes emerging from the written responses are the value of collaboration for efficiency and consistency; the importance of maintaining autonomy and considering local market dynamics; and the recognition that coordination may be more relevant in certain contexts than others (e.g., in digital markets).

Many respondents highlight the benefits of coordination for streamlining processes, saving time and cost for businesses, and achieving consistent outcomes across jurisdictions. Furthermore, some respondents express that coordination is "very important to avoid too different approaches with respect to the same matter". For authorities, working together, allows for an exchange of experiences, learning, and developing best practices, with richer sets of cases and empirical evidence.

Another recurring theme is the need for competition authorities to retain their independence and consider the specific circumstances of their local markets. It is suggested that "autonomy can be just as important" as coordination. Equally important is that "the authority remains independent" and respects "national legislation and consider[s] the reality of the local markets". Additionally, as circumstances may vary across countries, "those differences

should still be taken into account in the investigations". While a competition authority should not be swayed by the decisions of another, coordinated efforts can reduce strain on smaller competition authorities; however, competition authorities should not lose sight of local market dynamics.

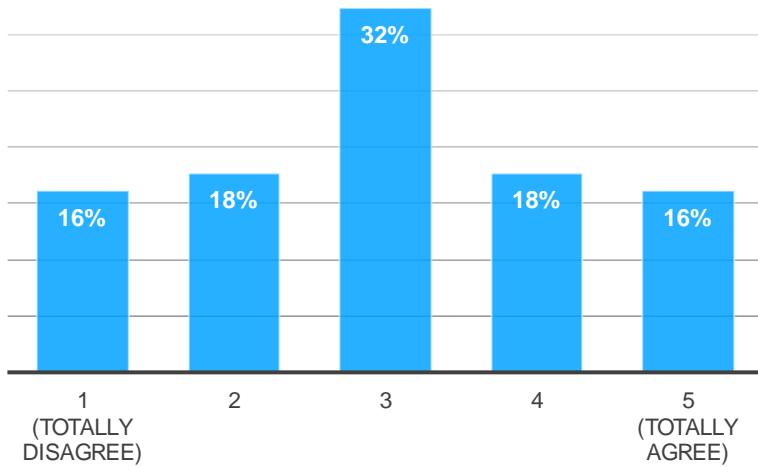
Several respondents also note that the importance of coordination might vary depending on the specific context of the investigation; digital markets are specifically mentioned as an area where sharing analysis is highly relevant. Coordination on the scope of definitions seems more relevant than at the level of the conducts themselves given the differences between countries in their market dynamics (except perhaps for digital markets, where sharing analysis is highly relevant). Some comments suggest the "need for multi-lateral coordination becomes less important and necessary for non-cartel and non-merger matters" and that coordination "can be helpful but may not be as essential as mergers and cartels because the impact of the conduct may be different in different markets".

Furthermore, a number of respondents directly link international coordination to the credibility and leadership position of a competition authority. Creating and respecting international consensus for objective analysis and legal certainty is of global benefit. Similarly, it is of the "utmost importance" that national competition authorities coordinate with foreign authorities to maintain credibility. International recognition by comparable competition authorities is central to being a leading authority.

On the other hand, some respondents express caution about the potential downsides of excessive coordination, including the risk of ideological influence and the need for procedural safeguards to protect confidentiality and due process. Some respondents also express reservations about the potential for ideological influence or undue pressure from other competition authorities. There are limits because "some agencies have become particularly ideological in this area". It is important to have procedural safeguards in place to protect confidentiality and due process, especially in cases involving prosecutors and agencies.

2(j) Is seeking to influence the application of competition rules in other jurisdictions critical to underpin "leading" competition agency?

Is seeking to influence the application of competition rules in other jurisdictions critical to underpin "leading" competition agency?



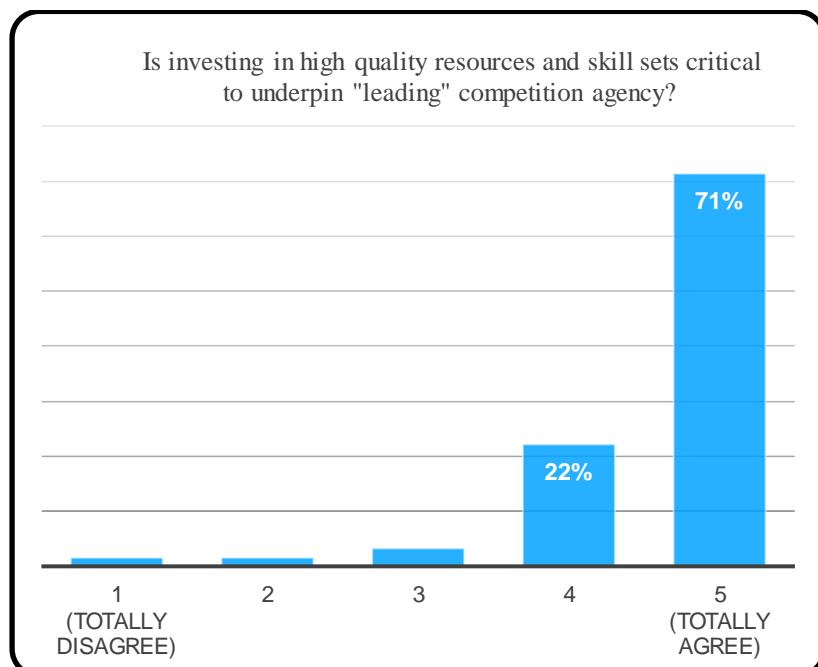
This survey question explores whether seeking to influence the application of competition rules in other jurisdictions is a critical criterion for a "leading" competition authority. The responses are evenly distributed across the spectrum, with a slight concentration around the middle. This indicates a lack of consensus on whether seeking to influence the application of competition rules in other jurisdictions is critical for a leading competition agency. Also, the largest group of respondents (32.3%) choose the neutral option (3), suggesting that many see this criterion as neither essential nor unimportant.

The written responses offer deeper insights into the nuanced opinions. Many respondents emphasize that a competition agency should concentrate on excelling domestically and demonstrating its effectiveness before attempting to influence other jurisdictions. Concerns are raised about actively seeking to influence other jurisdictions, with some viewing it as potentially intrusive or even "bossy". Some respondents also suggest that independent organizations like the OECD are better placed to objectively analyze different approaches. The FTC's role through the ICN and the OECD are cited as a key factor in influencing competition policy worldwide.

The importance of respecting the legal, cultural, and economic differences between jurisdictions is also highlighted by several respondents. Indicatively, one respondent notes the risk that a competition authority might try to influence other countries too aggressively because one country's definition of "competition rules" may not align with another's. While some support the sharing of knowledge and best practices, particularly when done sensitively and with respect for other jurisdictions, others caution

against it, especially when it involves pressuring or lobbying against the will of the other jurisdiction's enforcement authority. The 'Brussels effect' is mentioned as an example of a jurisdiction influencing others. One respondent argues that seeking to politically influence the application of rules could undermine an authority's legitimacy, while another respondent suggests that the desire to influence other jurisdictions can stem from a country's broader aim to influence the economy and political aspects of different countries. The EU's proactive promotion of the Digital Markets Act (DMA) before its effects are known is specifically criticized by one respondent. Another respondent highlights the importance of "due process and sound technical reasoning" in any efforts to exert influence. Some argue that influence should be a natural consequence of the successful implementation of a new approach, rather than a primary objective.

2(k) Is investing in high quality resources and skill sets critical to underpin "leading" competition agency?



This survey question regards the importance of investing in high-quality resources and skill sets for a "leading" competition authority. A significant majority (71.4%) of respondents rate the importance of investing in high-quality resources and skill sets as a 5 (Totally Agree), and 22.2% rate it as 4. This indicates a strong consensus on the criticality of this criterion.

The central theme emerging from the responses is that skilled and knowledgeable staff are vital in driving a competition authority's success. As some respondents succinctly put it, "You can only be as good as your people and your staff allows" and "A leading authority is only as good as the people it attracts and invests in."

This investment has a direct impact on the quality and effectiveness of the competition authority's work. Better-trained staff lead to more agile, insightful, and comprehensive decisions and enforcement actions. It also leads to more robust justifications for decisions and rules, increasing their effectiveness. Furthermore, investing in high quality resources ensures consistency and certainty in decisions. As one respondent points out "The quality of the agency's resources dictates its ability to perform optimally."

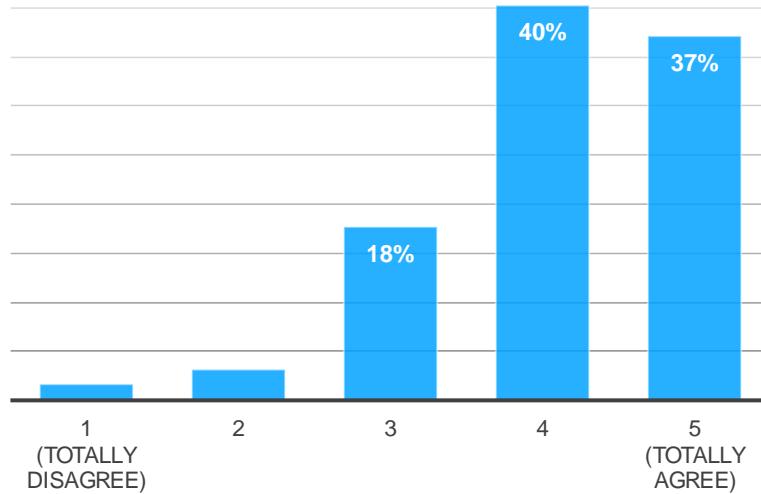
Investing in high-quality resources also helps to build the competition authority's reputation and increases its influence among peer authorities. Furthermore, it is essential for competition authorities to adapt to evolving market dynamics and emerging technologies such as AI. Competition authorities also need to be able to compete with private sector lawyers and economists to secure talent.

While some concerns are raised about the cost of these investments and how they are perceived by other agencies, the consensus remains that a skilled and knowledgeable workforce is fundamental to a successful and influential competition agency. As another response highlights, "Competition authorities deal with complex issues and its decisions have market-wide consequences. Decisions must be based on careful analysis, so having the right set of skills and resources is essential".

All in all, the responses overwhelmingly support the idea that investing in high-quality resources and skillsets is a critical factor in determining whether a competition authority is a "leader." These resources directly impact the quality of the competition authority's work, its reputation, and its ability to adapt to future challenges. While concerns exist regarding cost and the measurement of inputs versus outcomes, the consensus is that a skilled and knowledgeable workforce is fundamental to a successful and influential competition authority.

2(l) Is being influential in international fora (e.g., OECD, ICN) critical to underpin "leading" competition agency?

Is being influential in international fora (e.g., OECD, ICN) critical to underpin "leading" competition agency?



A substantial 77.4% of respondents rate influence in international fora as either important (4) or critically important (5) for a leading competition authority, suggesting a general agreement on its value. Specifically, 40.3% choose 4 and 37.1% choose 5. Only a very small minority, 4.8% (1.6% + 3.2%), rate it as unimportant.

The written responses demonstrate that the nature and purpose of that influence are critical. The key themes revolve around knowledge sharing, best practice dissemination, legitimacy building, and the potential downsides of prioritizing international influence over domestic enforcement. The consensus seems to be that international influence is a desirable attribute for a leading competition agency, but it should be a consequence of effective enforcement and insightful analysis, not a primary goal pursued for its own sake.

To be more specific, many respondents link international influence to the underlying quality and expertise of the competition authority. As one respondent puts it: "It is a reflection of how peers view an authority, though often related to the quality of the individual." Another wrote, "If influential means bringing strong thinking and analysis, then it's another manifestation of leadership." This suggests that influence should stem from intellectual merit, not political pressure.

A significant theme emerging from the written responses is also the role of international forums in facilitating the exchange of knowledge and best practices. Quotes supporting this include: "International discussions and best practices are most welcome," and "It is important to share and receive knowledge." Many see these forums as opportunities to learn from other competition

authorities and to improve the authority's own practices. "International presence and leadership mean constant learning and cooperation"

Several respondents also emphasize the importance of international recognition for building both external and internal legitimacy. "External legitimacy increases internal legitimacy and sometimes it can also protect smaller agencies whose independence at home is under attack." Another puts it succinctly, "It strengthens international presence, credibility, and information exchanges."

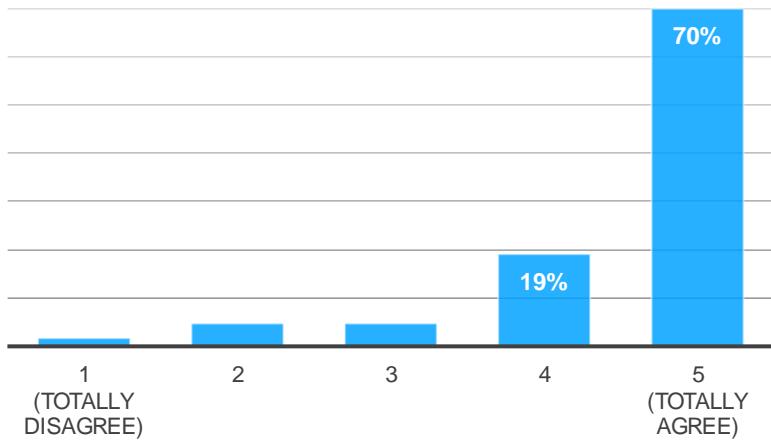
However, it should be noted that a number of responses caution against prioritizing international influence over domestic performance. For example: "It is a matter of image only. It is more important to be recognized as a leader in actual enforcement." Another highlights the importance of quality over political weight: "However, influence should be proportional to quality of reasoning, not political weight." In this context, several respondents highlight the type of influence that matters. One respondent states, "I am in favor of exporting best practices, but against attempts to export ideology." This indicates a preference for sharing evidence-based practices rather than imposing specific ideological viewpoints.

