



# Report on agency effectiveness through organisational design

Agency Effectiveness Working Group



International  
Competition  
Network

Report on agency effectiveness through organisational design, 2019

International Competition Network  
Agency Effectiveness Working Group

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## Acronyms and abbreviations

AEWG	Agency Effectiveness Working Group
APEC	Asia-Pacific Economic Cooperation
ECN	European Competition Network
e.g.	for example [exempli gratia]
i.a.	among other things [inter alia]
ICN	International Competition Network
i.e.	that is [id est]
NGA	Non-government advisor
OECD	Organisation for Economic Co-operation and Development
RFI	request for information
UNCTAD	United Nations Conference on Trade and Development

## Executive summary

The aim of this report is to share experience among competition agencies in order to improve agency effectiveness. The report explores the correlation between competition agencies organisational design options and agency effectiveness. In this context, the term *organisational design* refers to the structure and functioning of the organisation. There are links between the organisational structure, the functioning of the organisation and agency effectiveness. This is an important finding, considering the variety in human and financial resources, the political environment and the particular history that have led to the creation of the competition agencies, from the oldest agency (1870) to the youngest agency (2016) and from the largest agency (3 500 members of staff) to the smallest agency (3 members of staff).

### **Some of the headline findings from the survey are:**

- All competition agencies are delegated additional functions beyond enforcement of competition laws;
- the choice of an organisational structure is correlated to the size of the competition agency. Small scale agencies tend to have a structure where units are based on law that is being enforced, while large-scale agencies tend to have a hybrid structure;
- the single most common structural form used by agencies is the hybrid structure, which refers to a combination of different functional and divisional structures;
- all competition agencies employ a mix of lawyers and economists;
- all competition agencies tend to favour experience sharing, i.e. a combination of legal and economic expertise in case teams;
- the existence of specialised (separate) units/departments tend to correlate with the size of the competition agency;
- 80% of the respondents have specialised legal units;
- 68% of the respondents have specialised economist units;
- 63% of the respondents have specialised international units;
- 21% of the respondents have specialised enforcement compliance, order, settlement or remedy unit/department;
- 57 % of the respondents have other specialised units;
- 74% of the respondents have experienced a change in the organisational design of its competition enforcement function in the last ten years;
- more than 50% of the small agencies have experienced a change in the organisational design, compared to middle-sized (82%) and large agencies (79%) and
- the most common impetuses of a re-organisation are as a result of an evaluation of working methods (“internal”) or additional functions having been added to the competition agency (“external”).

From the survey responses it is evident that competition agencies face a number of challenges with their organisational structure and the functioning of the

organisation. First, it is clear that the choice of different organisational structures and the functioning of the agencies in terms of case team structures, involve a number of trade-offs and the weighing up of different, sometimes conflicting, factors in the promotion of effectiveness, efficiency and flexibility. For example, the choice of one structure may encourage sector expertise (market knowledge of a specific industry or market) at the expense of expertise in investigating specific types of infringement (instrumental expertise), or vice versa.

However, different structural and non-structural mechanisms can be implemented to offset or address the trade-offs. For instance, a structural measure to bridge gaps between instrumental expertise and sector expertise is to use a hybrid structure, which is a combination of different functional and divisional structures that allows for the development of both sector and instrumental expertise. The risk of creating silos of information and knowledge within instrumental and sector expertise can be addressed by a number of organisational techniques, such as various planning processes and information sharing channels. Technical solutions can also be employed to promote collaboration, to share internally created know-how and to avoid work duplication.

Moreover, the report presents some advantages of having separated economist units. For instance, such models enable in-depth competence, consistency and the production of higher quality economic analysis. The disadvantages of separation could however be less coordination across units and weak relations between lawyers and economists.

The ability to efficiently re-allocate personnel resources according to a task's priority was marked as a strength by some agencies. Various organisational structures and functions must be aligned and reinforce each other. The finding uncovers that agency effectiveness is not the direct outcome of the organisational structure. Instead, it is the composite relation between the structure, the functioning and priorities of the organisation that result in agency effectiveness. It is also clear that agencies often consult each other to learn from different models. By learning from the experience of others, agencies may better identify and evaluate options for their own organisational design. However, an optimal structure for one agency is not necessarily optimal for others because there is no "one-size-fits-all" solution. The organisational design depends on various factors, such as independence from i.a. government, availability of personnel and financial resources and the particular competition legislation the agencies have to follow.

To sum up, even though it is important to learn from the experience other agencies have gained from the outcomes of their organisational design, it is important to acknowledge that agency effectiveness is not only dependent on the organisational structure. Various functioning strategies, which allow an effective allocation of staff and expertise in case teams to meet the institutional needs, also contribute to an effective enforcement. This in turn has a direct impact on the agency effectiveness in terms of robust and high quality decisions.

# Section I

## 1 About the report, terms, survey and webinar

### 1.1 Report

The “*Organisational Design*”-project was undertaken by the Agency Effectiveness Working Group (AEWG) of the International Competition Network (ICN). The Swedish Competition Authority (SCA) has been the project leader on behalf of the co-chairs of the working group which were the U.S. Department of Justice (DOJ), the Competition Bureau of Canada and the SCA. The aim of the report is to share experience among competition agencies in order to improve agency effectiveness.

The report focuses on design choices that affect enforcement; i.e. how different organisational units interact, how case teams are allocated, the extent of collaboration between various categories of staff, and the ways that organisational structures contribute to checks and balances during investigations.

### 1.2 Definition of terms

In this context, the term *organisational design* describes the structure and function of the organisation. The term *structure* refers to the organisational foundation while the *function* relates to i.a. the organisation’s activities, working methods and goals. *Efficiency* refers to rapid and organised internal processes. The term *flexibility* refers to flexible staff allocation and the ability to adapt to changes and needs with respect to skills, capacity and priorities. *Effectiveness* means producing results commensurate with the goals set for the organisation, such as making robust and high quality decisions on time.

### 1.3 Survey

To better understand agency experiences of organisational design, the AEWG sent out a survey to AEWG-members in 2018 (attached as Appendix). The survey addressed not only the question of formal structures, but also the question of how different units, including specialised units, interact in practice in competition enforcement, how staff are allocated to case teams, the extent of collaboration between staff and the ways that structures contribute to checks and balances during investigations. The survey also addressed the question of changes in organisational design and impetuses for these changes. Broader questions of different institutional design options were left out of the scope of the project as those issues have already

been extensively covered by the OECD.<sup>1</sup> Therefore, questions regarding the comparative advantages of multifunction agencies, independence from government, different decision-making powers (e.g. the administrative or the prosecutorial model), internal governance, etc. are not covered in this survey. Rather, the survey only touches on these issues to the limited extent of understanding how changes in broader institutional design may have influenced internal re-organisations. Prior to issuing the survey, the AEWG sought feedback on the draft questions from an informal reference group of ICN members and Non-government advisors (NGAs).

The survey was divided into four sections:

- i. The **first** section was designed to collect basic background information and the scope of the competition agencies' activities, which helps to shed light on and provide context for their responses in the subsequent sections.
- ii. The **second** section was designed to gain the respondents' perspective on the structural form of their agencies' competition enforcement functions.
- iii. The **third** section was designed to summarise the respondents' experiences on forming case teams and the internal processes by which staff are allocated to case teams.
- iv. The **fourth** section covered changes in organisational design.

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<sup>1</sup> OECD, Changes in Institutional Design of Competition Authorities (2014, 2015).

## 1.4 Contributions to the survey

Contributions to the survey were received from the following ICN member agencies:

Africa	Asia	Europe
Algeria Kenya Mauritius Seychelles Zambia Zimbabwe	Armenia Hong Kong India Israel Japan Kuwait Malaysia <sup>2</sup> Philippines Republic of Korea Taiwan	Albania Belgium Bulgaria Croatia Cyprus Czech Republic Denmark European Commission (EU), the Commission's Directorate General for Competition Finland Georgia Germany Greece Hungary Ireland Italy Latvia Lithuania Netherlands Norway Poland Russian Federation Slovenia Sweden Turkey United Kingdom
North-America	Oceania	South-America
Honduras Jamaica México Trinidad and Tobago U.S. Department of Justice U.S. Federal Trade Commission (FTC)	Australia Fiji French Polynesia New Zealand	Argentina Brazil Colombia Curaçao Peru

The co-chairs of the AEWG would like to thank all the contributors to this report.

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<sup>2</sup> Note that the Malaysian Aviation Commission contributed to the report. The Malaysian Aviation Commission is not a competition agency and not an ICN member but has the power to i.a. regulate competition matters including mergers in the aviation sector.

## 1.5 Webinar

In November 2018, the AEWG organised a webinar on the same topic. The webinar offered structured presentations and discussions on different aspects of organisational design options that agencies have experienced. The co-chairs of the AEWG would like to thank the moderator Professor Bill Kovacic<sup>3</sup> and the speakers Dr. Alessandra Tonazzi<sup>4</sup>, Mr. Teo Wee Guan<sup>5</sup>, Mr. Joost van Zwet<sup>6</sup> and Mr. Esteban Greco<sup>7</sup> for their valuable input and presentations. Key aspects from the webinar have been taken into account in the production of this report.

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<sup>3</sup> Professor of Global Competition Law and Policy, George Washington University.

<sup>4</sup> Director, European and International Affairs, the Italian Competition Authority.

<sup>5</sup> Director, International & Strategic Planning Division, Competition and Consumer Commission of Singapore.

<sup>6</sup> Senior Strategy Advisor, Authority for Consumers & Markets, Netherlands.

<sup>7</sup> President of the CNDC, Comisión Nacional de la Defensa de la Competencia, Argentina.

## 2 General information about the agencies

A link to the online-based survey was sent out via email to 92 competition agencies. In total 56 agencies completed the survey, which gives a response rate over 60 %. Table 1 summarises the total number of full-time equivalent staff as of 31 December 2017 for all agencies that responded to the survey. The average number of full-time employees of the respondents is 261.

**Table 1. Full-time employees, (Q4)**

	<b>Mean</b>	<b>Min</b>	<b>Max</b>
All (n=54)	257.4	3 <sup>8</sup>	3 500
Small (n=16)	29.3	3	48
Medium (n=22)	95.2	50	156
Large (n=16)	708.3	207	3 500 <sup>9</sup>

In this report, we divided the 54 agencies who answered the question into three categories depending on the size of the agency in relation to the total number of full-time staff. Two competition agencies did not answer the specific question. The categories are the following:

- From 0 up to (but not including) 50 employees: **small**
- From 50 up to (but not including) 200 employees: **medium**
- From 200 employees or more: **large**

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<sup>8</sup> Trinidad and Tobago Fair Trade Commission

<sup>9</sup> Federal Antimonopoly Service of the Russian Federation.

**Table 2. Categorises by the size of agency**

Small	Medium	Large
Albania	Argentina	Australia
Algeria	Brazil	Czech Republic
Belgium	Bulgaria	Denmark
Croatia	Colombia	EU
Curacao	Fiji	Germany
Cyprus	Finland	Japan
French Polynesia	Greece	Mexico
Georgia	Hong Kong	Netherlands
Honduras	Hungary	Poland
Jamaica	India	Republic of Korea
Mauritius	Ireland	Russian Federation
New Zealand	Israel	Taiwan
Seychelles	Kenya	U.S. DOJ
Slovenia	Kuwait	U.S. FTC
Trinidad and Tobago	Latvia	United Kingdom
Zimbabwe	Lithuania	
	Malaysia	
	Norway	
	Peru	
	Sweden	
	Turkey	
	Zambia	

The respondents were asked to answer which year the agency was established. Based on the collected data, the 56 agencies were classified into three categories; old, middle-aged and young agencies. The oldest agencies are DOJ (1870<sup>10</sup>) and FTC (1914) of the United States, followed by the Norwegian Competition Authority (1917) and the Danish Competition Authority (1937). Example of young agencies are the ones from Georgia, Trinidad and Tobago (2014), French Polynesia (2015) and Malaysia, Curacao and the Philippines (2016).

The results whether an agency is categorised as a young, middle-age or old depends on the response when the agency was established. The Competition and Markets Authority (CMA) of the United Kingdom responded 2014, which was the year when the agency was combined with the Office of Fair Trading with those of the Competition Commission. The same applies for the Finnish Competition and Consumer Authority which began as a new authority in 2013, when it merged with the Consumer protection authority, although the national authority was established in 1988.

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<sup>10</sup> Note that the DOJ was founded in 1870, which is the founding date of the competition agency. The Sherman Antitrust Act assigned the responsibility to enforce it to the US Attorneys at the DOJ. However, in 1919 the DOJ formed various divisions based on competence (such as Criminal, Civil, etc.) and the Antitrust Division was created.

The categories are the following:

- From 2004 – : **young**
- From 1992 up to 2003: **middle-age**
- From 1870 up to 1991: **old**

**Table 3. Categories by year of establishment**

Young	Middle-age	Old
Albania	Algeria	Argentina
Curacao	Armenia	Brazil
Cyprus	Australia	Bulgaria
Fiji	Belgium	Colombia
Finland	Croatia	Czech Republic
French Polynesia	Greece	Denmark
Georgia	India	EU
Honduras	Israel	Germany
Hong Kong	Jamaica	Hungary
Kenya	Latvia	Ireland
Kuwait	Lita	Italy
Malaysia	Mexico	Japan
Mauritius	Peru	New Zealand
Netherlands	Slovenia	Norway
Philippines	Sweden	Poland
Seychelles	Taiwan	Republic of Korea
Trinidad and Tobago	Turkey	Russian Federation
United Kingdom	Zambia	U.S. DOJ
	Zimbabwe	U.S. FTC

Table 4 presents statistics of the year of establishment based on Table 3.

