ASSESSING PROGRESS IN DEVELOPMENT OF SUCCESSFUL ADVOCACY STRATEGIES TO THE JUDICIARY

An update on the relationship between competition authorities and the judiciary

JUNE 2024

Introduction

Irrespective of the nature of the legal system of which they form a part, competition authorities – whether as investigators, decision makers, or both – play a significant role in the interpretation and implementation of competition law in their jurisdiction. In a well-functioning competition law regime, the judiciary also ensures that competition law is applied through independent and effective scrutiny of competition authority decisions. For a competition law regime to work well, each of the judiciary and the competition authority plays an important, but complementary, role, in furthering the aims of competition policy in their jurisdiction when applying the competition law.

Given these complementary roles, the question of how well the relationship between the judiciary and competition authorities is functioning is an important one. This has previously been considered by the ICN, which in 2005 carried out a survey (**2005 Survey**) designed to analyse the role of the judiciary and its interaction with competition authorities in the implementation of competition policy. The results of the survey were set out in an ICN report published in April 2006.[1]

As the survey was carried out some nineteen years ago, the Advocacy Working Group (**AWG**) considered that it would be useful to repeat it to see whether the conclusions drawn in respect to the relationship between competition agencies and the judiciary (particularly in the case of young agencies) remained the same or whether there had been any material changes – either positive or negative.[2] It also wished to investigate whether the agencies surveyed in 2005 and which were at that time young agencies had materially overcome the problems that they were reporting in 2005 or not. Finally, the AWG was particularly interested to understand whether lessons could be drawn from the experiences of the more mature agencies in interacting with the judiciary that could help younger agencies design more effective advocacy strategies for this key stakeholder group.[3]

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1 "Competition and the Judiciary: A report on a survey on the relationship between Competition Authorities and the Judiciary" (the **2006 Report**). Report produced by the ICN's Competition Policy Implementation Working Group (**CPIWG**).

2 In 2011 the ICN Steering Group initiated a project the aim of which would be to analyse the state of relations between judges and national competition authorities and identify the areas of tension. This project was concluded and presented at the ICN Annual Conference in Warsaw as the host's special project. See https://www.internationalcompetitionnetwork.org/wp- content/uploads/2019/11/SP_Courts2013.pdf

3 The proposed questions for this study were as follows:

- Are young and developing competition authorities now experiencing similar issues in their relationships with the judiciary as were reported by young and developing agencies in 2006?
- Have those agencies surveyed in 2006 – 2007 and that were at that time young and developing materially overcome the problems they reported in 2006 – 2007 or are they still experiencing the same problems to the same extent?
- If they are still experiencing the same problems to the same extent, why have the advocacy strategies to the judiciary that they were developing in 2006 – 2007 been unsuccessful, in their view? If they are not still experiencing the same problems to the same extent, to what extent is this attributable to the advocacy strategies they have developed? Which strategies have been successful and why?

Methodology

Neither the original questionnaires used in the 2005 survey nor the individual responses[4] to that survey were available. The **Guernsey competition authority** (**GCRA**) therefore used the 2006 Report to reconstruct, as far as possible, the questions used in the 2005 Survey and these questions were incorporated into a new survey (**2024 Survey**).

In February 2024, the GCRA sent the 2024 Survey to 114 competition authorities, of which 29 (25%) submitted complete responses. 17 of these respondents were mature agencies[5] and 12 were young agencies.[6] 10 agencies were both small and young.

A copy of the 2024 Survey is attached to this report as Annex 1.

It was not possible to map directly the progress made by the young[7] competition authorities who responded to the 2005 Survey. This was for two reasons. First, it was not possible to identify individual responses to the 2005 Survey on the basis of the 2006 report. As a result, it was not possible to compare the 2005 and the 2024 responses of any individual authority to assess what progress, if any, that agency had made in its relationship with the judiciary. Second, even if it had been possible to isolate individual responses, there was only minimal overlap between the competition authorities that responded to the 2005 Survey and those that responded to the 2024 Survey which meant that it would not have been possible to use the 2005 respondents as a true "control" group for the purposes of this report.[8] Therefore, instead of mapping the progress of individual small agencies between 2005 and 2024 as initially proposed, the GCRA took the conclusions reached by the 2006 report[9] and used them as a benchmark against which to assess the responses to the 2024 Survey.