One respondent also notes the need for international fora to give smaller agencies a voice: "international fora should also give space for minor/newer agencies to speak up when possible." This underscores the importance of inclusivity in these discussions.

All in all, influence in international fora is a valuable, but not sufficient, criterion for judging a leading competition authority. It is most effective when it arises organically from a record of strong enforcement, thoughtful analysis, and a genuine commitment to sharing knowledge and best practices.

2(m) Is having particular features (e.g., predictability, credibility, transparency, efficiency) critical to underpin "leading" competition agency?

Is having particular features (e.g., predictability, credibility, transparency, efficiency) critical to underpin "leading" competition agency?



The overriding sentiment is that predictability, credibility, transparency, and efficiency are critical for a leading competition authority. Nearly 90% of respondents agreed or totally agreed with the contention. Of those, 69.8% rate these features as "Totally Agree" (5 out of 5) with a further 19% rating them as "Agree" (4 out of 5), indicating some of the strongest consensus in the survey, indicating the importance of this criteria. The qualitative responses highlight the belief that these characteristics foster trust, legitimacy, and a positive business environment.

Many respondents believe these features contribute to a stable and predictable business environment. "All of these features are most important in a competition agency, they work in tandem to create a reliable agency that brings legal certainty to the market, which is ultimately beneficial to the private sector and consumers."

In tackling novel issues, a transparent process is key to the competition authority being considered a leader: "To be able to lead by example, even when tackling novel issues, an agency must follow a transparent process. Naturally, for novel issues there always will be a degree of uncertainty. But ideally, the solutions found can be credibly developed from existing practice." To be more specific, several respondents explicitly link these features to legitimacy and trust in the competition system in the eyes of market participants, who value these qualities. The rule of law is also mentioned that improves trust and the business environment in general.

Furthermore, a leading competition authority is seen as one that sets a standard for others to follow. "Agencies that produce guidelines and are consistent in the enforcement of the law

provide a good standard for others." An authority's reputation can be built through the application of these criteria, as "Building reputation and quality are key for exercising influence over other agencies." Moreover, other competition authorities can see the decisions of a leading authority as more enduring and reliable: "...it will probably have a positive impact on its leadership position because other agencies will know that the decision that was made will likely endure for some time, and it may be reliable to these agencies to quote as a similar case/decision."

However, it is worth noting that (as with many of these issues) some responses, even if only a couple, caution against taking these concepts to extremes, fearing they could unduly constrain the agency's effectiveness and flexibility. Predictability is clearly in tension with flexibility and innovation and, as one respondent noted, it is important to recognize that exploring new areas can reduce predictability (at least for an initial period).

3. What other criteria you consider relevant that would be critical to underpin "leading" competition agency?

This question provides the opportunity for respondents to identify criteria not discussed above. Several themes emerge from the responses, highlighting qualities and characteristics that respondents deem important, such as the importance of integrity, adaptability, independence, communication, and external factors in determining what makes a competition authority a leader.

- **Integrity and Competence:** Some responses emphasize the importance of integrity and competence within the competition authority. One respondent suggests that an authority that acts against officials who are not performing well would be commendable. The rigor and quality of analysis are also highlighted, with a caution against authorities behaving like politicians or actors but rather focusing on being correct.
- **Adaptability and Openness:** Several responses stress the need for competition authorities to be adaptable to changing circumstances and open to new ideas and techniques. Flexibility in rules and regulations is seen as important to ensure the authority can adapt to rapidly growing and developing markets, keeping consumers' best interests in mind.
- **Independence:** Independence from political considerations is a recurring theme. The further removed a competition authority is from political influence, the better it can function effectively.

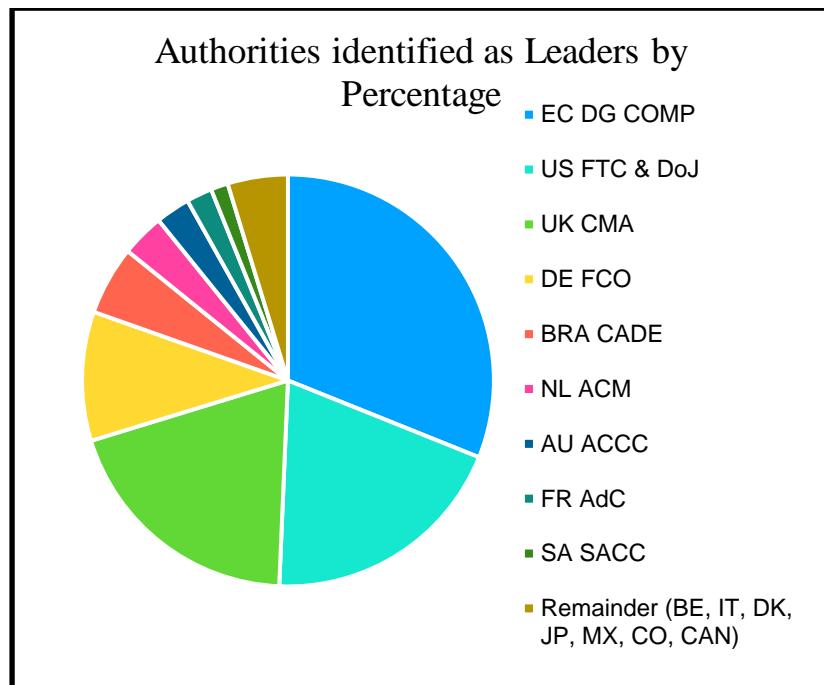
- **Communication and Engagement:** Dialogue with academia and the private sector, along with a good public communications strategy, are considered relevant. Openness to discussing issues with stakeholders, such as private bar, associations, and academia, can contribute to the competition authority's reputation.
- **Legal and Technical Prowess:** Consistency and standing before the courts are mentioned as important. Being technical is also noted as a relevant criterion. The use of technology for handling investigations is highlighted as a key metric for an authority to demonstrate leadership.

In summary, the responses and the criteria mentioned, such as independence, integrity, and communication, can be seen as complementary to the qualities discussed in Question 3. For example, an agency that is credible and transparent might also benefit from engaging with stakeholders and maintaining independence from political influence. Hence, the responses in Question 4 provide a more nuanced and comprehensive view of what constitutes a leading competition authority. While qualities like predictability and efficiency are important, the responses in this source highlight the significance of factors such as integrity, adaptability, independence, and effective communication. Nonetheless, it should be noted that while a wide array of criteria is presented, the responses do not delve deeply into how these factors interact or how they should be prioritized. Also, this diversity of opinion, while valuable, makes it challenging to draw definitive conclusions or establish a clear set of priorities.

4. Which 3 competition agencies do you consider have been examples of leaders in antitrust/competition policy in the last 5 years? Please give a short explanation of their leadership.

Between them, the 58 respondents identified 17 different agencies considered examples of leaders in their field. The fact that respondents didn't, at first sight, coalesce around only a handful of leading agencies is partly due to the fact that some agencies were identified as leading in particular fields e.g. the Dutch ACM on competition and sustainability, or Canada on competition and gender. Other authorities were identified for particularly notable actions, for example the German FCOA's case against Facebook, that explored the boundaries of competition and privacy laws, or the ACCC's pioneering work on the media bargaining code, inspiring many. This shows that seeking to lead in areas of particular priority or strength can be influential, no matter the size of the agency. Finally, there were clear regional leaders, such as the Brazilian CADE, the South African SACC or the Japan JFTC, who were considered influential in their particular regions.

However, despite this initial spread, 5 agencies (including both the US DoJ and FTC) did receive nearly 80% of the comments and can be identified as clear leaders in this, admittedly anecdotal, sample. DG COMP and the US FTC and DoJ that are, as one respondent noted, “naturally leading authorities, given their global influence” and are joined by the UK and Germany. The scores were DG COMP 30%, the CMA nearly 20%, the US agencies nearly 20% (though the FTC scored over twice the DoJ, with in the region of 13%) and the FCO almost 10%.⁷⁸



However, it should be noted that over 10% of respondents to this question were skeptical. One respondent noted that there were no examples “of agencies that are providing thought leadership that are not actively pushing more interventionist policies, despite little supporting assessment of the likely outcomes” and another respondent referred to a “strong leadership crisis”. Even those authorities identified in this section of the survey as leaders (i.e. the EU, the US FTC and DoJ, the UK and, to some extent, the German FCO), survey respondents queried their “more aggressive” antitrust enforcement based on novel but mostly equivocated supporting theories or chasing media headlines.

European Commission: The European Commission’s Directorate General for Competition was by far the most popular agency considered as an example of a leader in competition policy in the last 5 years, with 46 mentions. There were two main reasons for this: its general approach and its focus on digital markets.

⁷⁸ Some cited only one agency and sometimes just naming them with no commentary; others cited a number of (usually 3) and provided detail. Few respondents provided 5 in total.

What stands out were consistent references to transparency; whether clarity on merger control obligations, the application of economic standards and commitment to improve the quality of analysis, as well as due process. In addition, the European Commission's engagement was referenced a number of times; its discussions with peers and relevance of the thematic debates they engaged in (for example on sustainability). Broad access to guidelines and technical documents was also noted, as these are normally used as benchmarks by other agencies.

The European Commission's leadership, in the form of then-Vice President Vestager and her ability to resisted populism was noted, as well as the European Commission's approach being the main counterweight to American Chicago School school of thought.

The second clear area identified was the European Commission's innovative approach to digital markets, which is notably influential given the impact on global business in sectors that other agencies might be also interested in. The European Commission was considered highly influential through its decisions or in opening new investigations creatively addressing market power in digital markets, exploring novel areas such as AI, price-signaling and information sharing or in merger control.

Eight respondents highlighted the regulation of large digital platforms through the adoption of the Digital Markets Act (DMA) although, as one respondent noted, leadership will depend on the outcome of the DMA's implementation. Two respondents thought that the European Commission was the first to implement such regulation (although the DMA was preceded by the German amendment to Section 19a of the German Competition Act, adopted in January 2021, creating a similar regulation for designated digital platforms).

As one respondent noted "*Whether one would agree or disagree with [the European Commission] on their substantive understanding of competition rules and enforcement choices, they have been leaders in advancing the discussions, checking the proper enforcement boundaries and the like*".

UK Competition and Markets Authority: Out of the 29 mentions that the CMA received, 15 included comments. Three respondents noted the CMA's technical ability, innovations in investigative techniques, notably through the use of technology, clarity of analysis remedy design. The high level of intervention and robust enforcement in a number of recent, cases including international mergers (e.g., Microsoft/Activision; Facebook/Giphy) has helped keep the CMA influential in the global antitrust community. Two respondents noted that the CMA

has sought to take on this new role as a result of the UK's decision to leave the EU.

The CMA's initiatives in proactively addressing hotly debated issues, notably that have an impact on global business, that was flagged, including in consumer goods and labor markets, as well as sustainability. The CMA's approach of engaging in thematic debates and publishing in-depth factual analysis can be very important. However, it is the CMA's work on competition issues in addressing the consolidation of market power in digital markets that was highlighted in most of the comments. The CMA's leader in evidence-based analysis of digital platforms, through market studies or investigations), notably on digital advertising and Artificial Intelligence foundation models and the review of AI partnerships.

A further, important, element was flagged by two respondents; the CMA's leadership approach in coordination across regulatory agencies through the Digital Regulators Cooperation Forum (and example that was followed by the ACM).

Bundeskartellamt: Fifteen respondents identified the FCO's work on cutting edge digital topics, including adopting regulations on unfair practices and digital markets and analyzing difficult issues that raise new theories of harm. The case that was uniformly identified by respondents as the reason for the FCO's success mentioned was the FCO's case against Facebook on the intersection between competition law and privacy. Additional points include the FCO's resources and skilled staff, as well as discussions with peers in international fora.

FTC/DOJ: A number of respondents (9) identified the US authorities together, as amongst the leading authorities. Their work on labor markets was flagged, as well as their technical capability. The remaining respondents (21) identified either the FTC or DoJ.

The DoJ was identified by 6 respondents, through for different reasons, including its decision to sue Google for monopolizing advertising technology, although two other reasons (the prosecution of no-poach agreements and merger guidelines) involve joint DoJ and FTC activities.

The FTC received 15 mentions, 10 of which were substantiated. Chair Khan's leadership was called out, including her attempts to reinvigorate US antitrust enforcement in different cutting-edge issues, notably its analysis of disruptive innovation, significant actions against major technology and pharmaceutical companies, as well as the updated merger guidelines. In addition to general comments about has the FTC's continuing to be a reference for

other authorities, 2 respondents highlighted the FTC's efforts to lead internationally, notably through its Office of International Affairs (OIA) and significant advocacy in the African region.

Brazilian Administrative Council for Economic Defense (CADE): Brazil's CADE got 8 mentions, but mainly as a regional lead in promoting more exchange of ideas, soft law guidance and collaboration to take up competition law in LATAM, as well as developing countries. The fact that CADE has been the first in the region to analyze cutting-edge topics, was also flagged.

Netherlands Authority for Consumers and Markets: There respondents identified the Netherland providing thought leadership on thematic issues, especially as sustainability and competition law, including how debates were organized, including guidance, investigations and wide access to documents.

ACCC: Of the four respondents identifying the ACCC, three respondents highlighted the ACCC's leadership in its pioneering media bargaining code, that inspired jurisdictions like as Canada.

Spanish CNMC: Of the three respondents who identified the CNMC, two identified the leadership of its President, Cani Fernández Vicién, who helped to bring a greater focus agency improvements, as well as providing thought leadership, strong analysis and keeping relative distance from politics.

French Autorité de la Concurrence: Two of the three respondents who identified the French Autorité de la Concurrence noted its work in market power in digital markets.