**Table 4. The year of establishment, by category: age**

Category	Average	Min	Max
All (n=54)	1989	1870	2016
Young (n=18)	2011	2004	2016
Middle-aged (n=18)	1995	1992	2003
Old (n=18)	1962	1870	1991

Table 5 presents the correlation between the year of establishment and size. In general, larger agencies have existed longer compared to the smaller agencies.

**Table 5. The year of establishment, by group: size**

Group	Average	Min	Max
Small (n=16)	2003	1986	2016
Medium (n=22)	1992	1917	2016
Large (n=16)	1970	1870	2014 <sup>11</sup>

<sup>11</sup> Federal Antimonopoly Service of the Russian Federation.

Figure 1 illustrates that a majority of the agencies have been established around 2000.

**Figure 1. The year of establishment**

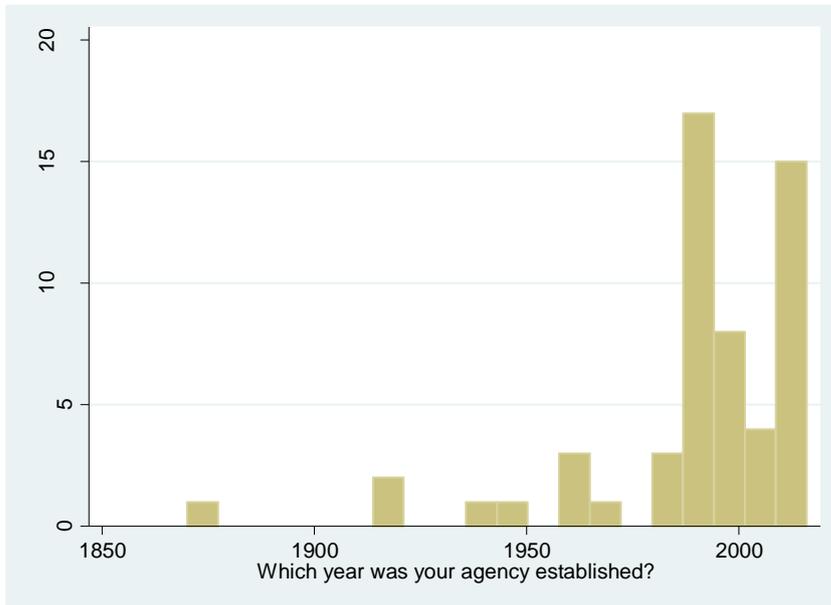


Figure 2 demonstrates the correlation between the size and the age of the agencies. Older agencies tend to have a higher number of full-time employees compared to younger agencies.

**Figure 2. Relation between the number of full-time employees and the year of establishment**

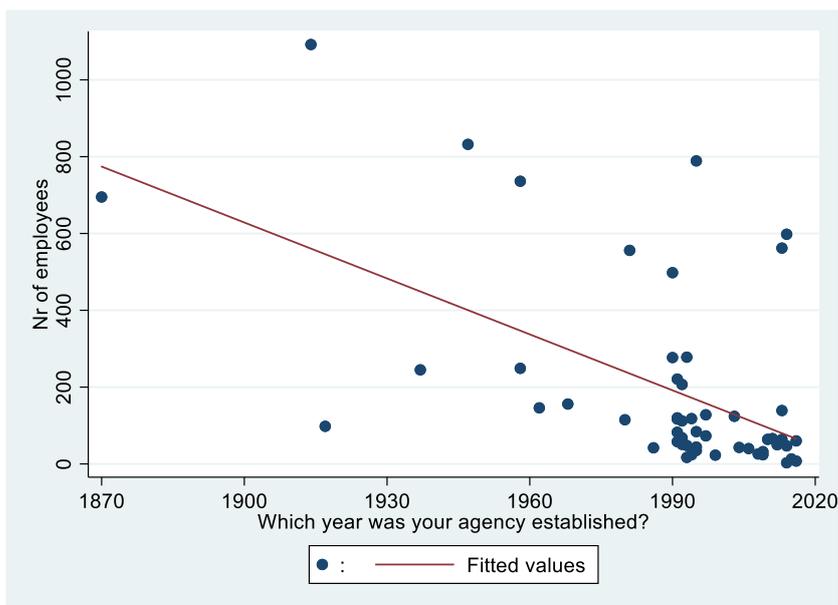


Table 6<sup>12</sup> shows the number of lawyers and economists in the agencies. There are slightly more lawyers working in the agencies than economists. The proportions of lawyers and economists in relation to the agency's total staff are shown in Table 7. The table shows that larger agencies tend to have more lawyers than economists.

**Table 6. Lawyers and economists**

Q5	Average	Min	Max	# respondents <sup>13</sup>
# lawyers	77	1	1 500	48
# economists	57	1	1 500	48

**Table 7. Lawyers and economists by size of the agencies.**

Size	Share of Lawyers	Share of economists
Total (n=48 <sup>14</sup> )	28	22
Small (n=16)	29	27
Medium (n=20)	27	23
Large (n=12)	27	16

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<sup>12</sup> Note that one competition agency answered the same number "1500" for both lawyers and economists.

<sup>13</sup> Eight agencies did not answer the question.

<sup>14</sup> Note that some agencies did not answer both Q3 and Q5.

### 3 Organisational structures and trends

#### 3.1 Introduction

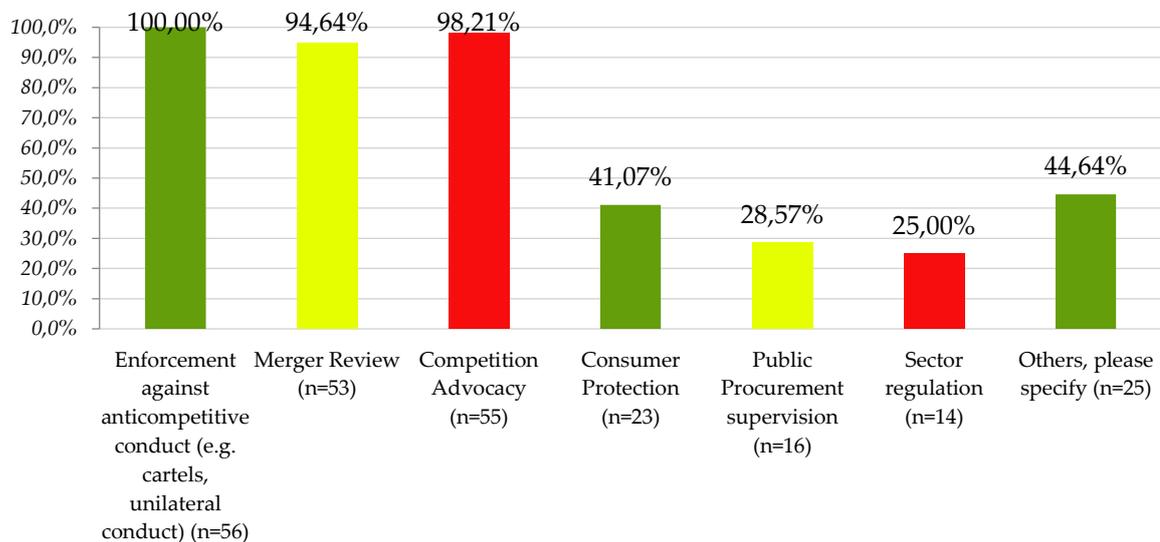
The organisational structure is the foundation of an organisation. It is often depicted by an organisational chart which constitutes the frame of the organisation. Despite the varieties of size, human and financial resources and responsibilities, the survey shows that the agencies share common organisational structure traits.

The purpose of this section is to allow agencies to share experiences with regard to different organisational structures. A descriptive overview of various activities, organisational structure options and specialised units are presented below.

#### 3.2 Scope of activities

Most agencies have several functions or aspects in relation to their mandate; such as conduct enforcement, merger review and competition advocacy. A number of agencies are also responsible for consumer protection, public procurement supervision and sector regulation. Examples of other additional functions (45 percent) include state aid control, consumer product safety and responsibility for water regulation.

**Q6: What is the scope of your agency's activities?**



In total, seven agencies are responsible for all main alternatives of activity; i.e. enforcement against anticompetitive conduct, merger review, competition advocacy, consumer protection, public procurement supervision and sector regulation. The most common combination is responsibilities for conduct enforcement, merger review and competition advocacy (22 agencies). An

observation is that there is a tendency that small agencies work with a more limited number of activities (see Table 8 and 9).

One agency is responsible for conduct enforcement and merger review only. Two agencies are responsible for conduct enforcement and competition advocacy but do not work with merger review. There is no agency with a portfolio that only covers conduct enforcement.

**Table 8. What is the scope of your agency's activities? (Q6)**

Number of activities <sup>15</sup>	6	5	4	3	2
E, M, A, C, P, S	7				
E, M, A, C, P		2			
E, M, A, C, S		4			
E, M, A, P, S		2			
E, M, A, C			9		
E, M, A, P			5		
E, M, A, S			1		
E, M, A				22	
E, M, C				1	
E, M					1
E, A					2

**Table 9. Relation between size of the agencies and the number of activities (Q4 and Q6)**

Number of activities	Small	Medium	Large	Total
2	2	1	0	3
3	9	10	4	23 <sup>16</sup>
4	2	6	5	13
5	1	3	4	8
6	1	2	4	7
Total	16	22	16	54

<sup>15</sup> E: enforcement against anticompetitive conduct, M: merger review, A: competition advocacy, C: consumer protection, P: public procurement supervision, S: sector regulation.

<sup>16</sup> (E, M, A) and (E, M, C).



### 3.3 Structural forms

Several structures have been developed to capture agency effectiveness, efficiency and flexibility. From a structural viewpoint, there are some main forms that can be found in agencies, even though it is evident that there is a great variety in how agencies define their competition enforcement structures.

**Q8: What is the structural form by which competition enforcement staff is organised in your organisation?**

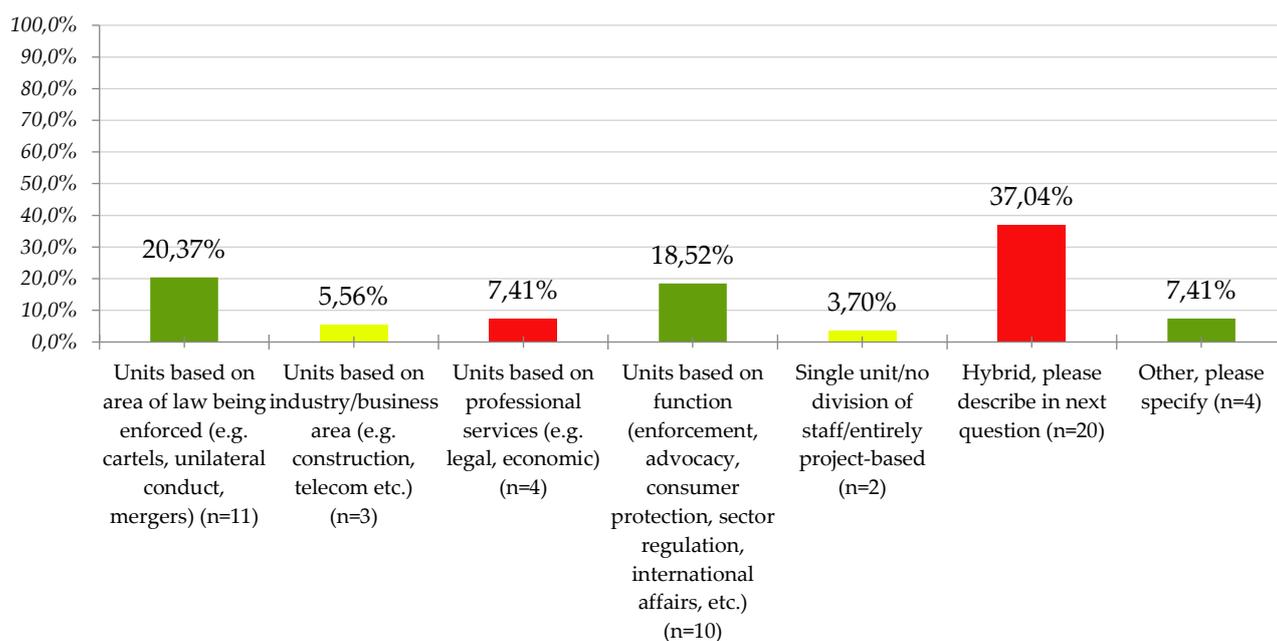


Table 10 reports that the hybrid structure is the most common structural form among the agencies. The most common unitary structural forms are units based on area of law being enforced and units based on function regardless of the size of agencies.

**Table 10: Structural form (all)**

	Number	Percent
Single unit/no division of staff/entirely project-based	2	4
Units based on industry/business area	3	6
Units based on professional services	4	7
Units based on function	10	19
Units based on area of law being enforced	11	20
Hybrid, please describe	20	37
Other, please specify	4	7
Total	54 <sup>17</sup>	100

<sup>17</sup> Two agencies did not answer this question.