When carrying out the benchmarking exercise, the GCRA compared against the conclusions of the previous survey both the whole set of responses to the 2024 Survey and various sub-groups of those responses, namely young agencies (**YA**), small agencies (**SA**) and mature agencies (**MA**). This has enabled the GCRA to assess:

(a) Whether and how, overall, the relationship between the 2024 Respondents and the judiciary might be materially different from the relationship between the 2005 Respondents and the judiciary.

(b) Whether the maturity of the 2024 Respondents might be a factor that has a material impact on the quality of their relationship with the judiciary.

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4 The GCRA notes that a small percentage (11% or 2 out of 18 respondents) of the respondents to the 2005 Survey were specialised tribunals within the judiciary and not competition authorities. Since it is not possible to disaggregate the responses of the specialised tribunals from the 2005 Survey results presented in the 2006 Report, the GCRA has treated the 2005 Survey responses as being attributable to competition authorities in their entirety.

5 A young agency is an agency that has been in existence for less than 15 years.

6 A small agency is an agency that has less than 50 staff members carrying out competition law work.

7 Where the 2006 report uses the term "developing country", we have benchmarked this against the category of "young agency" for the purposes of this report.

8 There were only four competition authorities that responded to both the 2005 and the 2024 surveys: CADE (Brazil), New Zealand's Commerce Commission, Turkey's Competition Authority, Zambia's Competition Commission.

9 2006 Report, pages 8 – 9; pages 15 – 16.

(c) Whether any lessons might be drawn from the experiences of the more mature agencies in interacting with the judiciary that could help younger agencies design more effective advocacy strategies for this key stakeholder group.

Executive summary

It appears that there are a number of **broad similarities between the responses of the 2005 Respondents and the 2024 Respondents regarding their relationship with the judiciary**.

- The percentage of respondents who considered that the judiciary shaped competition policy in their jurisdiction was broadly similar in each survey, with respondents in each case being fairly evenly split on this issue. Where the judiciary is perceived to have such a role, the most significant feature appears to be the creation of legal precedent or soft law through decision making by the judiciary on appeals.

- Both the 2005 and 2024 Surveys suggest that judicial involvement during the process of investigation by competition agencies, whether mergers, conduct cases or penalty assessment, is rare even in jurisdictions where the law makes provision for such involvement.

- Both surveys suggested that conduct decisions and financial penalty decisions are more likely to be appealed than merger decisions. The 2024 data suggests that there seems to be little significant difference between the proportion of merger, conduct or penalty decisions overturned by the judiciary. It would appear when an agency decision is appealed, the judiciary is as likely to confirm a decision as not irrespective of the type of decision appealed.

- When their decisions are overturned, the most frequently cited reason given by agencies for this is differences in interpretation between the judiciary and agencies. This is consistent with the 2005 Survey. The 2024 Survey results suggest that procedural reasons and differences of opinion about the applicable standard of proof have grown in importance since 2005.

The data suggests that **the maturity of the 2024 respondent agencies may be a factor that has a material impact on the quality of their relationship with the judiciary**.

- As competition regimes mature, the role of the judiciary appears to grow in importance. This is probably due to the fact that judicial involvement is more likely in a jurisdiction where an agency has been operating for longer and so has made a larger number of appealable decisions than a less mature agency.

- There was a relatively even split between agencies reporting increases in appeals over the last five years and those reporting there was no such increase. Younger agencies were more likely to report an increase than mature agencies.

- While the majority of responding young agencies indicated that they were not satisfied with their relationship with the judiciary, mature agencies were less likely to report that there is a problem in their relationship with the judiciary.

- Young agencies were more likely than mature agencies to report that their decisions are overturned because the judiciary interprets competition law differently. Mature agencies gave a broader range of reasons for why they considered that their decisions were overturned on appeal. The reason most frequently cited by mature agencies was that the judiciary is applying a standard of proof that in their view is not appropriate.

The GCRA has also looked at whether **any lessons might be drawn from the experiences of the more mature agencies in interacting with the judiciary that could help younger agencies design more effective advocacy strategies for this key stakeholder group.**

- The data indicates that the steps taken by agencies to address the perceived differences between the views of the judiciary and the views of the competition authority have focussed on providing training programmes and organising judicial participation in workshops, seminars, and conferences.

- There are instances of perceived improvement, but in general there is no evidence that these initiatives have been consistently or significantly successful for younger agencies.

- Further work would be needed to understand if initiatives by mature agencies are substantively different to those of younger agencies, given that mature agencies are significantly less likely to indicate a problematic relationship with the judiciary.