South African Competition Commission: The two respondents who identified SACC both noted the SACC's influence and leadership on the African continent. This is reinforced by its active involvement in advocacy initiatives. The SACC's increasing enforcement and response to Covid-19 pandemic.

The following agencies received a mention each, often because of intention to generate groundbreaking work in particular areas; Denmark on antitrust and ESG (environmental, social and governance) issues; Canada on gender and competition law. Both Belgium and Japan were considered sound, producing solid, quality work, with the JFTC particularly influential in the APAC region. Although Mexico's COFECE, Colombia's Superintendency of Industry and Commerce and Italy's AGCM also received an acknowledgement each, no comments were provided.

5. In your view, what outcomes can be considered “positive”, notably in relationship to the “Leadership” ambitions and agencies you identified previously?

Respondents were asked what positive outcomes they expected “leadership” to result in. Responses fell quite neatly into to six outcomes; market impact, substantive capabilities, thought leadership, increased certainty, advocacy and proven influence. These are all closely connected; technically strong authorities are more likely to have positive market impact, if their actions are transparent, which will result in other authorities seeking their insights, resulting in international advocacy and ultimately influencing the decisions of peer authorities.

Market Impact: Enforcement should produce more competitive and efficient markets and therefore economies. The actions of a leading authority will lead to a better competitive environment encouraging market efficiency and innovation, while changing anticompetitive business practices, thereby increasing competition and ultimately enhancing consumer welfare (while avoiding negative effects). Robust decisions can provide precedent that other authorities can refer to. However, once again, several respondents noted that sound enforcement must be bounded by due process protections, including reasoned decisions. In addition, respondents often conditioned effective enforcement with meaningful due process protections, although reflecting international best practices, such as the OECD or ICN would be a minimum.

In a strict sense, leading agencies exhibit a deeper understanding of the competition theories in their application to the cases that are brought to them. This results in the agencies making decisions that ultimately have the end consumer at the front of mind, generating enhanced consumer welfare outcomes.

Substantive Technical Capability: It may not be a surprise that the primary determinant of positive leadership outcomes, as identified by respondents, was high quality, evidence-based enforcement decisions. Respondents referred to coherent, thought-through, credible, accurate, substantive, sound, high-quality and defensible enforcement decisions, based on clear theories of harm. As one respondent remarked, *“only the sensible, well-reasoned, and well-articulated outcomes that have a higher chance of withstanding the test of time”*. This of course implies that the authority will possess strong technical capacities in order to successfully implement competition policies. As one respondent noted *“If such competition [between authorities] translates in a race for rendering more technical decisions, with more economic and legal analysis, this would certainly be a good outcome”*. As we will see below, the pursuit of such a leadership

outcome is bounded by the need to be faithful to sound competition principles.

An additional, related, element that came out of this was a focus, not only on the substantive nature of competition policy, but that it should be effective, pragmatic and implementable - in other words leading authorities should resolve problems effectively.

Thought Leadership: Another outcome of intellectual leadership related to the willingness of the authority to address new challenges with innovative approaches, developing new theories of harm and innovative solutions. Through thought leadership a leading authority demonstrates an ability to adapt to market changes, tackle novel issues or challenges. The ability to signal to peers what new areas of priority should be, was also flagged. However, as one respondent noted, the willingness to be an intellectual leader should be undertaken in a proportionate and objective manner. Respondents noted that thought leadership should ensure robust intellectual underpinnings, avoid unintended consequences and include effective due process protections.

Greater Certainty & Transparency: Leading authorities lead the way in providing increased legal certainty, through consistent, predictable and comprehensible decisions. They do so by maintaining greater transparency, partly through well-reasoned decisions as well as the broad access to documents such as reports and guidelines. Another element noted by respondents, relates to certainty and transparency is the respect of parties' due process rights and procedural fairness.

Engagement & Advocacy: Another outcome, if not necessity, of leadership is public engagement and open debate on relevant topics, that lead to improvements in the quality of competition policy, such as analytical framework or investigative techniques. This includes not only organizing public debates but also the openness i.e. structured processes to regulatory dialogue with economic actors and discussing appropriate remedy design with market players. This extends beyond debates with a jurisdiction and extends to engaging in international debates and cooperation (see below).

Competition advocacy was also identified as an outcome of leadership; that a leading authority would be effective communicating to the general public the importance of a pro-competition culture, the authority's work or particular decisions, and to do so in an understandable manner. However, some respondents flagged that leadership ambitions should not seek to make news headlines per se, but rather headlines were a result of concrete actions. These respondents warned that authorities

should avoid seeking public leadership for “political” or “emotional” reasons as these were the wrong incentives.

Influencing Peer Authorities: The strongest outcome of leadership was for peers demonstrably follow the leader’s example. A leading authority therefore can “set the pace” for what other authorities will likely do which. As respondents noted, this can bring notable benefit to companies active across jurisdictions following a leading, as these companies have greater certainty in applying the same business strategies across those jurisdictions. Leadership therefore ought to ultimately result in a level of international convergence. In individual cases, a leadership position can influence decisions in international merger or conduct cases.

A key question is the extent to which an authority with leadership ambitions just lets its record speak for itself, whether the authority should engage peers to explain its practice, or whether it should proactively advocate for its practices to be followed. In other words, whether leadership is a result of advocacy by an authority that seeks to see similar approaches in other jurisdictions. One respondent used the example of the EU’s Digital Markets Act as an example of a policy that the European Commission advocated internationally, and which resulted in a number of jurisdictions developing somewhat similar approaches, before the DMA has yielded measurable positive results.

In addition, these agencies previously identified, assist in creating a global standard that other younger agencies can look to for guidance on matters not previously encountered within their own jurisdictions. It assists in the establishment of sound economic principals and efficient procedures for these agencies to maintain transparent and accountability in their decision making.

Users will be more willing to evaluate the agency more positively, which can have an effect of greater legitimacy, enhancing its authority (not legal one, but in terms of perception). Also, agency's decisions will likely reach better results because parties will be more willing to willfully cooperate, and the agency will have better information at hand for its assessments.

6. To what extent should Leadership ambitions be consistent with, or flow from, formal agency prioritization or work plans?

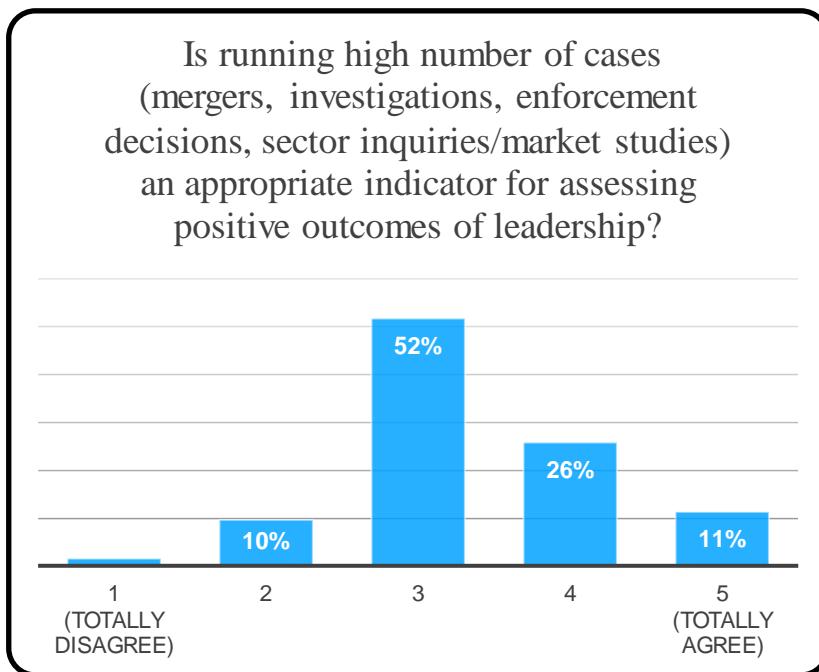
We asked whether leadership ambitions should be reflected in authorities’ prioritization plans, in order to get a sense as to whether leadership ambitions should be formalized or not. Respondents, of which there were 56, provided some clear perspectives.

Over 60% of respondents felt that there should be close alignment between leadership ambitions and an authority's prioritization plans. The clearest reason for consistency between specific leadership ambitions and broader prioritization plans was to ensure transparency, predictability and accountability i.e. to ensure an authority's credibility. Respondents also noted that leadership ambitions should flow from an authority's enforcement priorities, because leadership efforts likely require significant efforts and resources in order to produce meaningful outcomes. Such resources would need to be allocated through the prioritization process, given the limited resources at an authority's disposal. The mere fact of prioritization does not guarantee the desired outcome, and authorities need to invest time and energy not only to achieve the outcome but then to also ensure it proactively influences peers. One respondent noted that: *"it is hard to imagine a leadership role taken by agencies that do not invest time and resources in international fora, such as [the] ICN and OECD"*.

Respondents provided added perspectives. Leadership ambitions should be an institutional goal, requiring an authority-wide approach, in order to prevent such ambitions from being the personal projects of an authority's leadership. One respondent also noted that including leadership ambitions in formal prioritization plans allowed business to consider whether to adapt behaviour prior to the need for enforcement action. A smaller number qualified the need for a connection between leadership ambitions and prioritization plans, in order to ensure that authorities still have the flexibility to adapt to address unforeseen critical problems.

However, a small number of respondents felt that leadership ambitions should not necessarily be reflected in prioritization plans. Prioritization reflects the statutory duty of an authority, and one respondent suggested that such plans should first focus on the basic work of an authority, with leadership ambitions not necessarily focused on an authority's statutory duty and therefore being secondary. Others felt that leadership should rather be a consequence of effective competition policy or enforcement, rather than a priority. This is notably the case because the essential function of an authority is to ensure fair competition within an authority's jurisdiction, rather than international influence. If an authority is effective, will naturally obtain international recognition. Finally, one respondent noted that, first and foremost, authorities need to establish its institutional and technical credibility before seeking international recognition.

7(a) Is running high number of cases (mergers, investigations, enforcement decisions, sector inquiries/market studies) an appropriate indicator for assessing positive outcomes of leadership?



Of the 62 respondents, over 51% were agnostic to the importance of the number of cases as an indicator of positive outcome of leadership, although over 25% agreed with the contention (and over 11% totally agreed). Significant enforcement actions seem to matter. Respondents recognized that a high number of cases provides an authority with necessary experience, as well as exposure to key issues, keeping staff trained and ensuring that effective case-management processes exist to handle a large caseload. It also demonstrates to the market that the authority is willing and able to enforce the competition laws and has the capacity and resources to address potential infringements. Significant caseload also provides more jurisprudence to be studied which is critical for legal advisers to be able to advise companies. Three respondents added that significant enforcement efforts should still be effective and not compromise the rigorous application of law and economics. In particular, respondents noted that, first and foremost, an authority need to have sufficient resources to investigate matters effectively and be completed within a reasonable timeframe (rather than having a large number of open investigations that do not progress in a timely fashion).

Only 11.3% respondents disagreed or totally disagreed that a high number of cases was a metric to assess leadership outcomes. Yet a large number of respondents noted that case numbers was not the only factor to assess performance, as numbers do not necessarily correlate with positive outcomes. Numbers are a

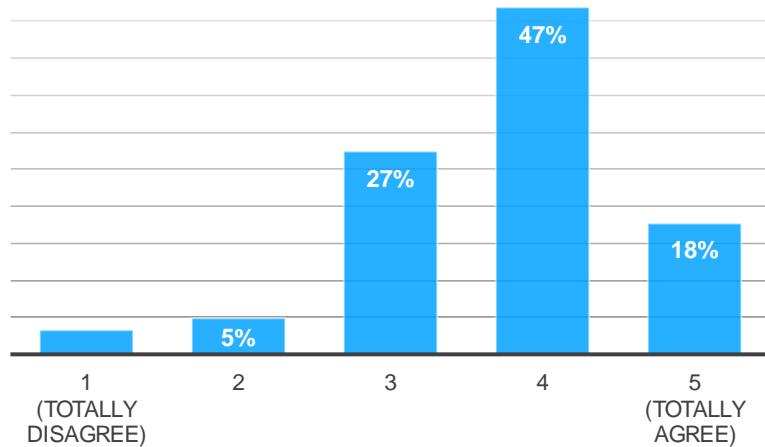
reflection of activity rather than a reflection of strong execution. Quantity is not synonymous with quality, which is a more relevant metric (see further below). Where it becomes clear that investigations should not have been undertaken in the first place (whether investigations are abandoned, do not address the anti-competitive harm, or overturned on appeal), a high number of cases may even be a sign of misguided prioritization, misuse of resources and over-enforcement. Indeed, a comparatively “low” number of cases could actually be a sign of under-enforcement, or that deterrence has worked well.

Despite case numbers being one of the most used metrics, what also came across from the responses is how a focus merely on numbers can be somewhat meaningless without a proper context. The numbers of cases that an authority can reasonably undertake will be affected by available budget and resources. In addition, the larger jurisdictions can be expected to have more cases. The stage of an economy’s development will also likely affect the types of cases and sectors with newer competition jurisdictions likely to focus on, for example, bid-rigging and collusion concerns. Different jurisdictions will have different thresholds, notably for mergers notifications, that will affect numbers. An authority may find it problematic to rely on case given that their ability to prosecute cases may be affected by availability of complainants who provide evidence of anticompetitive activity. As one respondent noted, “Some cases have more impact (on total welfare) than others, so it makes sense to dedicate more resources to them”.

Respondents indicated what some of the important considerations should be, in relation to competition authorities’ output, in order to assess whether an authority was doing positive work. Primarily, it is whether cases have a positive impact on consumer welfare, competitiveness and investment. Decisions need to be of high quality, clear and based on in-depth analysis in relevant sectors, in order to contribute to legal certainty for market players, enabling them to comply with the law.