### 3.3.1 *Single unit/no division of staff/entirely project-based*

A few respondents reported having either one single unit, no division of staff or an entirely project-based structure (4 percent). Agencies with this structure are more likely to be small and more recently formed agencies. With this structure, agencies adjust their case teams to the complexity of the cases and allocate staff on an *ad hoc* basis in order to adapt to the specific circumstances of the cases. The case team is brought together on the investigation, and once the work is done, the case team members are disbanded and will move on to other investigations.

### 3.3.2 *Units based on industry/business or sector*

The responses show that it is quite rare to have a structure solely with units that are based on industry/business or sector (6 percent). The range of sectors in which competition law is applied by sectoral regulators can for example include infrastructure, construction, telecoms, financial services and energy. Nevertheless, it is clear that this structure commonly occurs as part of the hybrid structures.

### 3.3.3 *Units based on professional services*

Another structure reported is a structure with units based on professional services, e.g. legal and economic services (7 percent).

### 3.3.4 *Units based on function*

One form by which agencies are organised, is a structure with units based on functions; e.g. enforcement, advocacy, consumer protection, sector regulation, and international affairs (19 percent).

### 3.3.5 *Units based on area of law being enforced*

One common structure by which competition enforcement staff is organised, is with units based on area of substantive law being enforced; e.g. cartels, unilateral conduct and mergers (20 percent).

### 3.3.6 *Hybrid*

The single most common structural form reported was a hybrid structure, although there is a great variety in how hybrid structures are described (37 percent). The hybrid structure is interpreted as a combination of different functional and divisional structures. The functional organisational structure describes the structure in which different divisions/units are created on the basis of major functions performed in the agency. The divisional organisational structure refers to the structure wherein the organisational functions are grouped together; into divisions, depending on the industry/business or sector. Despite the variety in how respondents defined the hybrid structure, the broad trend of the most common types of hybrid structures is explained below.

The most common types of hybrid structures are either a combination of units based on area of law being enforced and functions or a combination of units based on area of law being enforced and professional services.

Another type of hybrid structure involves units based on areas of law being enforced within broader sector-based divisions. This was described by one agency as a *“matrix structure with five ‘market and cases’ directorates dealing with different sectors. In these directorates, different areas of law are being enforced, i.e. antitrust, merger and state aid.”* Similarly, one agency’s structural form is broadly based on the units’ functions and the area of law being enforced. That agency has two main directorates carrying out its competition enforcement functions; an “enforcement directorate” which is divided into three units; cartel, antitrust and consumer enforcement units and a “market and mergers directorate” which is divided into six units; studies/investigations unit, merger units, remedies/business and financial analysis unit, the regulatory appeals unit and the sector regulation unit.

One agency responded that its competition enforcement is divided into seven units. Of these units, four units are based on industry/business areas and one of these is in turn responsible for the merger task force, and two are based on professional services, i.e. economic and legal services. Finally, one unit is based on a hybrid between the area of law being enforced and on function.

Another hybrid structure, which was described by one agency, had units based on industry/business area, supported by specialised (separate) horizontal offices such as the legal services, chief economists, IT forensic and international affairs.

One agency explained that its structure is intended to “promote instrument and sector knowledge, as well as the flexible and efficient use of human resources; both critical factors in ensuring a successful and timely delivery of objectives.” Another variety was noted by a large agency, where sector-based enforcement units are organised within larger units for civil and criminal enforcement respectively.

Another approach identified was the existence of a separate specialised investigation unit for horizontal agreements in addition to, and separate from, other sector-based units. Having separate units which exclusively deal with so-called hardcore (i.e. by object) horizontal agreements; e.g. price and quota agreements and/or horizontal agreements relating to territorial and/or customer allocation, is one example of institutional adjustments an agency can choose in order to become more effective and in line with the market requirements.

### 3.4 The correlation between the structural form, size and age

Tables 11-13 show that even though there is a number of structural options available, the choice of structural form correlates with the size of the agency. Small agencies tend to adapt a structure where units are based on the area of law being enforced (25 percent). Larger agencies tend to combine different functional and divisional structures, which results in more diverse and complex structures (56 percent).

**Table 11. Structural form (small)**

	Number	Percent
Units based on area of law being enforced	4	25
Units based on industry/business area	0	0
Units based on professional services	3	18.75
Units based on function	3	18.75
Single unit/no division of staff/entirely project-based	2	12.5
Hybrid, please describe	4	25
Other, please specify	0	0
Total	16	100

**Table 12. Structural form (medium)**

	Number	Percent
Units based on area of law being enforced	4	18
Units based on industry/business area	1	5
Units based on professional services	1	5
Units based on function	5	23
Single unit/no division of staff/entirely project-based	0	0
Hybrid, please describe	7	32
Other, please specify	4	18
Total	22	100

**Table 13. Structural form (large)**

	Number	Percent
Units based on area of law being enforced	3	18.75
Units based on industry/business area	2	12.5
Units based on professional services	0	0
Units based on function	2	12.5
Single unit/no division of staff/entirely project-based	0	0
Hybrid, please describe	9	56.25
Other, please specify	0	0
Total	16	100

Table 14 shows the correlation between the age of agencies and the structural form. Old agencies, which are often large, are more likely to be organised in hybrid structural forms compared to young agencies, which are often smaller.

**Table 14. What is the structural form? By age group**

	Old	Middle-age	Young	Total
Units based on area of law being enforced	4	5	2	11
Units based on industry/business area	3	0	0	3
Units based on professional services	0	1	3	4
Units based on function	2	3	5	10
Single unit/no division of staff/entirely project-based	0	0	2	2
Hybrid, please describe	10	6	4	20
Other, please specify	1	2	1	4
Total	20	17	17	54

### 3.5 Specialised units

Agencies tend to divide the organisation into specialised and separate divisions or units with the scope to take advantage of i.a. legal and economic expertise. One agency explained that expertise and specialisation are key drivers for the agency's organisational structure, but *"they are leveraged across multiple variables, e.g. legal and economic, enforcement, sector and industry expertise and functional specialisation like compliance and policy development"*. Nevertheless, two small agencies reported that they neither have specialised legal units nor specialised economist units. To facilitate an effective enforcement of the competition laws, agencies also tend to have specialised units that involve bilateral and multilateral policy work, communication and IT expertise.

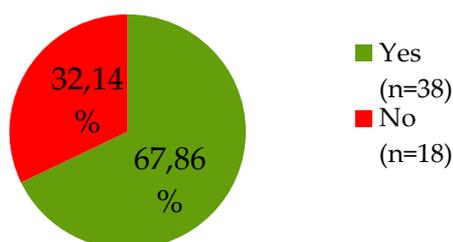
#### 3.5.1 Specialised economist units

A majority of agencies (68 percent) have specialised economics units, such as a Chief Economists' office. Table 15 reports that the existence of specialised economist units also tend to correlate with the size of the agency. Larger agencies with more complex structures tend to separate expertise to a greater extent. In addition to the common features, some agency specific features are worth mentioning. For instance, two agencies reported that they have specialised economist units but no legal units, even though it is more common to have specialised legal units established.

Moreover, some large agencies described that they have in addition to economist unit, also a unit responsible for providing economic analysis as an important input into the enforcement decisions. One agency explained that the organisation first had one standalone economist unit with the responsibility to support and advise the independent decision units in their cases. *"The economic unit and the position of Chief Economist of the agency were further strengthened by the addition of a second*

economic unit and additional highly qualified economic staff. The Chief Economist coordinates the work of both economic units.” On the other hand, in some agencies there is an “Economists office” containing a number of smaller units, e.g. a separate Econometrics’ unit, a Statistical unit and a Data Science unit.

**Q11: Does your agency have a specialised economics unit/department, such as a chief economists’ office, in addition to or separate from case handling units?**

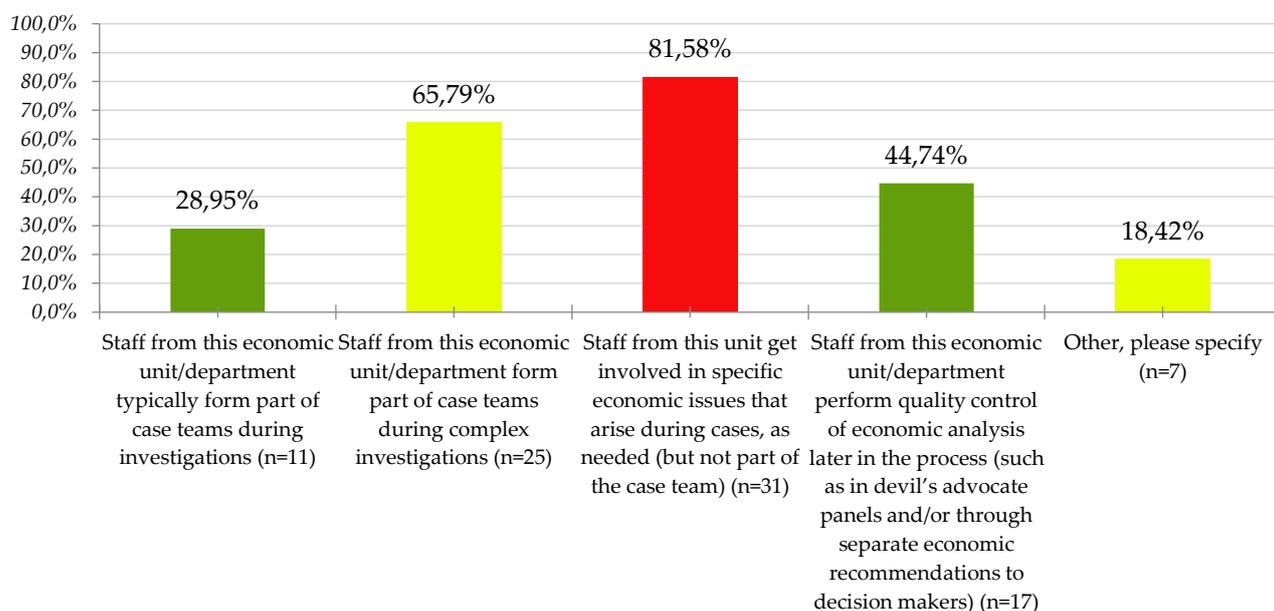


**Table 15. Does your agency have a specialised economics unit/department?**

	Yes	No
Total (n=54)	37	17
Small (n=16)	6	10
Medium (n=22)	16	6
Large (n=16)	15	1

The core work of the separate economist units is to assist enforcement functions throughout investigations, to provide guidance on methodological issues and econometrics in the application of competition rules and to assist with empirical and financial modelling and analysis. Separate economist units also contribute to individual competition cases, in particular the ones that involve complex economic issues and the development of general policy instruments, as well as giving assistance in relation to cases pending before the courts.

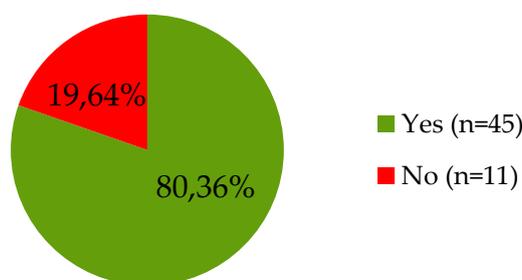
**Q11 (a): If yes, what role does this economic unit/department play in competition enforcement cases?**



**3.5.2 Specialised legal units**

A majority of the agencies (80 percent) have specialised legal units. The existence of specialised legal units tends to correlate with the size of the agencies. Some larger agencies have more than one specialised legal unit, which is either incorporated in a larger specialised department/unit, such as the Legal and Economist department, or standalone specialised legal units based on different areas of law enforcement, e.g. antitrust, mergers and state aid. This was illustrated by a large, multi-purposed agency with a hybrid structural form that has *“four separate legal units, i.e. Competition and Consumer Law Unit, Mergers and Authorisations Law Unit, Corporate Law Unit and Regulatory Law Unit”*.

