

ICN Guiding Principles for Procedural Fairness in Competition Agency Enforcement

Impartial Enforcement

Competition agencies should conduct enforcement matters in a consistent, impartial manner, free of political interference. Agency officials should not have relational or financial conflicts in the matters on which they work. Agencies should not discriminate on the basis of nationality in their enforcement.

Effective Enforcement

Competition agency enforcement should be effective and capable of identifying, prioritizing, and addressing competition law violations. Agencies should have sufficient investigative powers and their use should be adapted to the needs of the matter. To ensure effective enforcement, competition agencies should have tools and rules that enable them to cooperate with other public agencies or foreign counterparts.

Transparent and Predictable Enforcement

Competition agencies should conduct enforcement matters under transparent rules and practices that provide parties under investigation with timely notice, as appropriate to the type of matter, that an investigation has been opened and its subject matter, agency concerns, allegations, and supporting evidence. Enforcement decisions should be transparent and explain the findings of fact, relevant legal and economic analysis, and any commitments or sanctions.

Meaningful Engagement

Competition agencies should seek and take into account relevant information and views from parties and third parties to inform their consideration of enforcement matters. Agencies should offer meaningful communication with parties on significant factual, legal, economic, and procedural issues at key points during enforcement. This includes opportunities to meet with agency officials to discuss the status of the investigation and the merits of the case.

Objective and Sound Enforcement

Competition agencies should review and examine their conclusions and theories of harm, applying sound economic and legal analysis to support informed decision making. Enforcement decisions should be based solely on the facts and evidence, both inculpatory and exculpatory, obtained through investigation.

Opportunity to Respond

Competition agency enforcement proceedings should include opportunities for parties subject to possible adverse findings to review evidence, respond to the agency's allegations of anti-competitive conduct, and present evidence and their views.

Judicial Review/Appeals

Competition agency enforcement proceedings should include the right to seek impartial review by an independent judicial body.

Confidentiality Protections

Competition agency enforcement proceedings should include a process for appropriate identification and protection of confidential business information and recognition of privileged information. The decision to disclose confidential information should include consideration of the confidentiality claims, rights of defense, rights of third parties, incentives to provide information, effects on competition, and transparency to the public.

Efficient and Timely Investigation

Competition agencies should conduct enforcement within a reasonable time, appropriate to the circumstances of the matter, and avoid unreasonable costs and burdens for parties, third parties, and agencies.