7(b) Is running high number of cases an appropriate indicator for assessing positive outcomes of leadership?

Is running high number of cases an appropriate indicator for assessing positive outcomes of leadership?



The question asked whether running high profile cases is an appropriate indicator for assessing positive outcomes of leadership. Two definitional issues arose out of the responses. The first was that “high profile” could be understood as either relating to politically significant or mediatized cases, or significant from a competition law perspective e.g. heavily litigated cases or cases taken to shape policy. Secondly, often related to the distinctions above, are whether the significance of the case rises during the investigation, which creates a specific context around the case, or whether it relates to the impact of the decision on jurisprudence. It is also worth noting, as two respondents did, that globally “high profile” cases are often skewed towards larger jurisdictions, although such cases will exist in each jurisdiction.

High profile may mean cases that raise political issues or generate political interest, which risks putting pressure on the authority. A key issue is who makes a case political; it should not be the authority. Certainly, respondents felt that there should not be publicity-driven enforcement.

From a competitor law perspective, high profile investigations often address critical issues, set precedents, and signal the authorities’ capacity to handle complex cases. A number of respondents noted that it was important for authorities to have the capability to run high profile cases, as these can be resource intensive. High-profile investigations are often connected to significant competition issues that can directly affect consumers’ welfare, particularly in areas such as healthcare or pharmaceuticals, which can lead to positive impacts. From an advocacy perspective, high profile investigations focus attention of an authorities work. On the other hand, as one respondent

noted, that there are better, more appropriate, methods to competition policies.

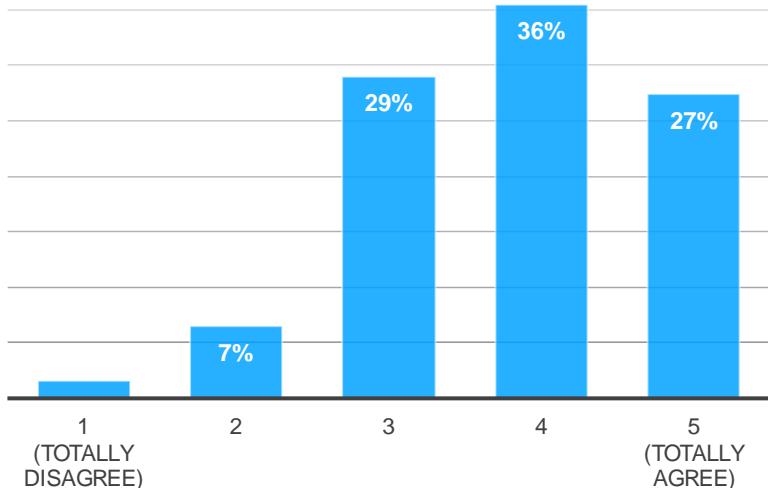
Respondents also suggested that an authority should only engage in publicizing an investigation if the situation requires it and it is duly justified. A number of respondents noted that it as the soundness of the analysis and positive outcomes were the important factor and could have a broad deterrent effect or impact on competition.

In the survey, 46.8% with the contention and 17.7% 5 totally agree with the contention that running high profile cases was an appropriate indicator for assessing positive outcomes of leadership. These respondents suggested that high profile cases were an indicator of an authority's relevance, that the more important cases are being addressed, experience being gathered including to enhance decision-making processes, highlighting the role and impact of competition law, ensuring greater compliance with the law and signaling more widely how the authority may enforce the rules.

Despite the majority of respondents seeing high profile cases as a net positive, a number noted that the was not a decisive factor as an indicator of the authority's good performance nor with the quality of the investigation or decision. High-profile cases do not necessarily produce positive outcomes and, indeed, low profile investigations can produce even higher outcomes. Authority prioritization should be based on an assessment of which markets need intervention or because they impact an important sector of the economy.

7(c) Is developing novel approaches or theories an appropriate indicator for assessing positive outcomes of leadership?

Is developing novel approaches or theories an appropriate indicator for assessing positive outcomes of leadership?



Novel approaches or competition law theories scored significantly high, with 62.9% either agreeing or totally agreeing (and the remainder ambivalent), with the expectation that leading authorities should drive thought-leadership and have the ability to develop well-founded and innovative approaches. Particular situations may require innovative solution, and authorities should choose the right tool for the problem at hand. Doing so reflects dynamic thinking. It highlights that the authority is aware of the ever-evolving nature of competition law and market evolutions (although developing novel approaches need not always to be in the context of a new case), is open to addressing new challenges and has the technical capabilities to do so.

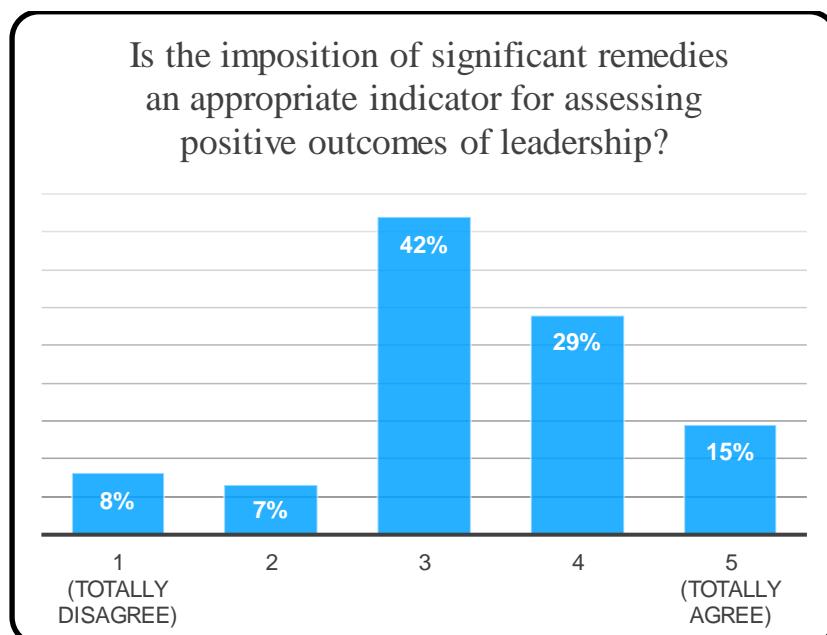
However, a significant number of comments qualified this idea that developing novel approaches or theories could be a metric for leadership. Novel approaches or theories had to be based on rigorous thinking and consistent and sound from an economic and legal standpoint, and with a critical mass of support notably by the academic community. Theories need to be researched and tested, focused on fighting practices that cause consumer harm. Such diligence is needed to avoid novel approaches from diverging from legal bases or from being outcome-oriented in order for them to have a chance to survive judicial scrutiny.

Some written responses disagreed (although this wasn't reflected in the scoring). These respondents felt that this metric might be an indicator of the authority's good performance but was not decisive. Rather it was whether the theories respond to the needs of consumers and the quality of the approach. If not done properly and proportionately, misadjusted innovations can lead of a lack of confidence or effectiveness. Respondents also noted that the less

exciting areas of competition law should be an authority's principal focus, especially as developing "novel theories of harm" can tie up an authority's scarce resources.

A further point was flagged by three respondents; pursuing misguided novel approaches creates instability and uncertainty, particularly where there is no precedent or standard on which market participants can look to for guidance to understand the law.

7(d) Is the imposition of significant remedies an appropriate indicator for assessing positive outcomes of leadership?



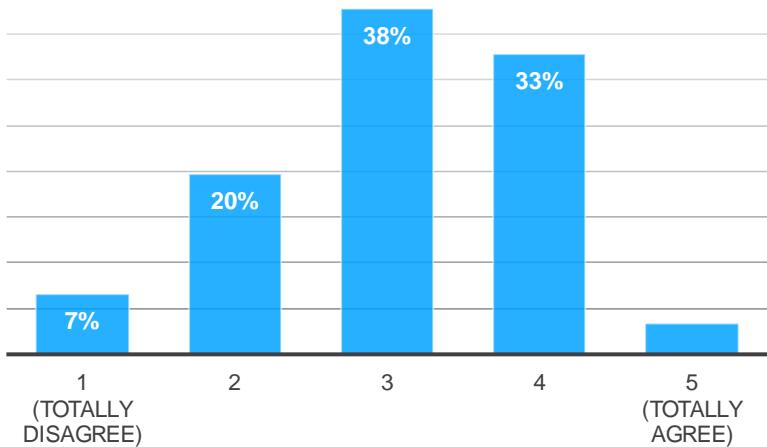
The survey showed that 43% of respondents agreed or totally agreed that imposing significant remedies was an indicator of leadership. However, 41.9% were neutral and under 15% did not feel this to be the case. Respondents agreeing noted that the ability to design and impose significant, effective remedies is considered the mark of a leading, mature agency and important for outcomes. One respondent considered that being able to impose such remedies, on the basis of a robust market analysis, may be one of the primary objectives of competition authorities. As companies innovate and markets are re-defined, it is important for authorities to have the ability to impose significant remedies that correct relevant problems. This is especially so if remedies help to eliminate competitive concerns, restore market competition and act as a deterrent to those implementing the conduct in future. But it is not always the case that a significant remedy is sufficient to act as a deterrent to some market players. Proportionate remedies demonstrate that the authority is willing to engage with undertakings and seek solutions to anticompetitive concerns. The outcome provides evidence that an authority has the independence and ability to design substantial solutions.

However, the majority of comments were equivocal on the issue, noting that significant remedies may be appropriate, if needed, but should first and foremost be commensurate to the restriction on competition identified and proportionate. Effectiveness of remedies is more important than any “level” of remedies. An authority’s performance can be measured by the impact of remedies of if these were upheld by the courts or higher tribunals. Disproportionate remedies can be counterproductive and chill the willingness of companies to engage in transactions, affecting opportunities for productivity or efficiency gains of. As one respondent noted, “*an interventionist approach does not necessarily translate to a leading approach*”.

Less than 15% of respondents felt that imposing significant remedies was an appropriate indicator for leadership. The risk of false positives makes this metric an ambiguous indicator.

7(e) Is the imposition of significant penalties (e.g., fines) an appropriate indicator for assessing positive outcomes of leadership?

Is the imposition of significant penalties (e.g., fines) an appropriate indicator for assessing positive outcomes of leadership?



While a significant portion of respondents (36.1% agreeing or totally agreeing) find significant penalties to be an appropriate indicator, a considerable number disagree (26.3%) or remain neutral (37.7%). This distribution immediately suggests that significant fines are not universally accepted as a key metric for assessing a leading agency's success.

Those who agree with the statement primarily highlight the deterrent effect of significant penalties. They argue that imposing such fines is crucial for deterring future anticompetitive conduct, and that firms should expect substantial penalties if they violate competition law to ensure the cost-benefit analysis does not favor infringement. Some respondents believe that significant penalties improve enforcement and are a base for creating deterrence, which should be a main objective of the agencies. Furthermore, it is suggested that these fines can serve as a signal of competition risk seriousness to company management and reinforce the agency's authority. One respondent explicitly states that it is "important for an agency to impose significant fines to deter others from doing anticompetitive conduct".

Those who outright disagree with the idea that imposing significant penalties is a reliable indicator of a leading agency see zero intrinsic leadership value in simply imposing large fines. They argue that higher fines do not automatically equate to better decisions or enforcement and that the process can be arbitrary with little regard for precedent. A significant worry is that such penalties might be overturned by the courts, rendering them ineffective. Furthermore, an interventionist approach signaled by high fines is not necessarily indicative of a leading agency. Some respondents explicitly state that the imposition of a significant

penalty is not always reflective of an effective competition agency and that it might not be equitable to the violation's magnitude. They also highlight that penalties alone are not an indicator of the quality of decisions and carry a risk of false positives.

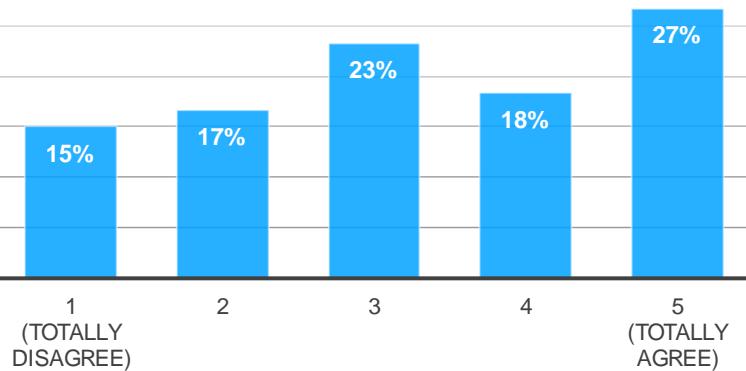
The neutral and conditional perspectives, while not outright rejecting the relevance of fines, introduce crucial caveats and highlight the context-dependent nature of their effectiveness. The significant proportion of neutral respondents suggests a belief that the value of fines as an indicator is not absolute. A key condition raised is proportionality; many argue for fines to be proportionate to the investigated conduct rather than simply "significant" in an absolute sense. The definition of "significant" itself is considered subjective and dependent on factors like the jurisdiction size.

Both dissenting and neutral/conditional viewpoints express concerns about deterrence versus unintended negative consequences. While deterrence is a primary justification for significant fines, there's a worry that excessively high fines could hamper investment and innovation. The need for fines to be firmly grounded and based on solid arguments and evidence is emphasized to avoid being overturned on appeal.

Furthermore, both perspectives acknowledge that fines are just one tool of regulation and can sometimes be a blunt instrument. The neutral/conditional responses explicitly state that effectiveness is more important than the level of remedies and that remedies can be more important than fines in the long run. This aligns with the dissenting view that focusing solely on the size of fines overlooks other crucial aspects of a leading agency's performance.

7(f) Is having fewer decisions challenged in court an appropriate indicator for assessing positive outcomes of leadership?

Is having fewer decisions challenged in court an appropriate indicator for assessing positive outcomes of leadership?