**Q10: Does your agency have a specialised legal unit/department, such as a legal counsel's office, in addition to or separate from case handling units?**

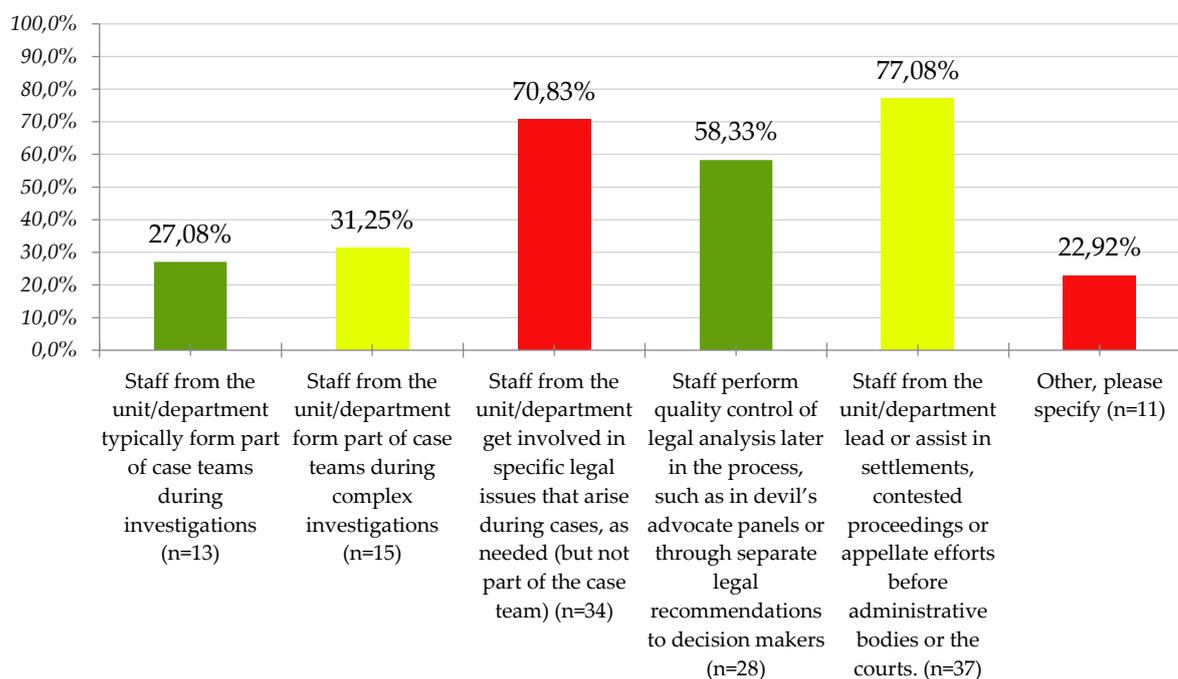


**Table 16. Does your agency have a specialised legal unit/department?**

	Yes	No
Total (n=54)	43	11
Small (n=16)	7	9
Medium (n=22)	20	2
Large (n=16)	16	0

Staff from specialised legal units can work with various tasks in addition to, or separate from, case handlers in enforcement functions. Providing legal support, advice to enforcement units, legal opinions on draft case reports prepared by case teams and the interpretation of laws, treaties and judicial decisions, can be ensured by having specialised units. Staff from specialised legal units can also play important roles in competition enforcement cases before administrative bodies or courts. In addition, to capture horizontal expertise and to pursue effective management, one agency explained that *“staff from the legal unit assist other units in the preparation, execution and evidence assessment of search operations in cartel proceedings. In these tasks, the legal unit is supported by the agency’s forensic IT experts”*.

**Q10 (a): If yes, what role does this legal unit/department play in competition enforcement cases?**



### 3.5.3 Specialised enforcement compliance, order, settlement or remedy units

The responses show that about one-fifth of the agencies have specialised enforcement compliance, settlement or remedy units. The choice of having these units correlates positively with the size of the agency, as it is more common for large agencies to have these types of units. Responses show that among the 12 agencies that have these specialised units; three agencies are small, three agencies are medium-sized and six agencies are large.

These units are in some organisations incorporated into other divisions or directorates, such as the “legal and judicial affairs” or the “office of legal counsel”. One agency commented that “*the Remedies, Business and Financial Analysis Unit sits within the Markets and Mergers Directorate*”. In the same submission, the agency added that “*it is responsible for all aspects of remedies work and for providing commercial and financial insight into the agency’s casework, including market and merger cases, competition and consumer enforcement and regulatory reviews*”. Compliance staff, working in these specialised units, are often intended to facilitate the agency’s orders and monitor company conduct required by the order. In jurisdictions where the prosecutorial enforcement model is prevailing, compliance staff can also be responsible for reviewing proposed divestitures and enforce agencies orders in matters related to the enforcement of its orders and seek penalties for violations of the competition laws before an independent tribunal or court.

**Table 17. Does your agency have a specialised enforcement compliance, order, settlement or remedy unit/department?**

	Number	Percent
Total	56	100
Yes	12	21
No	44	79

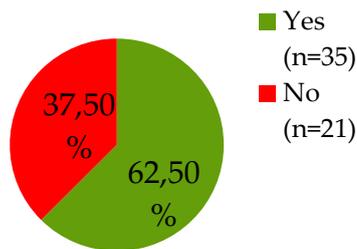
### 3.5.4 Specialised international units

A number of agencies have adopted specialised international units. A majority of the respondents indicate that the role of the international unit is to undertake bilateral and multilateral policy work (94 percent). The international work is often related to the organisation’s international engagements, which includes co-ordination of submissions and presentations to international fora, making recommendations and coordination of the agency’s international development work.

The separation of staff with international expertise helps staff to deal with international issues and to enhance the agency’s position in the international arena. To gain horizontal expertise, staff from these units may also prepare submissions and briefings for international meetings as well as leading the agency engagement within international and regional organisations and networks; such as the Asia-Pacific Economic Cooperation (APEC), the European Competition Network (ECN), ICN, the Organisation for Economic Co-operation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD).

One agency stated that it has an international unit which is incorporated in the “Advocacy Team”, i.e. the agency does not have a separate, dedicated international unit. Even though the unit is not separated, the agency explained the importance of the international work and by calculating how much time is spent on international work each year, it had noted that the international work had increased over the recent years.

**Q13: Does your agency have a specialised international unit/department, in addition to or separate from case handling units?**



**Q13 (a): If yes, what role does this international unit/department play?**

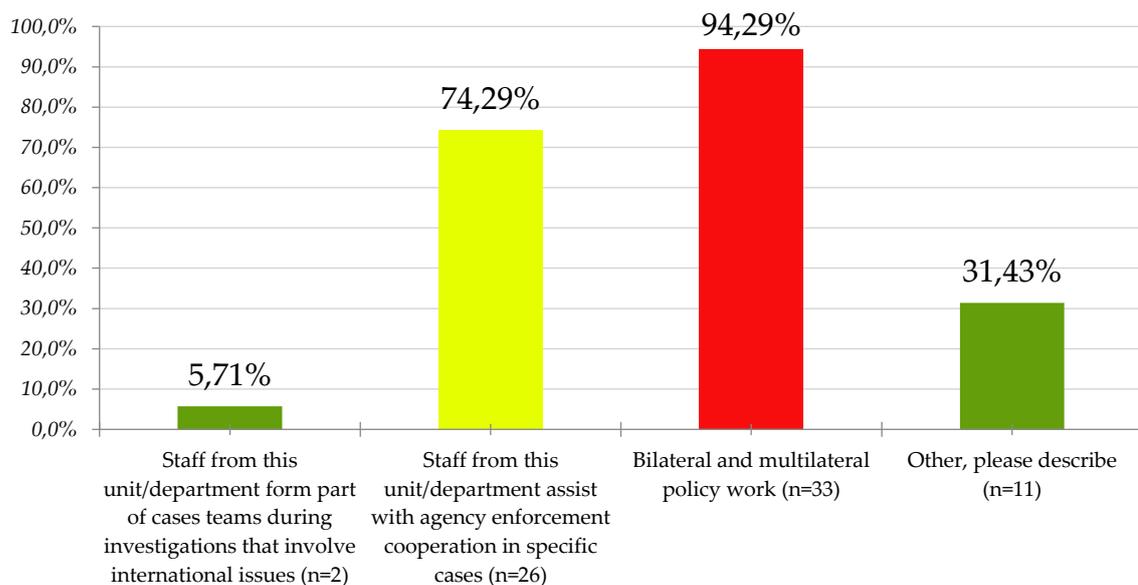


Table 18 shows that the size of the agency correlates to whether agencies have specialised international units/departments or not.

**Table 18. Does your agency have a specialised international unit/department?**

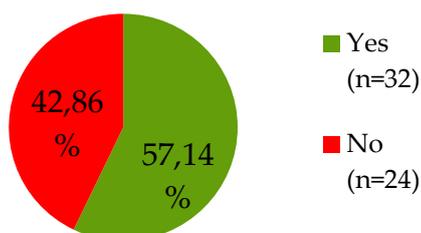
	Yes	No
Total (n=54)	34	20
Small (n=16)	5	11
Medium (n=22)	14	8
Large (n=16)	14	1

### 3.5.5 Other specialised units

Over half of the responding agencies replied that they have other specialised units. Despite the great variety in how respondents defined other specialised units, these units have some common characteristics. These units do not generally play a role in active investigations, even though expertise in these units can be very useful in facilitating effective enforcement by the agencies. For example are units tasked with technical assistance during investigations and the agencies overall management of external tip-offs, complaints and enquiries assigned under these units. One large agency, even though it did not mention under which unit the case team operates, described that it has a separate enquiry team that is not a part of the case teams, which includes enquiry and compliance officers. The case team receives complaints and does initial screening of enquiries, which involves assessing the complaint and give a preliminary recommendation about whether the matter warrants further investigation or analysis.

In order to communicate enforcement outcomes and run business information campaigns that encourage compliance with competition law and educate market actors about their responsibilities, some agencies recognise that separate communication units are beneficial within the organisation.

**Q14: Does your agency have other specialised units in addition to and separate from case handling units that assist with investigations (e.g. legislative affairs, market studies, complaint or notification intake, or units that coordinate specific types of investigations etc.)?**



## 4 Organisational functioning design and trends

### 4.1 Introduction

The purpose of this section is to share experiences among agencies about the functioning of the organisations. A descriptive overview of how case teams are comprised, staff allocation, the supervision of case teams, internal control and scrutiny of ongoing investigations is presented below.

### 4.2 Case teams

#### 4.2.1 *The internal process by which staff are allocated to case teams*

Case teams often comprise a mix of lawyers and economists with different skills and experiences. For example, in one medium-sized agency, case teams are usually comprised of three expert lawyers and economists with additional experts being added depending on the size of the matter (e.g. cartel cases with several parties) and if there are technical issues that might require technical expertise. Depending on the level of economic analysis required, case teams can have a greater or lesser number of staff with legal or economic expertise. Relevant factors for selecting staff are expertise in devising a theory of harm, sectoral expertise, language skills and of course time availability. Another approach is to organise case teams by including a *"variety of specialists with different knowledge and points of view"*, which allow for a wider range of perspectives and inputs. To ensure fairness in the workload of staff, one agency explained that the number of cases in which each person is involved is registered.

Case teams are often comprised in different ways based on the nature of the investigation. As regards to mergers' inquiries, a number of agencies explained that they require another process by which staff are allocated to case teams. Respondents also described that the complexity of a case has an impact on the composition of case teams. In complex cases, which are further explored in sub-section 4.4, the *"most experienced"* staff will be assigned to the case team and economists are assigned based on the *"level of economic analysis required"*.

#### 4.2.2 *Different approaches*

Table 19 presents answers to the question of how case teams are comprised. The respondents could choose all alternatives available. Although three respondents did not answer the question, it is clear that case teams usually comprise case handlers from the same unit or mostly from the same unit. Tables 20, 21 and 22 present the corresponding answers for small, medium-sized and large agencies respectively. The size of the agency and how case teams are built are often correlated. Case teams in large agencies are more often set up by case handlers

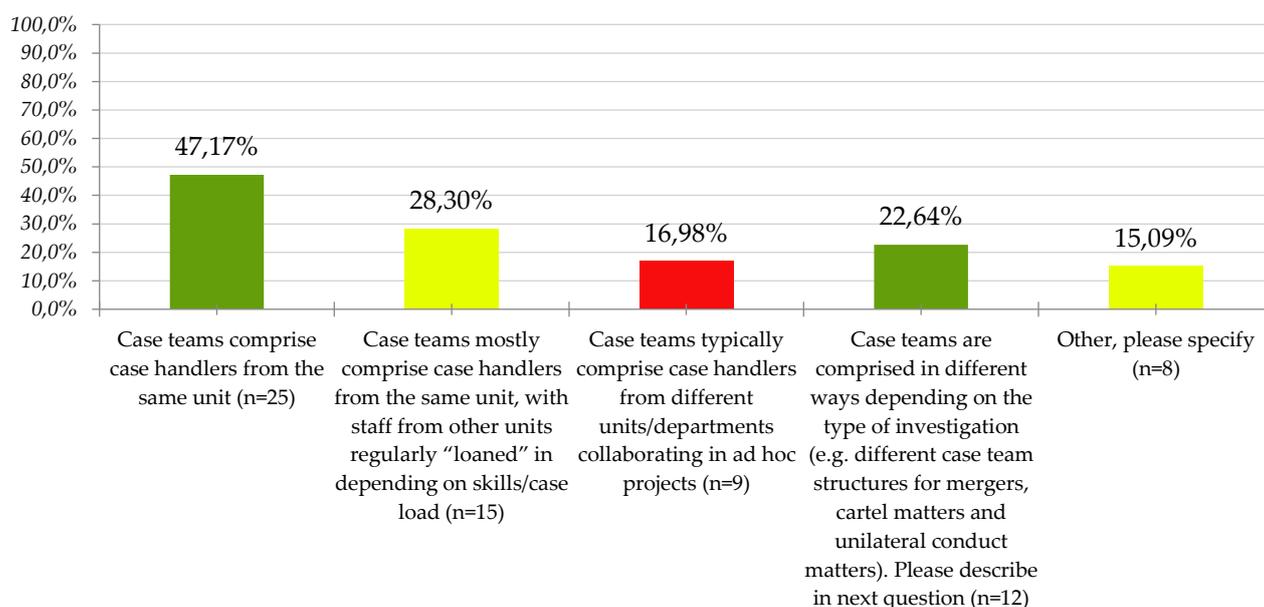
from the same unit (44 percent) and rarely utilise staff from other units (13 percent) since they normally have a higher number of staff in each unit, compared to small agencies which tend to create case teams with staff across units in order to leverage internal expertise (50 percent). Some examples on how case teams can be comprised are given below.

As mentioned above, the most common form of case team allocation is a case team defined by case handlers from the same instrumental or sector-based unit. This means that knowledge is captured in each unit and the unit forms case teams with staff depending on factors such as complexity, experience and availability. On the other hand, one agency explained that a unit typically has the ownership of a case, but if there is a lack of resources in the unit, the director of the unit discuss with other directors of other units about the possibility to utilise staff from other units for the particular investigation.

Moreover, one agency with a hybrid structure described that in the antitrust and merger units, case teams comprise case handlers from the same (sectorial) unit, with staff being allocated from other units occasionally. In cartels however, case teams comprise case handlers that are “pooled” together from other units *“as sectoral expertise is less important for cartel cases”*. Other agencies organise their case teams with regard to the complexity of each case and thus form case teams with case handlers from different units on an *ad hoc* basis.

In contrast to this approach, one large agency reported that case teams are fixed and hence, before a case is allocated to a team, the aggregated expertise of the case team is carefully considered. The agency further explained that *“if one case team has worked on matters involving a particular industry recently, then they may be allocated further cases involving the same industry due to the experience gained.”* In this case, the agency has built up an effective team over the time and the teams’ experience is maximised.

**Q18: Which of the following best describes how case teams are comprised?**



**Table 19. Formation of case teams (all<sup>18</sup>)**

Case teams (Q18)	Number	%
Comprise case handlers from the same unit	25	47
Comprised in different ways depending on the type of investigation	15	28
Mostly comprise case handlers from the same unit, with staff from other units regularly "loaned" in depending on skills/case load	9	17
Typically comprise case handlers from different units/departments collaborating in ad hoc projects	12	23
Other	8	15

**Table 20. How are case teams comprised? (small, n=16)**

Case teams	Number	%
Comprise case handlers from the same unit	8	50
Comprised in different ways depending on the type of investigation	6	32
Mostly comprise case handlers from the same unit, with staff from other units regularly "loaned" in depending on skills/case load	7	44
Typically comprise case handlers from different units/departments collaborating in ad hoc projects	3	19
Other	2	13

<sup>18</sup> Three agencies did not answer this question.

**Table 21. How are case teams comprised? (medium, n=22)**

Case teams	Number	%
Comprise case handlers from the same unit	10	45
Comprised in different ways depending on the type of investigation	5	23
Mostly comprise case handlers from the same unit, with staff from other units regularly "loaned" in depending on skills/case load	0	0
Typically comprise case handlers from different units/departments collaborating in ad hoc projects	6	27
Other	3	14

**Table 22. How are case teams comprised? (large, n=16)**

Case teams	Number	%
Comprise case handlers from the same unit	7	44
Comprised in different ways depending on the type of investigation	4	25
Mostly comprise case handlers from the same unit, with staff from other units regularly "loaned" in depending on skills/case load	2	13
Typically comprise case handlers from different units/departments collaborating in ad hoc projects	3	19
Other	3	19

#### 4.2.3 *People in charge of selecting case teams*

Many agencies have internal routines for staff allocation, and these are often related to the size and the structural form of the organisation. Agencies tend to have people in charge of selecting case teams that will handle the investigations; usually the Head of Units/Departments. Staff can also be allocated by a Project owner or a Case Manager, which could be the Head or Deputy Head of Unit or the Project Manager. One agency with a cross-unit project based approach has a capacity coordinator within the competition department that makes a proposal for a certain project team to the management team that makes the final decision.

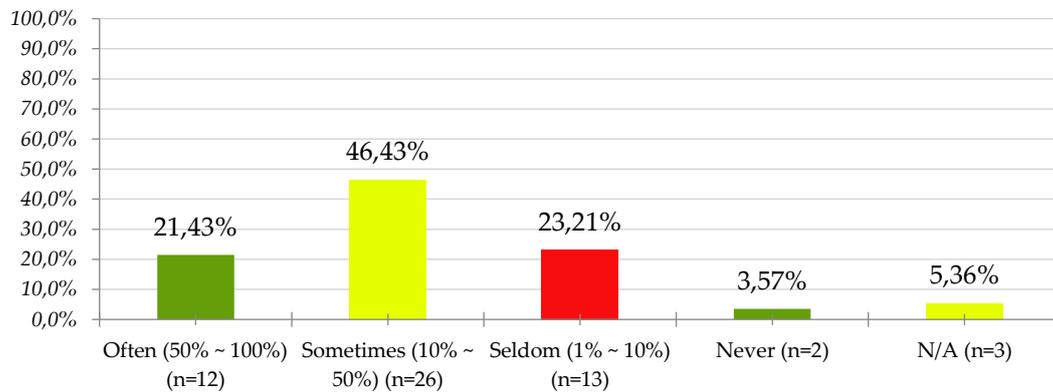
Another agency described that resources are normally allocated during weekly meetings ("Project Resource Meeting"). The meeting brings together the Heads of the legal and economist units and senior directors responsible for project delivery. They work collaboratively and guide the agency's project management office on the allocation of people to projects within the matrix working environment in a way aimed at delivering the best possible allocation outcomes for projects and staff within the agency. Some small agencies reported that the organisation is so small that the staff allocation is decided by the Director General, or the Executive Director.

### 4.3 Additional tasks

Staff that work on competition enforcement cases are in some agencies also working on tasks related to other functions. Responses show that it is common for staff to give input on competition aspects of sector regulation and market studies. Enforcement staff can sometimes also work on matters concerning international affairs. One large agency explained that staff sometimes work on competition outreach, advise the government on policy matters, and attend and prepare presentations before various international organisations.

Another example from a large agency shows that “Enforcement Division”-staff work on both competition and consumer law investigations, which may involve working with various domestic and international government and non-government stakeholders. Staff in the specialised units are predominantly working on competition matters, except where there are specialists in particular industries, where they may also fulfil roles in relation to competition advocacy, consumer protection and international affairs.

**Q9: Do staff that work on competition enforcement cases also work on tasks related to other functions, such as competition advocacy, consumer protection, sector regulation, international affairs, etc.?**



### 4.4 Complex and non-complex cases

There is a distinction between complex and other cases in some agencies, which can affect how case teams are comprised. The size of the agency can indicate whether a distinction between complex and other cases is made or not. The distinction can either be formal or informal in order to categorise different types of cases. The complexity of a case is normally assessed in the first stage examination of complaints, cases and/or market study, but can, if necessary, be reevaluated at a later stage. One agency explained that it is “*necessary to make a difference between complex and other cases for resource allocation and approach to ensure effective resolution of competition concerns and on-going compliance.*”

#### 4.4.1 *Level of complexity*

Some agencies described that the assessment of complexity can be based on a number of factors; the perceived scope of the matter, the likely impact of the outcome, perceived level of interest by the market, resources that are likely to be required to complete the work as well as time limits for when a decision has to be made. The assessment of complexity has an impact on the resource requirements, in terms of data and human resources. The level of complexity can also have an impact on the size of case teams and the need for allocating staff with different levels of seniority and professions.

As shown from the answers, the matter of complexity can increase the need to take advantage of staff from different divisions or units. Complex cases can also involve more background research, including market studies, whereby other units are called upon to offer expertise in methods and data collection, in order to capture horizontal expertise.

### **4.5 Supervision and coordination**

There is a great variety of structural measures implemented in order to supervise or coordinate and discuss investigations by case officers appropriate to the different organisational structures of agencies.

The graph below demonstrates that in about half of the agencies that have implemented a supervision system, case teams are supervised by the Head of Unit responsible for the investigation. The Head of Unit can also share the responsibility with a Project Manager or a Unit manager<sup>19</sup>. One agency explained that since the organisation does not have units, the Head of the department is supervising the case teams. Other examples of supervisors are the Head of Investigations, Head of Legal and Head of Markets. In one large agency, Directors supervise investigations with oversight from both the General Manager of the state industry/sector and the Executive General Manager of the Enforcement Division. Another large agency explained that the responsibility is shared among Directors, Deputy Director Generals and the Director General. Where a system puts emphasis on the independence of case teams, this independence is combined with a high level of coordination by agency management and other relevant parts of the agency, high demands on the experience and skills of the case handlers, and access to full judicial review.

Most agencies explained that in their view, the role of supervision and coordination is to safeguard enforcement consistency, e.g. request for information (RFI), counter any tendencies towards any form of bias, interpret case law and theories of harm –

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<sup>19</sup> To clarify, a unit can have several project and/or unit managers but they normally report to the Head of Unit.

all tasks that are intended to result in more uniform and more robust investigations and decisions.

**Q21: Who is responsible for supervising investigations by case teams?**

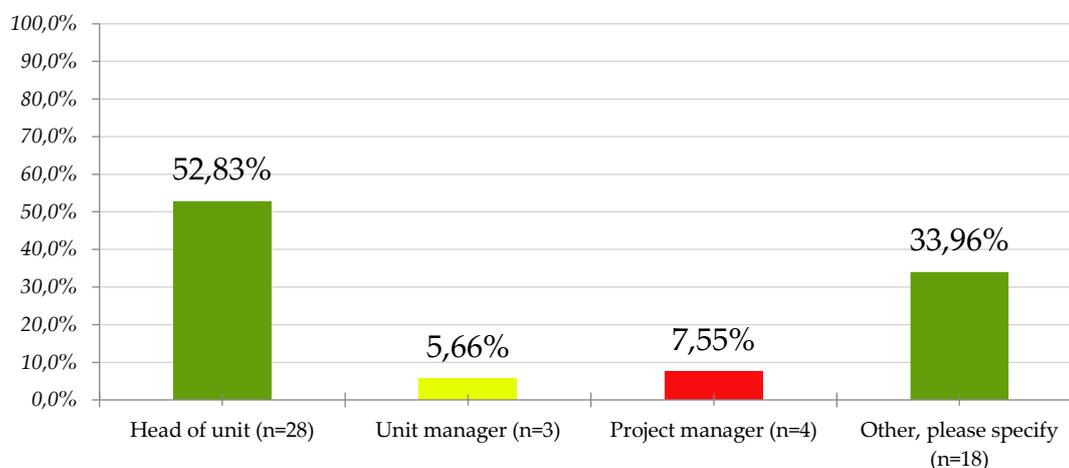


Table 23 shows that agencies with a hybrid structure more often tend to have other people responsible for supervising investigations by case teams. These people do often share the responsibility with the Head of unit and are in most of the cases, the Head of the legal and/or economist units.

**Table 23. Who is responsible for supervising investigations by case teams? By different organisational form**

	Head of unit	Unit manager	Project manager	Other	Total
Units based on area of law being enforced	7	1	2	0	10
Units based on industry/business area	3	0	0	0	3
Units based on professional services	3	0	0	1	4
Units based on function	6	0	1	3	10
Single unit/no division of staff/entirely project-based	1	0	0	1	2
Hybrid, please describe	6	2	1	11	20
Other, please specify	2	0	0	2	4
Total	28	3	4	18	53

## 4.6 Internal scrutiny and quality control of ongoing investigations

It is clear that different organisational designs and internal control options are correlated, which enable multiple opportunities for internal scrutiny and quality control of ongoing investigations. Below various mechanisms and procedures are described.

Many agencies have components of “vertical scrutiny”, which refers to vertical chains of accountability. Such multiple levels of review ensure that investigations are optimised, conducted in a transparent manner and help safeguarding the quality of the work. The agencies have given different descriptions on how their “vertical procedures” help to safeguard internal control and scrutiny.

For example, one agency explained that internal control is ensured by the Project Manager of each case team, who is the “first line of defence”. The Project Manager is given support from the separate legal and/or economist units. The “next line of defence” is the Head of Unit, who signs off the case prior to the case being peer-reviewed by the economist and legal units. Throughout this process, formalised meetings are held with the Steering Group (comprised of the board of directors and chief economist) and the competition council.

However, a number of agencies highlighted the additional importance of “horizontal scrutiny”, which may refer to quality control among case team members. These agencies recognised that the organisational structure can provide leverage and help the agency to enhance its functioning. One agency confirmed that *“the agency’s organisational design is built, among other things, around securing ample internal scrutiny and quality control”*. Another agency stated that *“the agency has an effective governance structure that enables multiple opportunities for internal scrutiny and quality control”*. The correlation between structure and functioning was also illustrated by *“internal scrutiny and quality control begins with the case team itself and progresses to particular organisational fora”* and *“the role of the staff teams, especially legal and economic, is crucial for ensuring a high quality”*.

As described above, most agencies have case teams with a mix of lawyers and economists. One method explained by the respondents is to form case teams that comprise different professions, with each profession being represented at different levels of seniority which ensures a high level of internal control. In the case of a large agency, internal scrutiny and quality control is ensured by *“explicitly including all relevant expertise; economist and lawyers as well as specialisations such as policy, compliance, and international staff, which ensure the agency benefits from all aspects of discussion and analysis”*. This means that the organisational design can strengthen internal scrutiny and quality control by striking a balance between integration and specialisation. The benefit of specialisation was also recognized among other respondents.

In some agencies, expertise is utilised at a later stage of the investigation. For example, a case team will hold a presentation of evidence after a summons application or a decision has been drafted, to assure the quality of the investigation. Senior officials from the Chief Economists and legal units, who have not been part of the investigation, can assess the content of the investigation before a decision is finally adopted. This procedure promotes enforcement consistency and can help challenge and refine internal assessments, counter any tendencies towards confirmation bias, and ultimately lead to better outcomes.