This question asked whether a low number of court *challenges* was a useful metric or indicator to assess qualified an authority as leading. The following question deals with court *decisions*, which provides additional color. As relates to challenges, although the majority block of respondents agreed or totally agreed (45%), a good number were neutral (23.3%) or did not agree (16%), so it could be said that this metric did not garner uniform enthusiasm.

Reasons why the ability and frequency of challenges might be considered a strong metric of leadership, is that might indicate that the authority is issuing high-quality, well-reasoned decisions, which discourages companies from challenging them. It may also indicate that there is consistency in an authority's approach, reflecting legal certainty on the topic at hand. Of course, this is closely linked to whether the ensuing decision of the courts either upholding or rejecting an authority's approach (see next question).

A number of respondents added nuances. Yet, the numbers of challenges (and the decision to appeal the actions of an authority) may be only partially related to the substance of the decision. If authorities are pursuing novel theories or the law is unclear, challenges are more likely to clarify the law. Newer authorities should expect their, powers to be tested as the jurisdiction settles. Depending on the fact, it could be that the number of appeals indicates active enforcement.

But the decision to appeal an authority's decision is often not as a direct result of the authority's actions. For example, the EU, challenges to merger and unilateral conduct decisions were relatively few, partly due to the expectation that the European court would tend to defer to the European Commission, although

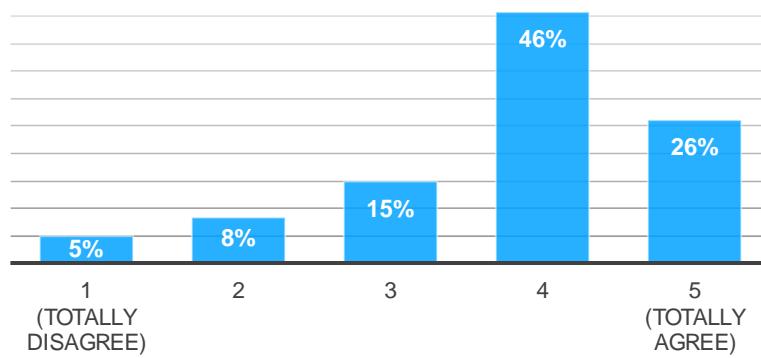
when challenges are finally bought, the court was indeed willing to highlight flaws in the EC's approach. Indeed, if the European court regularly reduces cartel fines, firms will appeal, which is a reflection on DG COMP's fining policy, not the quality of the substantive decision.

However, some parties are naturally litigious, which would affect any data, as would the cost and timing of judicial review. There are many considerations that companies consider when deciding whether to seek judicial intervention or not, which may be unrelated to the robustness or defensibility of an authority's actions.

A number of respondents added that it was a difficult to view this as an indicator of authority performance, as it depends on the relevant judicial system and institutional design of the authority. For example, the US consists of a judicial system, whereby the antitrust authorities need to convince a court to establish an antitrust. The considerations of appealing a US antitrust decision are very different compared to administrative jurisdictions, as a US antitrust decision will already have been approved by a court. Respondents flagged that in many Latin American countries the judiciary may not be well-versed in competition matters, resulting in courts focusing focus more on procedural issues than the substance. Indeed, some systems have full merits judicial review, whereas others have a more limited system of review, focused rather on legality. Challenges of competition enforcement actions may therefore be more a reflection of the robustness of the judicial system.

7(g) Is having a record of success in appeals before the courts an appropriate indicator for assessing positive outcomes of leadership?

Is having a record of success in appeals before the courts an appropriate indicator for assessing positive outcomes of leadership?



Question 8(f) was a precursor to 8(g), which looks at the record of success or failure of judicial appeals. While 45% of respondents in Question 8(f) agreed or totally agreed that the numbers of appeals appeared significant, 71.1% of respondents in Question 8(g) agreed or totally agreed that success in appeals was a valid metric.

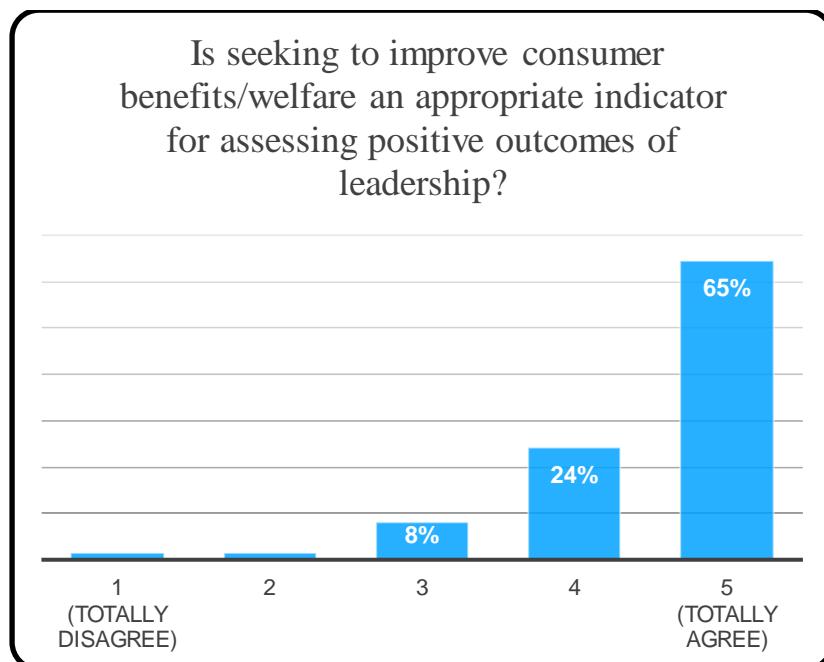
Where the court upholds an authority's decision, it not only clarifies the law and demonstrates the robustness of an authority's decision. It is also evidence of the strength of authority's analysis and reasoning, its evidence gathering capabilities and the application of competition law principles. A record of success on appeals highlights the thoroughness of the authority's investigations and legal arguments. Indeed, the review by an independent, neutral and competent fresh pair of eyes "is one of the most important factors in determining the effectiveness of a public authority", as one respondent suggested. Surviving judicial review reinforces an authority's reputation, its strength as an institution and therefore credibility.

Two respondents even suggested that an effective authority also needs to be prepared to lose on appeal, as this helps to clarify the law and there is always a level of uncertainty notably where the authority is dealing with novel conducts or new markets.

There were a small number of respondents who saw this metric as helpful but not indispensable. They noted that this metric was only so long as the court system functioned effectively. The impact of court's decision on an authority's credibility will largely depend on the reviewing court's understanding and competence to address complex competition law issues. The relevance of an authority's record on appeals could also be affected where a court showed excessive deference to the authority which "can

sometimes be counterproductive to the ultimate objectives of competition policy”. One respondent also queried this metric for potentially have a chilling effect on enforcement, notably if the authority’s legal advisers are particularly risk-averse, rather than being willing to take test-cases to court.

7(h) Is seeking to improve consumer benefits/welfare an appropriate indicator for assessing positive outcomes of leadership?

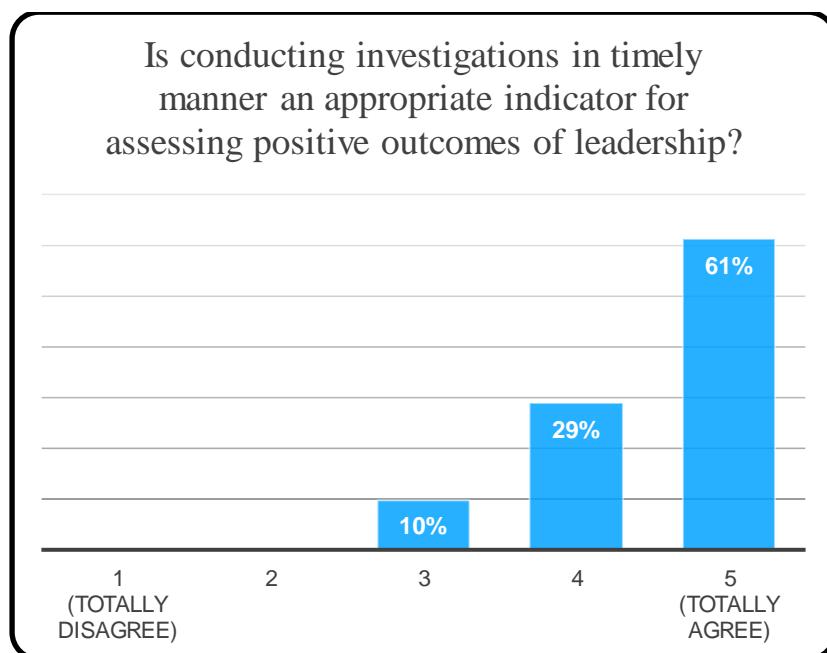


Neatly 90% of respondents (88.7%) agreed or totally agreed that seeking to improve consumer benefits or welfare was an appropriate indicator for leadership (with 64.5% totally agreeing), which is particularly notable score given the ongoing debate on the goals of competition policy. The majority of comments note that consumer welfare (lower prices, innovation, quality and choice, and economic surplus) is the globally accepted objective of enforcing competition law. One respondent noted that “The greater the improvement of consumer benefits/welfare, the greater the positive repercussion. Thus, the greater the impact on public opinion, the greater the influence on other agencies”.

Respondents discuss that being able to quantify positive consumer benefit increases the credibility of authorities as “there is no metric that better reflects the core of why competition law exists. Yet while “consumer welfare was one of the most important factors for determining the effectiveness of a public authority”, quantifying actual improvements to welfare remains difficult but critical.

In addition, a number of respondents highlight definitional issue and that the scope of consumer benefits/welfare remains open to debate and ambiguous at times, reflecting the ongoing policy discussions on the topic. With statements ranging from full support of consumer welfare (which should not be diluted); to noting that consumer welfare was the most important goal, if not the only one; to the key function of competition law being to protect the competitive process (rather than transferring wealth from producers to consumers), with consumer welfare flowing therefrom.

7(i) Is conducting investigations in timely manner an appropriate indicator for assessing positive outcomes of leadership?



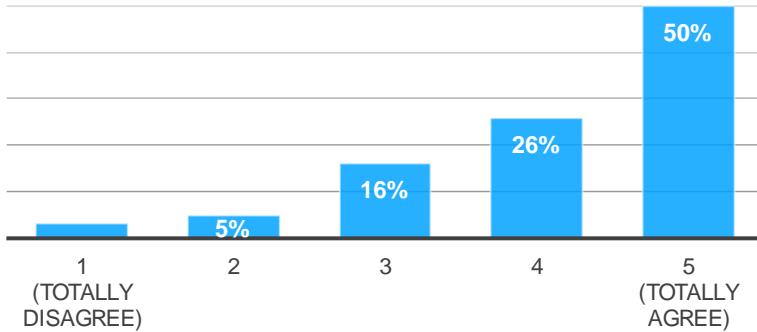
Over 90% of respondents agreed or totally agreed that conducting investigations in a timely manner was an appropriate indicator for leadership (with 61.3% totally agreeing). Many respondents comment that timely decisions are crucial to the effectiveness and reputation of the authority, demonstrating efficient use of resources i.e. strong management high quality staff. Indeed, timeliness is seen as one of the most important factors in determining the effectiveness of a public authority and a basic minimum for any authority with ambitions to lead others. Put differently, as two respondents noted, long and unfinished investigations undermine the ability to lead. Indeed, if proceedings take too long, the final decision will probably not achieve its potential. And even a right decision can be useless. Three respondents also noted that if intervention in the market is required, there is no justification to impose remedies late, with one respondent suggesting that effective enforcement requires

investigations to be conducted within a certain time frame: ideally less than five years.

Responses also highlight the tension between speed and rigor. Timeliness of investigations helps to minimize the legal uncertainty for the market players created by drawn-out investigations, also facilitating access to justice, in the event that a decision requires judicial review. However, the ability to conduct investigations in a timely manner requires a respect for the parties' due process rights and the right of defense. As one respondent noted, "timeliness over substance and proper analysis is pointless" and that quality should not be sacrificed for speed. Indeed, an authority's credibility is enhanced not merely due to the merits of a decision "but also on the way the procedures are conducted". Respondents recognize the challenge facing authorities of seeking a swift conclusion, which ensures due process and reaches the correct decision. This explains why the metric of timeliness, and effectively balancing these tensions, was a reflection of a leading competition authority's capabilities.

7(j) Is having adequate funding from government an appropriate indicator for assessing positive outcomes of leadership?

Is having adequate funding from government an appropriate indicator for assessing positive outcomes of leadership?



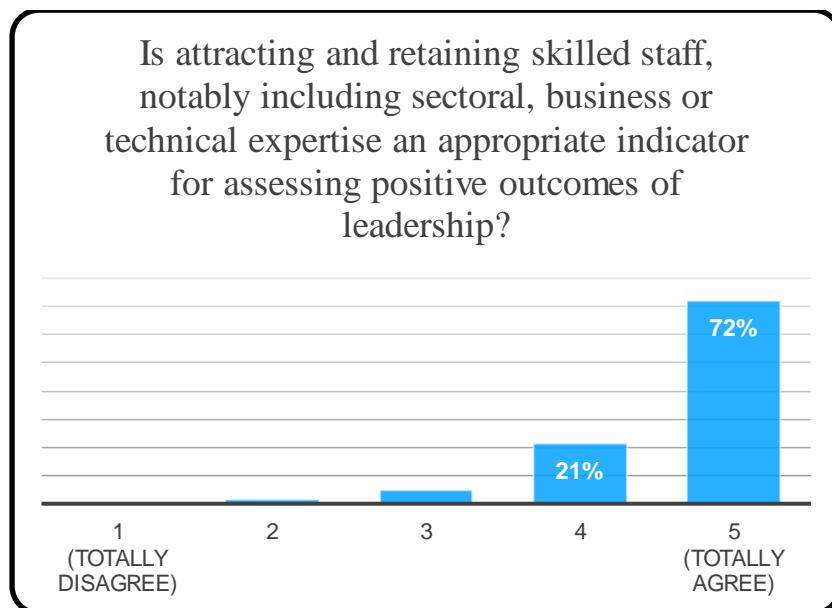
Over 75% of respondents agreed or totally agreed that adequate funding was an appropriate indicator for leadership (with 50% totally agreeing). The majority of comments recognize that access to adequate funding is critical for competition authorities have the resources to effectively enforce competition laws consistently. Respondents highlighted the importance of being able to hire and retain skilled staff, develop necessary tools. Adequate funding is therefore not a measure of success, but often a necessary ingredient for success.