Moreover, in one large agency, investigation reviews are prepared by the investigative teams and supervised by Project Managers with input from technical managers when needed. To affect a more efficient process, the agency has implemented 3-month "Stop/Go"-meetings on investigations files, during which senior managers can take decisions on whether or not to continue with an investigation. The benefit of this review process "*allows a clear visibility across the organisation of the direction of all investigation resources*". Additional approaches to guarantee internal control and scrutiny is to organise weekly meetings (e.g. technical staff meetings") and involve staff that are not assigned to a particular case to offer suggestions and to discuss certain issues.

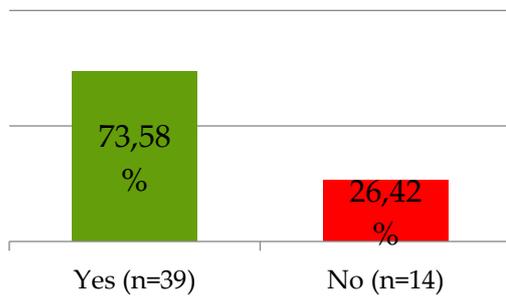
## 5 Experiences from changes in the organisational design

### 5.1 Changes

A majority of respondents (74 percent) have experienced a change in the organisational design of its competition enforcement function in the last ten years. Tables 24 and 25 report whether the responding agency had an organisational change in the last 10 years by showing the year of establishment and organisational size. Table 24 shows that a majority of the young agencies (59 percent) have experienced a re-organisation, compared to middle-age (76 percent) and old agencies (84 percent).

Table 25 shows that more than 50 percent of the small agencies have experienced a change in the organisational design, compared to medium-sized (82 percent) and large agencies (80 percent).

**Q25: Has your agency experienced a change in the organisational design of its competition enforcement function in the last 10 years?**



**Table 24. By category for year of establishment**

Group	Yes	No
Old (n=19)	16 (84 %)	3 (16 %)
Middle-aged (n=17)	13 (76 %)	4 (24 %)
Young (n=17)	10 (59 %)	7 (41 %)
All (n=53) <sup>20</sup>	39	14

**Table 25. By category for size of the agency**

Group	Yes	No
Small (n=16)	9 (56 %)	7 (44 %)
Medium (n=22)	18 (82 %)	4 (18 %)
Large (n=15)	12 (80 %)	3 (20 %)

<sup>20</sup> Three agencies did not answer this question.

## 5.2 Impetus for a re-organisation

Table 26 presents the impetus for the re-organisation which 39 agencies reported to have experienced in the last 10 years. The respondents had the possibility to choose all alternatives presented in the graph below. The most common impetuses for re-organisations were the result of evaluation of working methods (“internal”) and new functions being added to the agency (“external”).

### Q25 (b): Impetus for the re-organisation

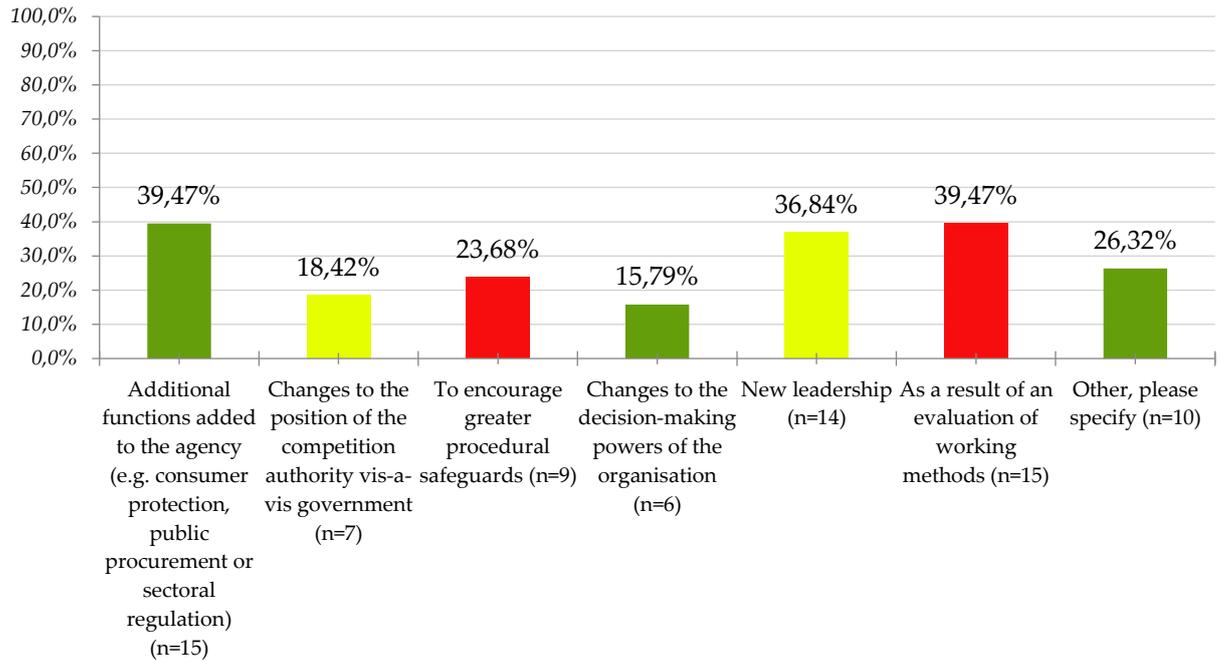


Table 26. Impetus for the re-organisation (all, n=39)

	Number
Additional functions added to the agency	15
Changes to the position of the competition authority vis-a-vis government	7
To encourage greater procedural safeguards	9
Changes to the decision-making powers of the organisation	6
New leadership	14
As a result of an evaluation of working methods	15
Other	10

**Table 27. Impetus for the re-organisation (small, n=9)**

	<b>Number</b>
Additional functions added to the agency	5
Changes to the position of the competition authority vis-a-vis government	3
To encourage greater procedural safeguards	2
Changes to the decision-making powers of the organisation	1
New leadership	3
As a result of an evaluation of working methods	4
Other	0

**Table 28. Impetus for the re-organisation (medium-sized, n=18)**

	<b>Number</b>
Additional functions added to the agency	4
Changes to the position of the competition authority vis-a-vis government	0
To encourage greater procedural safeguards	4
Changes to the decision-making powers of the organisation	2
New leadership	7
As a result of an evaluation of working methods	7
Other	6

**Table 29. Impetus for the re-organisation (large, n=12)**

	<b>Number</b>
Additional functions added to the agency	6
Changes to the position of the competition authority vis-a-vis government	4
To encourage greater procedural safeguards	3
Changes to the decision-making powers of the organisation	3
New leadership	4
As a result of an evaluation of working methods	4
Other	4

## Section II

### 6 Perceived advantages and risks of different structures and functions

#### 6.1 Introduction

An analysis of the responses and comments made during the webinar, indicate that the choice of different organisational designs involve a number of trade-offs between different, and sometimes conflicting, factors in the pursuit of effectiveness, efficiency and flexibility. The choice of one structure or function may enhance effectiveness in certain regards but at the same time create potential weaknesses with regard to other issues. Different mechanisms may thereafter be implemented to try to offset or remedy these potential weaknesses. However, the common used hybrid structure shows that agencies are of the view that there are advantages to have a mixture of sector and instrumental expertise.

This section of the report discusses some of the trade-offs and challenges that have been identified, and explore some of the structural and non-structural measures taken by agencies to enhance effectiveness.

#### 6.2 Sector expertise vs instrumental expertise

##### 6.2.1 *Advantages with sector expertise*

In some organisational structures, it is more common to have sector expertise than expertise of investigating specific types of infringement (instrumental expertise). For example, one agency that operates sector-specific units reported that allowing case handlers to work with cases within the same industry is beneficial to the screening and prioritisation of cases since market knowledge enables a quicker assessment of whether a complaint has merits or not. Similarly, market knowledge can help agencies to target its ex officio cases more efficiently. This structure can encourage sector consistency in antitrust enforcement, and promote in-depth knowledge of the industry and its regulation. This can make the case-handling process and use of resources more effective.

### 6.2.2 *Challenges with sector expertise*

The challenge with sector expertise is to develop a regulatory mind-set and a deeper knowledge of a specific sector, which is often jeopardised by staff turnover or lack of staff rotation. The structure can also increase the risk of fragmented expertise on investigative techniques and procedures, e.g. inspections and econometric analysis and create a risk of inconsistent approaches within the same type of competition violations. There are also risks of overlaps between departments/units, which can lead to possible conflicts and sometimes internal debate for what are considered “good” cases. One agency noted that since different types of investigation compete for resources, cartels and unilateral conduct may end up being given a lower priority, since merger cases have deadlines that must be kept. The organisational structure can also prove an obstacle to properly capturing cross-sector phenomena, such as digitalisation.

Finally, some small agencies reported that due to the size of the country with relatively small markets, a sector-specific structure may not be suitable as some units would be overloaded with cases (e.g. the service sector), while others (e.g. industry sector) would have very little workload.

### 6.2.3 *Advantages with instrumental expertise*

Units based on instrumental expertise allow case handlers to build efficient working methods by investigating the same types of infringement. This structure facilitates development of legal and technical expertise in the area of law being enforced. By drawing on the areas of expertise, i.e. cartels, unilateral conduct and mergers, staff can identify issues and risks and address them early in an investigation. Moreover, one agency described that the structure allows for “*deeper and comprehensive knowledge*” that can also help to prioritise between cases of the same type of infringement, e.g. between two different complaints of unilateral conduct.

The structure therefore allows for an initial prioritisation assessment to assess whether the conduct at hand can be assumed to result in harm based on the economic and legal context before open an investigation. This enables the agencies that operate under this structure, to efficiently use resources and to identify the most harmful conduct. As a result, the structure makes it possible to better compare case-handling and possible misuse of resources between cases of the same type of conduct.

Another advantage which was discovered, is that it is often evident to which unit a case should be allocated. Furthermore, it also helps to apply a uniform approach to the relevant type of case.

#### *6.2.4 Challenges with instrumental expertise*

One weakness identified in this method is the potential loss of sector-specific knowledge. Staff that develop expertise in areas of mergers, cartels and unilateral conduct can lead to issues in terms of interchangeability of resources. The structure can also lead to a lack of expertise in cross-tool thinking about market competitiveness and consumer-focused prioritisation of issues. The extra time needed to obtain relevant knowledge about certain sectors can be costly and inefficient. One agency responded that this downside was less critical since certain sectors do not turn up often and that sector expertise was less valuable to the organisation.

#### *6.2.5 Measures to bridge gaps between instrumental expertise and sector expertise*

There is a range of structural and non-structural methods to bridge gaps between instrumental and sector expertise. For example, the hybrid structures allow for the development of both sector and instrumental expertise. Running multidisciplinary teams can encourage collaboration throughout the life cycle of an investigation, which enables the use of expertise from various areas.

Other measures to promote collaboration between units include methods to promote knowledge sharing, planning meetings and joint events. The risk of creating silos of information can be addressed by a number of organisational techniques, such as various planning processes and information sharing channels. Regular meetings for all, or groups of, employees, with an agenda that touches upon relevant cases and general information about events etc., are also measures to bridge gaps. One agency highlighted the need for formalised knowledge sharing, whereby all units are made aware of not only current cases, but also learning points, pitfalls and other knowledge of relevance across the units. A large agency reported having a “know-how” team that works with staff across the organisation and coordinates a range of initiatives to ensure that learning from cases and projects are shared in a timely and effective manner. Another agency explained that outside of investigations, there are regular discussion groups between areas of specialisation, allowing the sharing of knowledge across teams. That agency has for example legal and investigative discussions groups, which are open to all staff. This enables a broader knowledge of changes to frameworks, relevant legislation and best practices.

Another approach is to create “methodology” teams, which can comprise staff from different units, with the responsibility for updating working methods for issues based on new experiences. The adoption of internal policy documents (e.g. “Smarter Working Initiative”) that engages all staff in identifying further sources and synergies with other units, was a measure used by one large agency. That agency had also adopted internal recommendations to the senior management on issues relating to the best use of resources in a hybrid matrix structure.

Another mechanism to overcome the risk is to share information and expertise among units, for example by weekly meetings of directors and internal seminars that can retain knowledge and reinforce professional standards and capacity building. In addition, a key to overcome the gap is to introduce systematic oral or written knowledge shared among staff as well as the transfer of knowledge from different activities, such as external workshops and conferences.

Technical solutions can also be employed to promote collaboration, facilitate transfer of know-how and help to avoid work duplication. Agencies report using intranets, e-mails, know-how webpages, platforms and other common knowledge management tools to encourage better collaboration and to contribute to the retention of expertise. One agency reported to have a detailed staff intranet system to provide all staff with access to key information, which includes a staff directory where areas of responsibility and expertise are listed. Another agency reported using *“a tool to enable powerful search from a single-user friendly interface across various information sources”*.

### **6.3 Separation vs integration with regard to economic expertise**

#### *6.3.1 Economic expertise*

The structures of economist functions vary a lot; economists can be structured separately from case handling teams, e.g. in an economist unit, integrated into case handling teams, or be part of a hybrid structure, i.e. where economists form part of case handling units and case teams as well as having specialised unit for economists. The survey shows that irrespective of the structure, agencies believe that their economists are able to fulfil their functions.

The survey explored the extent to which agencies utilise specialised units. Responding agencies identified various potential strengths and weaknesses with different models for organising economists in competition enforcement functions. In the following section, the report explores the ways in which economist expertise is organised within the agencies, and the advantages and weaknesses of different models.