A number of respondents noted that adequate funding was not necessarily a measure of an authority's performance, but rather a reflection of the government's policy priorities and commitment (or not) to competition law. Different jurisdictions have different needs, dependent on their economic development and size. Governments cannot expect significant competition policy results if the authority isn't adequately funded. Yet the general consensus is that adequate resources are critical to enable an authority to take a leadership role in its field, [which implies that government may be conscious that part of its budget will be used to promote its authorities approach overseas.

The question of funding triggered respondent to focus on the connection between the authority and government. Government funding may increase if the authority's priorities are aligned. Respondents expressed concern that funding be granted without compromising the authority's independence. One respondent noted that different pressures may exist if an authority was being accountable to, for example, the ministry of justice or ministry of trade.

Finally, some respondents focused on the term ‘adequate’ resources; whether resources were “adequate” or not, an authority would still have to enforce the law and protect consumer welfare. Authorities should use resources effectively, which is a test of capable management.

7(k) Is attracting and retaining skilled staff, notably including sectoral, business or technical expertise an appropriate indicator for assessing positive outcomes of leadership?



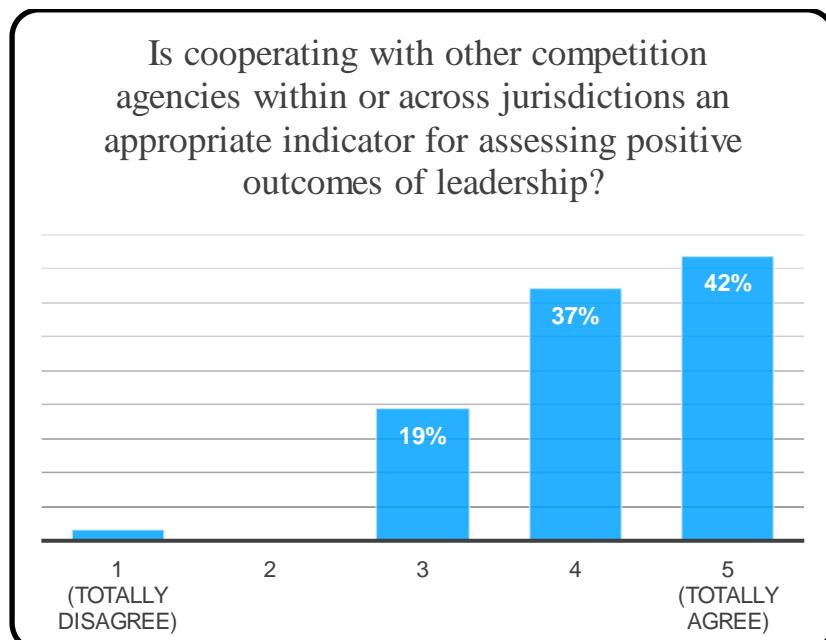
Over 93% of respondents agreed or totally agreed that attracting and retaining skilled staff, was an appropriate indicator for leadership (with 72% totally agreeing). There was overlap with Question 8(j) above, related to resources, as most of the answers to Question 8(j) understood resources as the ability to attract and retain high-quality staff (rather than e.g. investing in technologies or tools for enforcement and advocacy).

Comments reflected the view that attracting and retaining skilled staff was critical for effective, qualitatively high, enforcement of competition law. The ability to recruit staff with robust business experience or technical expertise is increasingly important in understanding market dynamics and how companies operate. Put differently, effective competition analysis and enforcement requires strong technical capacities and complementary skills-sets. As one responded put it “lack of expertise means less capacity to influence others”. Respondents add that attracting and retaining skilled staff was not an indicator of success but a necessary ingredient for success and therefore leadership; one respondent noted that not being able to attract talent is a good indication that an authority will struggle. Finally, respondents noted that attracting and retaining itself was an

indication of good leadership. Employee satisfaction is therefore an important metric.

A number of respondents also commented on the issue of the “revolving door” where authorities are willing to hire from the private sector (and visa-versa). One suggested that there should be no entry or exit barriers in competition enforcement. In particular, the US competition authorities’ status as leading authorities is partly due to the fact that they are better at attracting talented private sector applicants and see government employees move to the private sector. Although there may be cultural resistance or other impediments to this approach elsewhere.

7(I) Is cooperating with other competition agencies within or across jurisdictions an appropriate indicator for assessing positive outcomes of leadership?



Nearly 80% of respondents agree or totally agree that cooperating with other authorities was an appropriate indicator for leadership, with scores rather evenly split between the two. Nearly 20% are neutral. A number of respondents saw international cooperation as critical to lead internationally, as it increases the legitimacy and credibility of a leading authority, with international cooperation being a good way to measure an authority's ambitions. The general benefits of international cooperation (ensuring mechanisms to address cross-border issues, exchanging approaches (especially on novel theories) and ongoing capacity building, developing best practices, understanding competition policy from a broader (less parochial) perspective) which improves performance and the quality of decision making. From the business perspective, cooperating can help to create certainty

and consistent enforcement for global businesses, notably multi-jurisdictional mergers, “is a positive side-effect of a successful and influential agency”. Yet, as some respondents note, the importance and efficacy of international cooperation as a “leadership” factor is somewhat exaggerated and there are limits what one can reasonably expect, as each jurisdiction has a different legal systems and structures. Indeed, one respondent notes that co-operation needs to be discerning as it does not mean that “bad” enforcement decisions should be followed. However, a number of respondents point out that engaging in international cooperation is to be expected, but it is not an indicator of an authority’s good performance. Yet, driving international cooperation would be expected from an authority that seeks to lead its peers as it is: “also means ability to lobby your policy and rules.”

7(m) Is winning international awards (e.g., GCR, World Bank, ICN) an appropriate indicator for assessing positive outcomes of leadership?



In answering whether winning international awards was an appropriate metric for assessing the performance of a leading authority, the scores seemed pretty evenly split; 35.5% of respondents were neutral, 32.3% agreeing or totally agreeing and 32.2% either disagreeing or totally disagreeing (although a fairly high percentage 17.7% totally disagreed).

Comments reflect this split. On the positive side, some respondents feel that winning such awards are indicators of the quality of the authority’s performance, enhancing an authority’s global reputation and credibility - especially when acknowledged by reputable institutions. Awards raise awareness of the

authority's work and make others seek that authority out, while internally awards can be useful to staff. One respondent noted that "Although those awards will always have some degree of failure, it is the best index ever created". However, the criteria on which these awards are granted is important and need to be robust, especially if awards are to inspire authorities.

On the other extreme, some respondents saw this metric as a popularity contests, "totally irrelevant", "are the result of self-promotion" not substance (as one respondent noted "Unfortunately, we've seen instances where some agencies vie for international awards for the sake of winning them and even press the private sector for favorable recommendations". Awards can be "spurious" or "political" and therefore "the least relevant element in assessing the performance of the authority". Awards rarely reflect the actual work developed by authorities and tend to be awarded for exotic cases, rather than factors that reflect a leading approach. In addition, more mature authorities are better able to position themselves to win awards, ignoring the extent to which a young authority may display leading characteristics. Some respondents noted that awards do not necessarily reflect the quality of an organization and many equally or more meritorious organizations do not get awards.

8. What are other good indicators of performance? And what would be poor indicators of performance?

Having reflected on various issues related to "leadership" criteria, respondents were asked about **additional** indicators of performance not previously discussed. What respondents consider positive indicators of performance can be grouped into the following:

1. **Objective economic performance:** A large number of respondents suggested regular ex post empirical assessments by an independent third party, to help understand the long-term impact of competition policy on market structure, applying a counterfactual analysis against consumer welfare goals. It would also help ensure that remedies are effective and proportionate, without undermining competition. As one respondent notes "Agencies should have the strength of conviction to ensure that their policies and enforcement stand up to an effects assessment of the outcomes". Ex post assessments would also help identify the technical quality of decisions and tools to boost efficiency in case handling
2. **Cooperative enforcement:** One respondent suggested that the number of commitments, consent decrees or settlements reached could be seen as a sign of efficient performance. If an authority is able to convince defendants that co-operative solutions are available, the authority could "come across as

competent, credible and professional”. The respondent notes that this depends on whether the commitments, consent decree or settlements are meaningful (and indeed warranted).

3. **Recognition by local constituents:** Recognition by local peers, including lawyers, business academics and judges is considered important. Citations, positive reviews of decisions in academic and practitioner publications, as well as standing before the court could serve as measurements.
4. **Competition authority staff:** Staff retention can be an additional indicator of quality (reinforcing an authority's institutional memory), although a revolving door to and from law firms can also be an indicator of the quality of staff. Limited movement in and out can have positive and negative aspects; increased institutional memory but limited real-world experience.
5. **Public engagement & advocacy:** A number of respondents flagged, as occurred throughout the survey, that the quality of interactions between representatives of the authority and stakeholders is central, as well as engagement with the private sector and those who depend on the authority's actions. Authorities should consult these communities frequently about their policies and generate soft law materials to increase transparency, legal certainty and consistency. This is intimately connected to the degree of competition culture and awareness which can translate into setting international antitrust compliance standards.
6. **International influence:** Not surprisingly, an indicator of leadership amongst competition authorities includes leadership in international fora (e.g., ICN and OECD) which includes leading working groups or working parties, coordinating research, publishing robust working papers, etc. An additional indicator is the extent to which an authority's cases are discussed by peers at international conferences. One respondent noted that performing well at the international level, through cooperation and involvement in discussions with peer authorities, did not necessarily mean that the authority was having much of an impact domestically.⁷⁹ It is therefore important to look first at an authority's ability to fulfil its mandate as a precondition to international leadership.

Performance indicators considered poor, were largely those focused on quantitative metrics, as opposed to qualitative ones (or where quantitative metrics are not enhanced with additional qualitative perspectives). For example, “wins versus losses”, high volume of cases, number of merger prohibitions, high levels of fines. Many of negative indicators help to test positive indicators.

⁷⁹ The example given was of the Canadian Competition Bureau which is respected internationally but is facing domestic challenges largely not within the Bureau's control (for example, overburdened legislation and difficult institutional structure).

For example, inconsistency, negative substantive outcomes on appeal, deterring pro-compleutive conduct, overly burdensome procedures, excessive industrial policy influence, “headline-grabbing” cases not supported by positive impacts on consumer welfare, low staff morale and high staff turnover, lack of stakeholder trust and negative reviews of an authority’s decisions in academic and practitioner publications.

9. In your view, what are the pros of competition agencies seeking to be “leading” amongst their peers?

Question 10 asks what the benefits were of leadership ambitions may be. Respondents provided a series of perspectives⁸⁰ on what the benefits should be for the authority with leadership ambitions:

- **Improved quality of national competition law and policy:** Leadership ambitions should result in an increased investment by the authority to reach such status, meaning more qualified staff as well as motivating the authority continuously work to the highest standards and develop insightful policies, deliver robust and consistent decisions, quality reports and other output. In particular, it is a significant motivator for agency staff to excel in their investigations and decision-making, which also increases an authority’s ability to attract talented staff. As one respondent noted, such ambitions means that an authority is more likely to achieve their goals. A number of respondents noted simply that such leadership ambitions, as with any activity of a competition authority, should lead to increased consumer welfare. Leadership ambitions should also result in the authority to be more transparent in its approaches and communicate to stakeholders, if it is to influence others.
- **Improved quality of international competition policy:** Leading by example enables that authority to engage in international cooperation and should incentivize other authorities to improve their own regulatory frameworks, due process and thoughtful enforcement (through “peer-learning”). Cooperation builds capacity and improves the quality of decision making, including the harmonization of competition law across jurisdictions, multi-lateral coherence and consistency, including the adoption of global standards and best practices. The result should be a reduction in the number of divergent decisions is positive for economic actors. As one respondent noted, however, while higher harmonization of methodologies and approaches is laudable, convergence this is better achieved through cooperation

⁸⁰ Just shy of 10% of respondents expressed skepticism about the positive outcome of leadership ambitions; rather that leadership should be a by-product of good work. These are addressed in Question 11.

among peer authorities, rather than through the leadership of a specific authority.

- **International influence:** A number of respondents noted that well-executed leadership ambitions will mean that authority enforces national competition law with an eye to international developments but it will also increase that authority's capacity to shape decisions in other jurisdictions (as one respondent noted "for the microeconomic needs of [the leading authority's] country") because the leading authority has devoted resources to address challenges that other authorities do not have the capacity to think about in detail, but can adopt.

Accordingly, it should be possible to examine those authorities with leadership ambitions to these metrics; how effective an authority is within its jurisdiction, whether there is increased international convergence on the area of leadership and whether the leading authority has influenced the competition policy of another authority.

10. What are the cons of competition agencies seeking to be "leading" amongst their peers?

In contrast to Question 10, this question asks what the negative elements are to an authority seeking to lead their peers. Respondents coalesced around the concerns related to the motivations for being a "leading" authority resulting in distorted impacts:

- Seeking to be the first authority to issue a decision or a new rule with slight regard to the outcome on consumer welfare, whether the new rules are clear, effective or prone to Type-II (over enforcement) errors, effectively resulting in a "race to the bottom". This particularly true where exotic cases or novel theories of harm are being pursued that are not based on sound economics. As one respondent noted, not every new theory is a good theory, and authorities should guard against novel theories that move away from the foundations of competition law.
- Linked to the above was the often-voiced concern that a desire to lead may result to biased decision-making, even if only in prioritization and resource allocation, distracting an authority from addressing more equally important yet less visible issues (notably local issues rather than international one). This situation risks making an authority less predictable.
- This is also connected to instances where authorities seek to publicize decisions in the media or advocate decisions, rather than focusing on the day-to-day work. In particular, this can be a concern where publicity is linked to individual officials and not the institution.

- Where the notion of a “leading” authority is based on ambiguous metrics e.g. number of cases, severity of remedies, etc. (see poor performance indicators described in question 9 above) which detracts from actions to enhance consumer welfare.
- Where leading is essentially based on an attempt to export a particular ideology.
- Focusing on issues that may be of relevance to peer authorities but are not important from an internal national perspective.
- An authority’s desire for higher visibility (including steering advocacy to win international awards) can result to increased scrutiny from the public, businesses, and political entities, putting pressure on the authority.
- Where the desire to “lead” goes beyond leading by example but rather interfering in other jurisdictions, especially where the basis for leadership is poorly founded or controversial. It was pointed out that those authorities seeking to follow a leader should not merely copy another jurisdiction’s experience without undertaking their own analysis as to the appropriateness of “following”, given the specificities of different jurisdictions, economic development, legal traditions, and market structures (although inconsistent or divergent decisions among different jurisdictions also raises compliance costs to business).
- Finally, it was suggested by a number of respondents that seeking “leadership” could result in unnecessary rivalry and indeed a lack of incentives to cooperate in certain cases, especially those in which they see an opportunity to “lead by differentiation”.

Effectively, respondents’ concerns effectively boil down to situations where an authority prioritizes leadership for reasons other than consumer welfare or encouraging investment by business, and which detract and distract that authority from thoughtful, well-founded and timely decisional practices.

11. In your view, how could the ‘pros’ of competition agencies seeking to be “leading” amongst their peers (indicated in Question 9) be amplified?

Respondents, of which there were 38, identified three means to amplify the benefits of leadership:

- First, is to increase authorities’ accountability by requiring rigorous ex post quality control and cost-benefit analysis, public evaluation, surveys, peer reviews, assessments by academics and other enforcers, as well as ensuring that authorities are open to receiving feedback. The focus should be on quality of an authority’s interventions, its decision and the effectiveness of remedies. Praised for careful analysis and

technical work would make it easier to for others to be inspired to do the same

- Second, is to facilitate exchanges between authorities and formalize international cooperation projects (e.g. twinning projects or key performance indicators for effective international cooperation) to share common experiences and further harmonized regulatory standards are across jurisdictions.
- Third, is to increase meaningful engagement with a wider set of stakeholders (private practitioners, business, consumers, academics etc.) to assist authorities and minimize the risk of interventions having unintended consequences. This equates to more effective communication and transparency by the authority, including through intellectually robust decisions responding to the needs of the jurisdiction, developed by motivated, technical and qualified staff. Two concrete suggestions were to ensure that important decisions were translated into English and ensure more revolving-door policies to great a better understanding of business and regulatory incentives.

12. In your view, how could the 'cons' of competition agencies seeking to be "leading" amongst their peers (indicated in Question 10) be mitigated?

Most respondents noted that mitigating negative impact of (misguided) leadership ambitions could be addressed by undertaking the actions outlined in responses to Question 10. This includes:

- “Peer reviews, internal and external quality checks, periodic evaluation reviews, opinion surveys, among others”, as well as conducting thorough studies before implementing new rules and having key performance indicators for cases, in order to focus on substance, rather than e.g. high fines or “spectacular” remedies.
- International fora boost collaboration that instils mutual support and appropriate conduct, mitigating any lack of coordination. Emphasizing collaboration and dialogue should trump any league table, ranking or race to be “first”.
- Transparency and accountability measures were also identified as a means to mitigate the risks of authority overreach. Transparency enables outside groups to correctly assess the competences of an authority, and respondents suggested that “The arbitrators of what agencies are leading needs to comprise a diverse group of individuals that are aware of what is happening outside of the “center””, requiring engaging with dissenting voices, including from civil society and academia, who should also contribute with “more critical analysis in professional publications”. Proactive and

meaningful engagements with the private sector is needed to ensure that an authority's conduct does not have any unintended consequences. One respondent also suggests that "Courts and public opinion have to be a real constraint on possible arbitrary action by agencies", which transparency enables, at least for public opinion.

The balance needs to be struck between transparency and scrutiny and an authority's independence and impartiality.

Further suggestions include:

- **Prioritization:** Ensuring that prioritization criteria exclude a focus on international impact but rather focuses on strengthening the institution's credibility at national level. In particular, as one respondent notes, civil servants value authoritativeness and effectiveness over international "leadership" (although other respondents felt otherwise). A number of respondents noted that authorities should be less focused on "cutting edge topics of little practical relevance or so little tested that the remedy may end up being worse than the alleged infringement" and rather focus on day-to-day work so that "all government policy doesn't appear to fall on shoulders of competition agencies". An authority's objectives should therefore be balanced, and any international work should align with an authority's national goals and work plans.
- **Resources:** Authorities should be sufficiently well funded to be able to retain experienced staff, whose professionalism will enhance internal support systems, ensure morale and maintain alignment with priorities, which can help to prevent conflicts.
- **Following with purpose:** One respondent remarked that peer authorities, who might be tempted to follow the example of a leading authority, should not only do so considering the local particularities but also do so with a level of caution, which would mitigate misguided leadership ambitions.

13. Would it be beneficial to have a uniform understanding of "Leadership" of competition policy and enforcement across jurisdictions, including common metrics and parameters?

Over 50% of respondents believed that a uniform understanding of what comprises "leadership" would be beneficial and would generate positive impacts (even if it is not easy to necessarily identify metrics). These would need to be objective and aligned with traditional competition policy goals. Common parameters proposed include timelines; respect to due process or procedural fairness; legal certainty; robust economic analysis (including

efficiencies).⁸¹ A series of metrics can help authorities and other groups to triangulate using a series of metrics appropriate to that jurisdiction. International organizations such as the OECD Competition Committee could help develop parameters and metrics.

Respondents also cautioned that such concepts need to be common across jurisdictions and the peculiarities of each country need to be factored in. A single, inflexible metric could be detrimental impacts if applied indiscriminately. International “leadership”, one respondent noted, needs to be grounded in principle to help develop parameters and metrics. The respondent suggested that consumer welfare could serve well but as it is now being questioned, another core principle needs to take its place it. International “leadership”, one respondent noted, needs to be grounded in principle to help develop parameters and metrics. The respondent suggested that consumer welfare could serve well but as it is now being questioned, another core principle needs to take its place it.

Seven respondents answered in the negative, because it appeared difficult (if not impossible) to generalize and define common metrics across authorities or even desirable to develop a value for a uniform understanding of "leadership" between competition authorities. A further four respondents were unsure, given that there were pros and cons to having the uniform understanding of "leadership". Rather, the ideal is to have authorities seek to do their best and compete naturally on meritorious issues.

14. When thinking about its “leadership”, which stakeholders (e.g., peer national or international authorities and agencies; undertakings, industries or sectors; consumers; citizens; government and parliament; courts etc.) do you think should the agency take into consideration or prioritize?

This question seeks to gauge which stakeholders are of particular importance to authorities in any leadership ambitions. Rather than seek a grading between stakeholders (given the broad set of stakeholders) the question focuses on individual groups (although these groups are not broken down e.g. consumers in general versus consumer associations).

Interestingly, 70.5% of respondents (nearly 100% of respondents answered these questions) agree or totally agree that **foreign, peer competition authorities** should be a priority in considering leadership ambitions. This appears logical, yet that 70.5% of

⁸¹ These could be the diametric opposite of what is considered a “race to the bottom” in terms of excessively quick decisions, high fines, cursory legal analysis, lawyers’ ranking etc.

respondent also greed or totally agreed that **sectors of the economy or undertakings** were a priority (split evenly between agreeing or totally agreeing, with 23% of respondents being neutral). It could therefore be said that the interests of undertakings are on a par with peer authorities that a “leader” seeks to influence. Yet respondents overwhelmingly felt that it was consumers and citizens who are the most prominent stakeholders that authorities should prioritize when considering leadership ambitions. This broke down to 83.6% agreeing or totally agreeing (with 54.1% totally agreeing) that **consumers** are the priority and 78.6% agreeing or totally agreeing that **citizens** are a priority. This reflects both the consumer welfare approach and the public function of a public authority, but also that the beneficiaries of leadership ambitions should ultimately be local consumers and national citizens.

Thereafter, 62.3% of respondents agreed or totally agreed that **courts** should be a priority (29.5% of respondents were neutral); 58.6% agreed or totally agreed that other **national governmental bodies and regulators** should be a priority; only 55% agreed or totally agreed that the authority’s government should be a priority (with 28.3% being agnostic); that fell to 40% of respondents disagreeing or totally disagreeing that the **national parliaments** were a priority (with 40% being neutral). The following additional stakeholders were identified; agency staff; the private bar and law firms, economists and economic firms, academics (identified by a majority of respondents) and research institutions, civil society organizations, advocacy groups and think tanks, as well as the press.

15. Are competition agencies effectively balancing the interests and concerns of these various stakeholders, notably if interests are divergent? If not, how can this be improved?

The question essentially asks how authorities can best balance the different, and at times, competing or divergent stakeholders’ interests. As one respondent noted, “Effective balancing of divergent stakeholder interests is crucial for maintaining credibility and achieving optimal policy outcomes”.

A key element that respondents raised was what criteria authorities should apply when balancing different interests. Some suggested that the criteria should be different depending on the stakeholder. For example, the relevant criteria for government could be competitive neutrality; for courts, it might be legal certainty. Reflecting the debate on the centrality and scope of the consumer welfare test, some respondents believed that authorities should prioritize consumer welfare, whereas others felt that the objective of the consumer welfare standard should be adapted to enable a better balance between different interests. One

respondent suggested that only prioritizing companies or consumers limited the ability of an authority to decide freely. Indeed, another respondent suggested that “There is too much focus on listening to companies and consumers and less on people as citizens and thinking of antitrust law as an instrument of government public policy”. There is a balance between prioritizing (or deprioritizing) one group over factoring in other more remote stakeholders (e.g. other authorities).

Yet there was criticism of an over-expansive approach that would draw in different societal issues “in practice this will lead to agencies applying contradictory mandates, which in turn will lead to bad performance and unintended consequences”. Unclear policy goals result in unclear standards and the more authorities need to make political choices; the less technical decision usually turn out to be as decisions are taken out of the hands of experts. Authorities should be anchored the national constitution in order to balance divergent interests. This can be particularly relevant in order to limit political influence or have senior management of authorities appear to cater more to the wishes of those who appointed them to their positions. As a result, a number of respondents noted that the only way to balance divergent interest is through specialists “conducting technical, apolitical analysis, ensuring due process rights, being transparent and acting timely”. Therefore, recruiting and retain talent is key.

Interestingly, 25% of respondents all felt that authorities did not effectively balance the different stakeholder interests (though 3 felt authorities did strike the balance) and 12% felt that authorities tried to strike a reasonable balance but that this was a difficult ask, not always achieved and therefore there was room for improvement. Of course, several respondents noted that the answer very much depended on the jurisdiction. Not all respondents provided such definitive views but there was a recognition that, in developing competition policies, authorities needed to “decide which stakeholders to pay more attention to” and all policy choices require trade-offs.

However, the most significant recommendation provided by respondents was to organize more opportunities for regular open dialogue, engagement and cooperation with the users of the antitrust system (more public consultations, hearings, and other forms of feedback mechanisms) to identify areas for improvement or common ground. Armed with that input, authorities can use their best judgment and make transparent decisions on the basis of principle, not politics. Regular updates and detailed reports also help with transparency that stakeholders expect and need to engage. Two respondents suggested the creation of advisory panels, representing diverse interests as a mechanism to address conflicting interests.

16. The best practices listed below have been recommended by some international organizations (e.g., ICN; OECD; UNCTAD; ECN) and academic literature. In your view, from 1 (Totally Disagree) to 5 (Totally Agree), which of these best practices matter most for achieving positive outcomes in seeking the “Leadership” accolade?

Respondents were asked to rate and comment on which international best practices matter most in achieving positive outcomes when seeking to be a leader amongst peer authorities. Although respondents were not asked to rank these from the highest to lowest, the responses clearly indicate a hierarchy. In particular, the highest scores were reserved for procedural fairness and transparency and institutional independence, both with 95% of respondents in agreement or total agreement (and notably the flip side of the same coin); timeliness of decision-making, the use of appropriate tools, adherence to sound economic principle, the protection of confidential information and legal privilege as well as being well funded, all with 93% in agreement or total agreement. Thereafter, predictability across competition law, the recruitment and retention of skilled staff and clear and coherent objectives/strategy in the low 90% in agreement or total agreement.

16(a) Adherence to an agency's formal priorities or work plan
Over 75% of respondents agreed or totally agreed that adherence to an authority's enforcement priorities or work plans, which helps prevent authorities losing focus and chasing “fashions” and respondents referred to benefits such as transparency, accountability, predictability, reliability, focus, objectivity, certainty and consistency. However, nearly 20% of respondents were neutral on this issue. A number noted that leadership requires flexibility in order to be responsive to emerging crises or new challenges, so this best practice remains one indicator.