#### *6.3.2 Specialised economist units*

One advantage of having specialised economist units which are also managed by economists, is the development of economist expertise which can facilitate better quality control of the economics analysis produced by the staff in the case handling units. Specialised economist units allow for effective quality control and checks and balances when they review outputs from other units. One agency explained that this would be lost in a completely integrated structure where economists were involved at all times and levels.

Other advantages are that specialised economist units enable staff to identify similar issues across different cases, to understand complex matters and to contribute so that cases are investigated in an effective way. Transferring this expertise to a specialised unit fosters efficiency and consistency in the enforcement procedure and enhance the effectiveness of the decision-making processes. Having this structure can also better equip agencies to identify competition issues that may not be apparent without deep understanding of the subject matter. In order to overcome lack of accountability in the organisation, one agency explained that it had moved *“from a structure of legal and economist sections to a structure where economists are separated”*.

One agency that employs sector-specific units described specialised economist units that deal with sectors of the economy and types of conduct that are especially complex. Staff in these units have detailed knowledge and expertise in certain investigative techniques, as well as a strong understanding of the industries involved. By having separate economist units, the agency can quickly analyse competition issues of priority areas without the need to invest significant time and resources into gaining a base level of knowledge. The choice of having separate economist units may enhance effectiveness but at the same time may create potential weaknesses. Separation may also distance lawyers from the economic models and theories that are necessary in many cases.

### 6.3.3 *Non-specialised or integrated economist units*

The advantages of integration whereby lawyers and economists work together in the same units are day to day cooperation between staff, and that staff must perform a variety of tasks. Capacity and expertise across the organisation can therefore be used in a flexible way. Separate economist units can also result in more complex and slower investigations compared to investigations performed by integrated staff in the enforcement functions.

Moreover, one agency explained that separation of economists is not always effective, especially not in merger cases. When staff from case teams open up for discussions at a late stage of the process, it can be difficult for economists in separate units to give comprehensive answers to the concerns having not been involved earlier in the process, and thereby not having been able to advise what to investigate. If the same concerns had been raised earlier, the economists would have had the time to assist better and to give more qualified advices. The agency therefore explained that separation *“makes the whole process less predictable”*. On the other hand, with integrated units there is a risk of losing some of the natural interaction or cross-pollination of ideas and experience that comes with having all your economists working closely together.

#### 6.3.4 *Measures to remedy potential weaknesses*

Different mechanisms can be implemented to offset or remedy potential weaknesses of an integrated model and the model with separate economist units. The risks associated with an integrated model can be addressed by maintaining a separate Chief Economist. Another measure could be to require, when appropriate, both disciplines, legal and economic, within the case team, to write separate opinions. This may help to ensure that relevant legal and economic arguments are fully vetted.

One weakness identified by having separate economist units is the risk of losing communication and collaboration between these units and the case teams. This risk can be addressed by tying the separate economist units more closely to the enforcement functions when required. This can guarantee that expertise from both specialised economists and senior lawyers is taken into account throughout investigations. Another solution can be to structure economic units or even specific economists or group of economists, to work with the same legal units or investigators, e.g. by matching up their sector expertise or instrumental expertise.<sup>21</sup>

### **6.4 Flexibility vs consistency**

It is important to ensure that the case teams are comprised with the right expertise and with enough resources to meet the goals of the agency. It implies that each person must be aware of his/her specific role and understand what is expected of him/her. This in turn also requires an environment where staff are able and willing to contribute and to be flexible enough to be able to adapt to changes.

From a case team design perspective, most agencies adapt their case team design to the complexity of the cases and allocate resources and staff from the same unit. What is interesting to note is that the ability to quickly reallocate personnel resources according to priority was marked as a strength by a number of agencies, even though these agencies had different organisational structures. This indicates that the organisational structure alone is not the deciding factor for how an agency best deals with challenges, prioritisations and meeting the set goals.

This section presents perceived advantages and challenges of forming case teams of staff from the same unit and how these challenges can be addressed through structural or non-structural measures.

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<sup>21</sup> For example, if the agency has legal section A that covers sectors X, Y and Z, it can have economic section B also specialised in X, Y and Z, so that A and B have more interactions and can build shared understanding and expertise.

#### *6.4.1 Advantages of case team comprised of case handlers from the same unit*

According to the responses, the most common form of case team allocation is to form case teams of case handlers from the same instrumental or sector-based unit. This method can be beneficial since staff allocation among cases of the same type is facilitated and cases are prioritised by the same Head of unit. The knowledge of workload and expertise in each unit can also help to ensure that resources are used in the most effective manner.

Some agencies explained the advantages of forming case teams that comprise case handlers from the same sectoral unit. This approach can be effective and flexible as the sector is well known to the case handlers, which means that staff can quickly be involved and meet the needs arising in the agency. On the other hand, there are advantages of forming case teams with staff from the same instrumental units as it helps to ensure that case teams have and share the necessary knowledge in a particular field of competition law.

#### *6.4.2 Challenges of case team comprised of case handlers from the same unit*

Functional or sector-based case team allocation comprised of case handlers from the same unit also has its drawbacks. It can lead to unevenness in workloads and difficulties in responding to unexpectedly increased workloads. For example, one agency explained that *“depending on the complexity of cases, some teams are over-burdened either with the number of cases or the quantity of various procedural steps”*. Furthermore, this approach can contribute to rigidity and reinforce silos of information and risks of work duplication if staff from the same unit are operating in isolation. There is also a risk that if one part of the organisation takes action, it may undermine the approach of another. Regarding mergers specially, one common challenge for many agencies is the ability to gather sufficient resources and to form case teams in a flexible way, on top of dealing with ongoing enquiries and enforcement.

#### *6.4.3 Measures to strike a balance between flexibility and consistency*

These challenges can be addressed through structural or non-structural measures. For example, rotation of staff can prevent the creation of silos and improve integration and create new methods throughout the organisation. It can also provide better opportunities for professional development, job satisfaction and retention of staff. Some case examples are presented below.

One agency responded that its hybrid structure is based on function-specific units (e.g. cartel, antitrust, consumer enforcement), coupled with the formation of multi-disciplinary teams which are comprised of staff from different units. The agency noted that such a structure and method for case team formation allows for flexible case allocation, necessary to respond to urgent needs.

Furthermore, one agency with a cross-unit project based approach, responded that the approach contributes to flexibility when allocating resources to the most important competition problems. The flexible project-based organisation facilitates flexible horizontal resource allocation across the organisation, which means that knowledge and skills can be directed to where they are most useful. In order for the organisation to set-up case teams that bring together the necessary knowledge to deal with the competition issue, the agency has given the task to a coordinator who plans each project to ensure the right composition of staff in the case teams. It is inevitable that such an approach is associated with transaction costs, since managing and allocating resources and tasks can be relatively time-consuming.

Another agency reported that a majority of cases are resourced through weekly meetings with “Heads of Professions and Senior Directors” who are responsible for the projects. Their aim is to ensure that the agency’s’ priorities are met and that the cases teams have the right compositions. The agency stated that *“supporting individuals to develop skills and experience will make the agency more flexible and resilient in the future”*. This flexible allocation of resources can also help when there is a high workload due to many projects with statutory deadlines. The same agency added that *“this can be a time consuming and potentially disruptive process”* when the assessment of staff allocation has an impact on the other projects that are losing resources and on staff members who have to be moved to mandatory projects.

There are also other strategies explained by respondents, which can involve the implementation of a system where case handlers from different units are formally assigned as a “discussion partner” to one another. One agency with a hybrid structure explained that while case teams primarily comprise case handlers from the same unit, it employed a practice of “*décloisonnement*” (i.e. opening up). This approach enables a flexible allocation of case handlers to prioritise cases or projects and to break down information silos by encouraging sharing, regardless of their unit of origin.

## **6.5 Specific challenges and strengths for smaller agencies**

The structure of an organisation is seemingly related to the size of agency. The most commonly reported type of unitary structure among small agencies is that of units based on the area of law being enforced. This is in contrast with large agencies where the hybrid structure is the most commonly reported type of structure. A number of strengths and weaknesses of different structures and functions are particularly relevant in the context of larger agencies, but have less bearing on smaller agencies.

One small agency with units based on function and with 13 members of staff in total, explained that *“the organisation chosen is the only one available”*. Even though other responses demonstrated there are other options available for small agencies, the citation suggests that smaller agencies in term of staff numbers, do not have as many organisational design options as large organisations have.

### 6.5.1 Challenges

One obvious challenge with a limited staff number, is that it is more difficult to allow for specialisation to the same extent as larger agencies, which have adopted more complex structures with specialised units. The lack of resources in small agencies can also be an issue, especially when the workload is high and the nature of the cases is complex, which puts a premium on prioritisation and case selection within available resources/agency capacity.

### 6.5.2 Strengths

When analysing the challenges and strengths from smaller agencies perspective, it is clear that the structure has a direct impact on the functioning of the agency. Since the structures of small agencies are less complex and contain fewer units, case teams are often formed on a case-by-case basis. Flexibility in allocation of staff across units is necessary and performing different tasks helps to assure that a case benefits from the necessary expertise. Hence, collaboration among staff and between units arises more naturally in small agencies. One small agency explained that even though the acquired experience is limited the *“teamwork has been a key factor in handling cases mainly due to the small number of staff, rather than the type of structure”*.

One agency explained that case team members are generally working on more than one case at any time, which means that staff may have a wider knowledge of different areas of work than in some larger agencies. The trade-off is in relation to depth of expertise of a particular sector. On the other hand, the agency further explained that *“should we notice effectiveness gaps as a result of our structure, the ability to remove staff to other areas to develop their skillsets and the organisation capability is open to us to consider”*.

Another small agency explained that all staff within the organisation work on tasks related to the enforcement of competition laws, competition advocacy, as well as regional and international matters. Larger agencies tend to rely on established institutional knowledge in forms of handbooks, steering documents and policies, while small agencies tend to have developed less formal systems that evolve with their experience and are based on *ad hoc* cooperation and communication.

The small scale agencies therefore show a result in staff being more flexible as to resources. This means that staff are usually more aware of *“the whole picture”* and that available resources can be used in a more flexible way. This can also facilitate the need to cover temporary lack of human resources due to staff leaving the agency.

## **7 Perceived positive and negative outcomes of the re-organisation**

In the following section, the perceived positive and negative outcomes of changes are explored. Based on sub-section 5.1, a majority of agencies have experienced a change in the organisational design during the recent years. Figures 1 and 2 in Section I show that most of the agencies were established towards the end of the 1990s and that there is a positive relationship between the size and the age of the agencies. Every agency is shaped by the prevailing external and internal circumstances, but it seems rare that an agency is established and immediately begin to operate in large scale.

### **7.1 Is there an optimal design?**

Section I demonstrates that in order to attain agency effectiveness, both the structure and the functioning of the organisation should be taken into consideration. Based on the information provided in Section I, the optimal design for one agency is not necessarily suitable for others because there is no “one-size-fits-all” approach. Examples of external and internal factors for re-organisations are presented below.

#### *7.1.1 External factors*

External factors, such as legislative reforms, changes in the decision-making powers, new functions or leadership, can be reasons for a re-organisation. Learning from other agencies with similar conditions is a potentially useful tool to help identify and consider new design options. One agency responded that it had to change its organisational design because of a constitutional reform, and that prior to the re-organisation it consulted other agencies to identify the pros and cons of different alternatives in order to find an optimal model.

Other external influences can also initiate organisational design initiatives and agencies are taking different actions to ensure that they are well placed to face new challenges, such as issues posed by digital markets. For example, the competitive landscape is changing as digital platforms are empowering companies to roll out products and deliver them to new markets. To better understand these changes, some agencies have hired technologists, introduced new technology-focused investigative or research units, or created separate IT units within existing structures. The purpose of specialised units is to conduct IT forensic investigations, to collect forensic evidence and to provide analysis of digital evidence. One small agency explained that in the digital era, it needed to add additional units to be able to respond to the changes that are being brought by the emerging digital society. Social media and more streamlined communication with the public, may be used as a mechanism to create a common understanding of the value of competition.

Consequently, communication units with digital-communication strategies have been formed in some organisations, responsible for press releases, media contact and internal and external websites. Agencies are also forming specialised units such as advocacy units, responsible for responding to official consultations and inquiries and conducting market studies. A large agency described that the separation of some enforcement functions into specialised industries/sectors has meant that the knowledge gained from specialisation, including through market studies and inquiries, has enabled the agency to inform the public about its investigations and enforcement. The creation of “pools” of expertise has provide opportunities to exchange ideas and develop innovative solutions to issues.

### *7.1.2 Internal factors*

Some structures contribute to developing so-called “blind spots” for parts of the market, which is a negative centralisation of resources and expertise in certain markets failing to understand or notice important developments in other markets. This can be problematic if the organisation lacks mechanisms to overcome that risk. Another common internal factor is that the agency suffers from ineffective coordination of resources.

Some agencies described that a change was made to enable case handlers to focus on enforcing the competition rules, by changing the structural form from sector-based units to units based on types of conduct. Another agency explained the change from a sector-based approach to an instrumental-based approach with the aim to make it easier for case handlers to become more specialised in the competition regulation. Moreover, some agencies have changed to a structure where units are responsible for a particular type of conduct, e.g. cartels, unilateral conducts and mergers, while some have changed to a structure where cartels and mergers are integrated into one unit and cases concerning unilateral conduct are separated. A number of agencies reported positive outcomes with the establishment of a standalone merger unit and explained that the concentration of expertise regarding merger regulation had improved effectiveness and efficiency of the merger review processes. In one example is that this resulted in a more efficient review process for mergers with a simplified notification process.