16(b) Clear and coherent objectives and strategy, communicated to staff and external groups

Although a number of respondents saw some overlap between formal prioritizations or work plans and objectives or strategies 90% of respondents agreed or totally agree with this metric; a significant increase demonstrating the importance of clearly expressed goals. Again, respondents flagged the impact of clearly understood objectives as bringing transparency, credibility, consistency, predictability, focus and trust but also noted the importance for agency staff, their focus and improved efficiency.

16(c) Adherence to sound economic principles

A total of 93,3% of respondents agreed or totally agree with this metric, with nearly 70% totally agreeing. Decisions based on

sound economic principles establishes an authority's technical performance and enhances the soundness of an authority's decisions and actions. This is particularly true if an authority has its own resources to produce a high-quality economic analysis. Although antitrust law is, in principle, the application of economic principles for effective promotion of competition and consumer welfare, much depends on a jurisdiction's legal system which could result in a dilution of sound economics with excessive reliance on non-economic elements such as overly legalistic approaches or political or populistic actions. Some respondents question how to define "sound" economic, which could be subjective, depending on the school of thought (such as the Chicago or New-Brandeisian schools) and which evolve over time.

16(d) Analytical sophistication and thought leadership

A total of 88,3% agreed or totally agree with this metric, with 70% totally agreeing that intellectual analytical sophistication and thought leadership was critical. Authorities are technocratic institutions that need to demonstrate rigor when regulating the economy and impact many millions of consumers. Analytical sophistication was a minimum to ensure predictability and credibility, if an authority was to position itself as a source of expertise and guidance. Such rigor needed to be expressed in well-reasoned and well-articulated decisions or policy positions - especially on new or difficult issues.

16(e) Doctrinal significance or influence of decisions

A total of 77,6% of respondents agreed or totally agree with this metric (with a little over 22% being neutral) to the importance of the influence of an authorities' decision and doctrine. Respondents noted that as an authority can only address a small portion of the business activities sound so developing clear, consistent legal principles, based on strong analysis, are essential for business and to achieve deterrence. However, it was noted that seeking to influence other authorities should not be a goal of an authority but rather a demonstration, *ex post*, of the authority's impact. It was also noted that authorities should avoid academic exploration but rather focus on technical analysis, which will also help avoid that doctrine driven by ideology rather than the quality of analysis and thinking.

16(f) Procedural fairness and transparency - impartiality / non-discrimination /due process / engagement with the parties

A total of 95% of respondents agreed or totally agree with this metric, 83% totally agreeing, that procedural fairness (and all that implied i.e. transparency, impartiality, due process and engagement) was critical for the legitimacy of any regime. Upholding these elements was essential for sound, accurate, and

fair decisions and avoid arbitrariness, especially where an authority is seeking to explore or promote new ideas.

16(g) Protection of confidential information and legal privilege

Just over 93% of respondents agreed or totally agree with this metric, with 71,7% totally agreeing that the protection of confidential information and legal privilege were critical for the authority to be trusted by stakeholders, as these are fundamental to the rule of law. Breaching these principles will undermine the integrity of investigations and open up decisions to appeal. On the other hand, respecting these rules will ensure that companies cooperate with the authority and increase an authority's access to information that may be important to their analysis. The right to access information must be effectively balanced against the right to privacy (also applicable to respondent companies in antitrust investigations).

16(h) Timeliness of decision-making and proceedings

Just over 93% of respondents agreed or totally agree with this metric, with 61,7% totally agreeing that timely decision-making and proceedings was a critical characteristic for a leading authority, so long as due process was ensured. While timeliness increases an authority's legitimacy, delay can result in delayed remedies and not deterring anti-competitive conduct (while potentially discouraging pro-competitive conduct or transactions).

16(i) Proportionality - enforcement/merger review avoids unnecessary costs and burdens on parties

Just over 88% of respondents agreed or totally agree with this metric, with 50,8% totally agreeing that proportionality in enforcement minimizes costs and regulatory burdens on the parties. A little over 10% of respondents were neutral. It was highlighted that regulatory burdens reduce net value of competition law enforcement and can deter pro-competitive conduct. Rather proportionate cost or burden will build trust and demonstrate that an authority is pragmatic and understands the practical impact of investigations on the parties or of compliance on the market more broadly. Yet assessing what is "proportionate" or disproportionate may be difficult to assess, largely depending on the complexities involved, which makes it challenging to have as a strict requirement. While avoiding unnecessary costs is important "The goal cannot be to minimize the burdens of the parties".

16(j) Using appropriate tools (including enforcement powers) to address problems

Over 93% of respondents agreed or totally agree, with 57,8% totally agreeing, that leading authorities should use appropriate

tools in their work. Respondents referred to proportionality and transparency, legal certainty and predictability as well as procedural efficiency, all critical to ensure compliance and effective deterrence. The use of inappropriate mechanisms to address perceived competition challenges will compromise any resulting enforcement decision, undermining the effectiveness of the authority to fulfil its tasks.

16(k) Internal checks and balances

A total of 81.3% respondents agreed or totally agree (with 61% totally agreeing) on the importance of internal checks and balances within the authority. Uniformly comments highlighted that such mechanisms (peer review, “fresh pair of eyes”, split between investigatory and decision-making teams etc.) ensure sound decision making and decrease likelihood of errors or arbitrary decisions, as well as limiting prosecution bias affecting objectivity. Internal checks and balances would lead to better decisions. Checks and balances strengthens the authority’s governance mechanisms, improves accountability, increased predictability and strengthens the authority’s legitimacy.

16(l) Predictability / consistency across cases and areas of competition law

Nearly 92% of respondents agreed or totally agreed, with 65% totally agreeing, with the need for predictability across areas of competition law as a necessary condition for leadership. The legal certainty created by such consistency fosters trust in the system and make it easier for stakeholders to comply with the law or take appropriate business decisions. Within these parameters, authorities need to have adaptability to address new challenges. While consistency is largely feasible where the underlying facts substantially similar, predictability and consistency are impossible to guarantee 100%, especially as case law develops and principles evolve.

16(m) Deterrence effect of enforcement decisions

A total of 86.6% of respondents agreed (38.3%) or totally agreed (48.3%) that the deterrent effect of enforcement decisions on anti-competitive conduct was relevant metric for leadership, as it generate predictability and compliance with the law. The level of deterrence can be difficult to establish. It was noted that deterrence helps authorities focus resources where deterrence fails.

16(n) Activity levels (number of cases, number of mergers challenged/blocked, sanctions imposed)

Nearly 50% of respondents were neutral on the level of activity being a relevant metric, with nearly 30% agreeing. There was a general recognition that numbers in themselves are not meaningful (and could be misleading), with quality of analysis in

decisions being the more important criteria for leadership. While quantitative metrics were easier to show this could create a distorted image of an authority's track record. However, cases that show that the law is vigorously enforced is positive, to the extent these encourage compliance. Volume may also indicate that the authority is gathering a richer experience.

16(o) Number of high profile-cases

Responses were split; while 50% of respondents either agreed or totally agreed that high profile cases were a relevant metric, 38.8% of respondents were neutral with 11.6% disagreeing or totally disagreeing. Comments reflected this. An authority's ability and resolve to address significant market challenges and run multiple high-profile cases is critical and, if the facts call for it, is necessary. High profile cases, as long as they are reasonable, consistent and robustly founded, are another way of creating deterrence and a competition culture. In other words, a high profile case "could mean acting where it really matters". However, a number of respondents warned against enforcing for the wrong reasons and falling into the trap of populism. In other words, "Publicity should not be a priority". Importantly, pursuing high profile cases should not distract from the important yet less glamorous work. As before, it is the quality of the analysis that is a more important criterion.

**16(p) Have a positive impact on economic performance
(economic growth, productivity, innovation, lower cost,
lower price, improved quality)**

Nearly 80% of respondents totally agreed that a positive impact on economic performance was a key criterion, with nearly 60% totally agreeing. Almost 17%, however, were neutral. Respondents recognized that the ultimate goal of competition law was to have a positive impact on economic performance, impacting prioritization. However, while the debate about the goals of competition policy (e.g. decreasing inequality or transforming an economy) was also reflected in the comments, the positive economic effects of competition policy was still recognized the overriding goal. This was notably important for engagement with the government. On the other hand, there was also broad recognition that economic effects were very difficult to measure in convincing quantitative terms, and that overall economic performance may at times not even be within the control of the competition authority.

16(q) Success in appeals before the courts

Nearly 67% of respondents agreed or totally agreed (with the majority of 43.3% only agreeing) that success in appeals was a necessary condition for leadership; 25% were neutral. Obviously, success before the courts legitimizes an authority's approach and increase its credibility. Effective judicial oversight also increase

the quality and consistency of enforcement decisions. As one respondent noted that “Success in appeals before the courts means the agency has the opportunity to play a role in shaping competition laws and policies on the basis that the agency’s decisions are well- founded and credible and while promoting transparency and stakeholder involvement”. An enforcement decision should be able to withstand judicial scrutiny, but one respondent noted that prioritizing such “safe” case should not necessarily come at the expense of an authority’s willingness to pursue novel cases. In such instances, losing cases (notably novel ones) should not necessarily be seen as a failure so long as the authority’ has adhered to the evidence-based approach and robust theories. However, a number of respondents noted that the relevance of this metric depends on the institutional environment, not only between lower (often more specialized) courts and higher courts, but also the institutional structure in the jurisdictions where authorities need to have the court support their enforcement action. In addition, some courts “might not be prepared to review antitrust cases in specific jurisdictions”.

16(r) Cooperation with other competition agencies

Nearly 26% of respondents totally agreed and 50% agreed that cooperation with other agencies was a necessary condition for leadership. A little over 20% of respondents were neutral on this metric. Respondents commented that cooperation should have the effect of increasing legal certainty and predictability, reducing regulatory burdens and costs as well as potential contradictory decisions. Harmonization of approaches and principles also serves to boost best practices and improve methodologies and even sharing of resources. It avoids “parochial attitudes” by placing competition issues or investigations in a broader context, demonstrating an authority’s openness to address multi-jurisdictional business effects. From a repetitional perspective, cooperation assists in international recognition and can boost an authority’s legitimacy. From a leadership perspective, one respondent noted that “The greater the contact with other agencies, the greater the influence the agency may achieve”. However, another respondent noted that “[cooperation with other agencies] is useful but does not guarantee a good outcome”.

16(s) Establish evaluation programs to routinely measure performance (as defined in various ways by agencies and ICN)

A total of 70% of respondent agreed or totally agreed that regular performance assessments were a necessary condition for leadership. Nearly 42% of respondents agreed and a little over 28% totally agreed; a little over 23% were agnostic. Although this metric did not score highly, the comments were fairly clear in their support for regular performance assessments. Not only did respondent reflect the view that regular performance assessments

should be undertaken by all authorities, because “What cannot be measured, cannot be managed” but that international benchmarks would be ideal, to achieve a high level of consistency. Routine self-reflection and, importantly peer review or third party feedback was critical for authorities to improve their activities and ensure that key performance indicators have been achieved. Indeed, it was considered good administrative practice and a necessary condition for accountability, and indeed, leadership. Obviously, performance assessments have to be based on objective criteria and realistic (to avoid bias), focused on the authority’s core objectives.

16(t) Accountability to the public; to Parliament; to government; to courts?

Over 80% of respondents agreed or totally agreed (almost equally split between the two) that public accountability was critical (although 18% were neutral). Comments uniformly noted that accountability to the public is a fundamental element for the credibility and legitimacy of a competition authority; external checks were a key criterion of a democracy and necessary to ensure future support. It was important to ensure that an authority’s independence was still tethered to broader realities. As one respondent noted “Nothing like appearing in front of a [parliamentary] committee to force an agency to move out of its comfort zone and hear what the broader public thinks of its work”. Key was accountability of competition authorities to the public (though to a lesser extent to parliament, to government and to courts). However, a number of respondents noted that to whom a particular competition authority is accountable depends on a country’s legal and institutional structure. For example, in the U.S., the DoJ’s Antitrust Division is part of the executive branch, while the FTC is an independent agency answerable to the U.S. Congress.

Accountability was, in this context, a nuanced issue. One respondent asked, “Should the public have the right to seek to replace agency heads if they disagree with certain policies and cases?” This form of accountability would change the nature of enforcement as authorities would likely focus more activities that are directly understandable to consumer, potentially leading to a “public popularity contest”. Respondents also raised the issue of independence; the risk that political accountability could translate to political enforcement. Accountability and transparency are mandatory for an authority’s credibility (and leadership status) but must be done in a way to preserve the authority’s independence.

16(u) Institutional independence from government, parliament or avoiding regulatory capture

Over 93.5% of respondents agreed or totally agreed, with over 65% totally agreeing, that independence was a necessary

condition for leadership. Institutional independence is paramount to ensure objective, apolitical competition law enforcement and impartiality in decision-making processes. Independence avoids regulatory capture or manipulation by populist forces. While independence is key, input from executive agencies regarding policies and priorities remains important (though not case-specific input) and must be conditional on accountability mechanisms, such as transparency and checks & balances.

16(v) Recruitment and retention of skilled, specialist staff

Over 91% of respondents agreed or totally agreed, with 67.8% totally agreeing, that the recruitment and retention of skilled, specialist staff was a necessary condition for leadership given the complex nature of competition law. The quality of staff is synonymous with the level of professionalism of the authority, its objectivity and apolitical enforcement. This score highlights the importance of adequately training staff and leading authorities training and capacity building of the newly developed authorities.

16(w) Being well funded in proportion to the mandate

Over 93% of respondents agreed or totally agreed, with 53.3% totally agreeing, that effective funding was a necessary condition for leadership, as adequate funding enables it to effectively execute its mandate and ensures an authority's freedom of action i.e. independence. Many respondents noted that funding was directly connected to the quality and retention of qualified staff (see above), as well as access to necessary technological resources. One respondent noted that "if overfunded, an agency will start inventing issues/cases to pursue" which undermines its leadership capabilities.