Furthermore, one agency identified a need to improve project management at different levels within the competition area. This was to allow better operational support, more time for strategic planning and stakeholder engagement, staff development, project management and reporting, as well as clearer definition of responsibilities and accountability for all staff and to provide a pathway for investigations to become more efficient. In order to achieve these commitments, the agency implemented a hybrid structure and divided the agency into six areas and created new roles and methods for leadership, management and project management. The positive outcome of the changes included i.a. better focus on the agency’s goals but also better project planning and clearer roles and responsibilities. The work that has been carried out on project management has enabled greater clarity for staff around decision-making problems and improved

communication. It has also allowed the agency to better identify complex and non-complex investigations and to set different performance benchmarking. Senior managers have also been able to devote more time to strategic work. Improved learning and development opportunities for staff have been implemented.

## **7.2 Managing changes effectively**

Every organisational re-design carries risks, such as the creation of silos of information and expertise or the loss or dispersal of expertise, which can result in work duplication and that one part of the organisation takes action that may undermine the approach of another. Divergence among units can make it difficult for the agency to operate with consistency and the distribution of responsibilities can obstruct case handlers from enforcing the competition laws. One example, where a large multi-purpose agency added new functions to the organisation, illustrates that a re-design can result in a more “heavy” and complex structure characterised by lack of clarity about responsibilities.

Agencies can mitigate the potential damage by identifying important risks early and monitoring them well after the re-design has been carried out. For example, a medium-sized agency explained that even though it had changed from a hybrid structure to a functional structure, it still identified a need to actively work to ensure consistency between the units. In the case of another agency, the aim of the re-organisation was to combine units with diverse or distinct functional roles, but found it challenging to prevent overlaps and work duplication between the new entities. This was addressed by new routines in terms of deliberate and frequent communication about ongoing investigations between the concerned units.

Moreover, it is essential to identify the motivation for undertaking changes. This perspective can position the re-design in a way that supports broader goals, such as efficiency, flexibility and agency effectiveness in the organisation. Is the entire organisation design the root cause of the problems or can other interventions achieve a similar result with less changes? Changes in one part of an organisation can affect the overall organisation and can significantly speed up investigations. For instance, one agency with a sector-based structure that had a number of “small” units inside the market units, identified concerns about which market unit had the ownership of the cases. The agency made some minor changes by absorbing the small units into three market units, which resulted in a more conducive environment for staff and therefore made an improvement in performance. As a result, the organisation design that emerged was well placed to meet the challenges posed without compromising on-going operations.

## 8 Conclusions

Agencies are designed and re-designed with the intent of introducing better or optimal structures and functions to address needs, priorities, and challenges. But the optimal structure for one agency may not be suitable for others – there is no “one-size-fits-all” organisational design. Indeed, given the trade-offs often derived from different designs, there may not be a single optimal structure. There are rather multiple “optimal” structures depending on the existing needs, priorities and challenges. The organisational design depends on various factors, such as size, independence from government, the amount of resources and applicable competition law. However, agency effectiveness is not the direct outcome of the organisational structure. From a functioning perspective, various strategies allow an agency to respond and adapt to changes and to achieve the desired results.

From an analysis of the collated responses it is clear that the choice of different organisational designs involve a number of trade-offs between different, and sometimes conflicting, factors in the promotion of flexibility, efficiency and effectiveness. The choice of one structure and function may enhance effectiveness in certain regards but may at the same time create potential weaknesses. However, once the causes of weak performance are understood, appropriate changes in the organisational structure and the function of the agency may be carried out. Different mechanisms can be implemented to offset or remedy these potential weaknesses.

Furthermore, it is clear that the complexity and dynamics of external factors cause changes in agencies’ overall activities. Such external factors can be new market conditions with new products and services and in turn, the agency influences the external environment by enforcing competition laws in an effective and flexible manner. This shows that agencies do not operate in isolation or remain unaffected by the changing market landscape, but rather they take different actions to ensure that they are well placed to face new challenges.

In conclusion, because of the relationship between structure, function and perceived agency effectiveness, changes in the structure do not have to be the only option to consider in order to improve the effectiveness of an agency. Indeed, many of the more fluid process choices identified in this report, such as case selection and tools for internal scrutiny, can be just as important to achieve effectiveness as different choices of organisational structures. It is therefore beneficial to keep in mind before re-organising that *both* the structure and the function of a competition agency can be amended in order to achieve an improvement in agency effectiveness. The two variables are correlated and the interaction between them can have a strong impact on the outcomes in terms of agency effectiveness.

### Questionnaire on internal organisational design options for competition agencies

#### BACKGROUND

This questionnaire forms part of the ICN AEWG's project on international organisational design options for competition agencies. The goal of the questionnaire is to collect information that will form the basis of a report describing the internal organisational design choices utilised by competition agencies, the rationale for those choices, and the perceived impact on effectiveness. In addition, the questionnaire seeks information on agencies that have undergone a change in their internal organisational design to gather information about why such changes were made and the perceived effect of the change in terms of effectiveness.

The project focuses specifically on organisational design options related to competition enforcement functions within agencies. Therefore, broader questions of how other competition functions such as advocacy, communications, HR, etc. are structured are outside the scope of the questionnaire.

Likewise, broader questions of different institutional design options are left the scope of the project. These issues have already been extensively covered by the OECD.<sup>22</sup> Therefore, questions about the comparative advantages of multifunction agencies, independence from government, different decision-making powers, internal governance, etc. are not covered in this questionnaire. Rather, the questionnaire only touches on these issues to the limited extent of understanding how changes in broader institutional design may have influenced internal re-organisations in terms of competition enforcement functions.

In recognition of the fact that there is no "one-size-fits-all" solution to these questions, the aim of the project is to produce a descriptive report rather than best practices. The goal is for the report to provide information and inspiration to competition agencies that are re-appraising the ways in which competition enforcement case handlers are structured, and the ways case teams are formed.

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<sup>22</sup> OECD, Changes in Institutional Design of Competition Authorities (2014, 2015)  
<http://www.oecd.org/daf/competition/changes-in-competition-institutional-design.htm>

## SECTION I – General information about the competition agency

1. Name of the agency and jurisdiction
  - (i) Name of the agency
  - (ii) Jurisdiction
2. Contact person(s) at your agency regarding this questionnaire
  - (i) Name(s)
  - (ii) Email
  - (iii) Telephone
3. Which year was your agency established?
4. Total number of full-time equivalent staff as of 31 December 2017 (please specify in number format)
5. Total number of full-time equivalent non-administrative competition staff working with merger and competition enforcement as of 31 December 2017, excluding members of decision-making bodies such as a board or commission. (please specify in number format)

Lawyers:  
Economists:  
Other, please specify
6. What is the scope of your agency's activities? (choose all that apply)
  - (i) Enforcement against anticompetitive conduct (e.g. cartels, unilateral conduct)
  - (ii) Merger Review
  - (iii) Competition Advocacy
  - (iv) Consumer Protection
  - (v) Public Procurement Supervision
  - (vi) Sector regulation
  - (vii) Other, please specify

Additional comments on section I:

## SECTION II – Organisational structure

7. If possible, please attach a link to or image of an organigram that shows the organisational structure of your agency, including the organisational structure of your competition enforcement function.
8. What is the structural form by which competition enforcement staff is organised in your organisation?
- (i) Units based on area of law being enforced (e.g. cartels, unilateral conduct, mergers)
  - (ii) Units based on industry / business area (e.g. construction, telecom etc.)
  - (iii) Units based on professional services (e.g. legal, economic)
  - (iv) Units based on function (advocacy, consumer protection, sector regulation, international affairs, etc.)
  - (v) Hybrid, please specify
  - (vi) Single unit / no division of staff / entirely project-based, please specify
  - (vii) Other, please specify
- a. Are these units part of broader divisions or departments?
- Yes       No       N/A
- b. If yes, please describe the way these broader departments or divisions are structured, e.g. by function (such as competition enforcement), based on industry / business area etc., based on professional services etc.
9. Do staff that work on competition enforcement cases also work on tasks related to other functions, such as competition advocacy, consumer protection, sector regulation, international affairs, etc.?
- (i) Often (above 50%)
  - (ii) Sometimes (above 10%)
  - (iii) Seldom (above 1%)
  - (iv) Never
  - (v) N/A, no other functions

10. Does your authority have a specialised legal unit / department, such as a legal counsel's office, in addition to and separate from case handling units?

Yes  No

a. If yes, what role does this unit play in competition enforcement cases?  
(choose all that apply)

- (i) Staff from this unit typically form part of case teams during investigations
- (ii) Staff from this unit form part of case teams during complex investigations
- (iii) Staff from this unit get involved in specific legal issues that arise during cases, as needed (but not part of the case team)
- (iv) Staff perform quality control of legal analysis later in the process, such as in devil's advocate panels or through separate legal recommendations to decision makers
- (v) Staff from the unit lead or assist in settlements, contested proceedings or appellate efforts before administrative bodies or the courts.
- (vi) Other, please specify

11. Does your authority have a specialised economics unit / department, such as a chief economists' office, in addition to and separate from case handling units?

Yes  No

a. If yes, what role does this unit play in competition enforcement cases?  
(choose all that apply)

- (i) Staff from this unit typically form part of case teams during investigations
- (ii) Staff from this unit form part of case teams during complex investigations
- (iii) Staff from this unit get involved in specific economic issues that arise during cases, as needed (but not part of the case team)
- (iv) Staff from this unit perform quality control of economic analysis later in the process, such as in devil's advocate panels and / or through separate economic recommendations to decision makers
- (v) Other, please specify

12. Does your authority have a specialised enforcement compliance, order, settlement or remedy unit / department, in addition to and separate from case handling units?

Yes  No

a. If yes, what role does this unit play? (choose all that apply)

- (i) Staff from this unit assist case teams during investigations to negotiate or draft settlements or remedies
- (ii) Staff from this unit monitor compliance with agreed upon settlements or remedies, after the conclusion of cases
- (iii) Other, please describe

13. Does your authority have a specialised international unit / department, in addition to and separate from case handling units?

Yes  No

a. If yes, what role does this unit play? (choose all that apply)

- (i) Staff from this unit form part of cases teams during investigations that involve international issues
- (ii) Staff from this unit assist with agency enforcement cooperation in specific cases
- (iii) Bilateral and multilateral policy work
- (iv) Other, please describe

14. Does your agency have other specialised units in addition to and separate from case handling units that assist with investigations? (e.g., legislative affairs, market studies; complaint or notification intake, units that coordinate specific types of investigations etc.)?

Yes  No

a. If yes, please describe these units and the roles they play in competition enforcement cases.

15. What strengths of the organisational form of your agency's competition enforcement function have you experienced in terms of effectiveness, efficiency and flexibility?

16. What weaknesses of the organisational form of your agency's competition enforcement function have you experienced in terms of effectiveness, efficiency and flexibility?
17. How do you work to encourage collaboration between units? Are there benefits to specialized expertise in enforcement or policy groups?

Additional comments on section II:

### SECTION III –Case teams

18. Which of the following best describes how case teams are comprised?
- (i) Case teams comprise case handlers from the same unit
  - (ii) Case teams mostly comprise case handlers from the same unit, with staff from other units regularly “loaned” in depending on skills / case load.
  - (iii) Case teams typically comprise case handlers from different units / departments collaborating in ad hoc projects.
  - (iv) Case teams are comprised in different ways depending on the type of investigation, for example different case team structures for mergers, cartel matters and unilateral conduct matters. Please specify differences.
19. Is a distinction made between complex and other cases, and if so, does it affect how case teams are comprised?
20. Please briefly describe the internal process by which staff are allocated to case teams.
21. Who is responsible for supervising investigations by case teams?
- (i) Unit manager / Head of Unit
  - (ii) Project Manager
  - (iii) Other, please specify
22. What strengths of this method for forming case teams have you experienced in terms of effectiveness, efficiency and flexibility?
23. What weaknesses of this method for forming case teams have you experienced in terms of effectiveness, efficiency and flexibility?
24. How does the organisational design of your competition enforcement function and the design of case teams strengthen internal scrutiny and quality control of ongoing investigations (for example in terms of testing of theories of harm, analyses or findings)?

Additional comments on section III:

**SECTION IV – Changes in organisational design of competition enforcement functions**

25. Has your agency experienced a change in the organisational design of its competition enforcement function in the last 10 years?

Yes

No

If yes:

a. Please describe the nature of the re-organisation into its current structure

b. What was the impetus for the re-organisation? Please select all statements that apply.

- (i) Additional functions added to the agency (e.g. consumer protection, public procurement or sectoral regulation)
- (ii) Changes to the position of the competition authority vis-a-vis government
- (iii) To encourage greater procedural safeguards
- (iv) Changes to the decision-making powers of the organisation
- (v) New leadership
- (vi) As a result of an evaluation of working methods
- (vii) Other, please specify

26. Have you identified any positive outcomes of the change? Please describe:

27. Have you identified any negative outcomes of the change? Please describe:

Additional comments on section IV:



International  
Competition  
Network