- At least two factors might explain some of the difference given survey responses. Mature agencies deploy a wider range of initiatives than younger agencies and none of the mature agencies reporting lack of knowledge by the judiciary as a significant issue, were subject to appeals heard by specialist courts.

- **Despite evidence of efforts by younger agencies over almost two decades, the extent of, and the reasons for, concern about their relationship with the judiciary remain. The apparent lack of perceived improvement indicates a need for alternative approaches to address their challenges. Alternative approaches include: inviting the judiciary to moderate at conferences, establishing procedures to encourage consultation, drafting judicial rules on procedure, contacting specialist foreign judges and the authority appearing as amicus curiae.**

- **A focus on improving the knowledge of generalist courts appears not to provide a path to substantive improvement and younger agencies may wish to explore other avenues in future. Widening the range of initiatives is an option to consider given the more positive relationship between the breadth of initiatives by mature agencies and fewer problems reported with the judiciary.**

- **The extent to which generalist courts are hearing competition law appeal cases and the lack of substantive improvement after investment in education and training programmes suggests a structural solution might be more effective than an educational improvement solution in addressing the issues perceived to exist between competition authorities and the judiciary.**

Issue 1 – Does the judiciary shape competition policy?

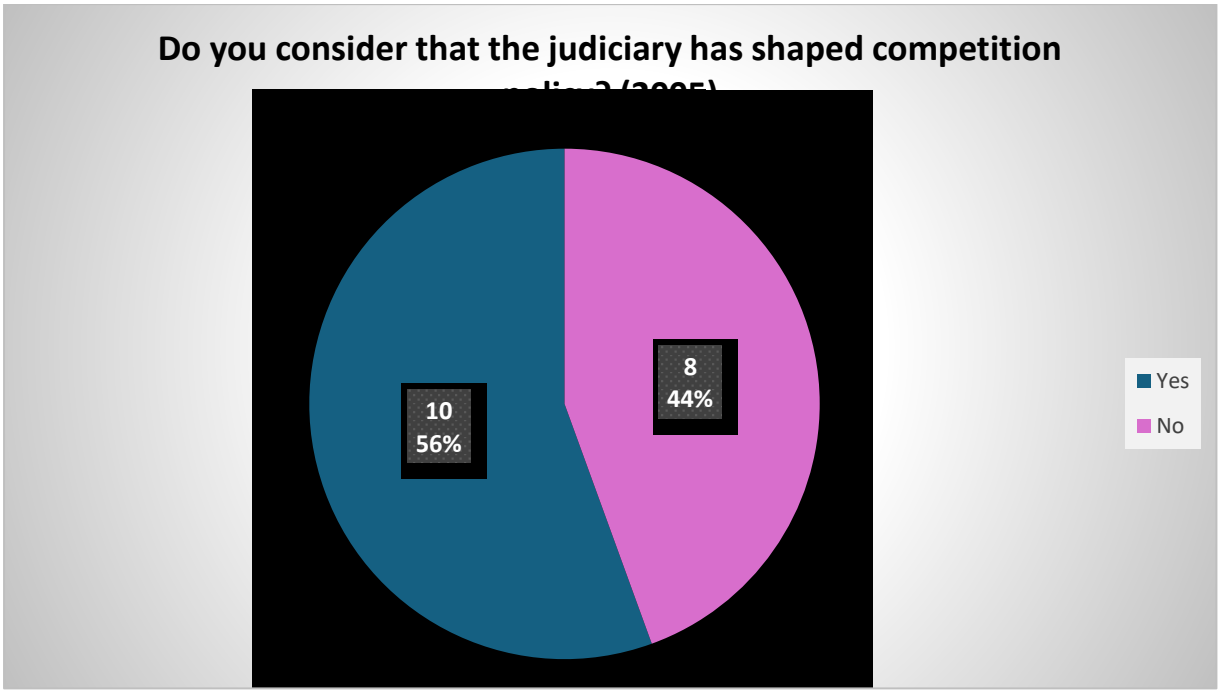
Overview

In this section responses on the effect of the judiciary on competition policy and how that manifests are discussed. Whether these differ to any material extent between mature and young agencies is also considered. The sample sizes are not sufficiently large to be determinative and the conclusions should therefore be read as indicative only.

Does the judiciary shape competition policy?

Both the 2005 and 2024 Surveys asked whether the responding agencies considered that the judiciary had shaped competition policy in their jurisdiction.

All eighteen respondents to the 2005 Survey answered this question. 56% answered that the judiciary had shaped competition policy.

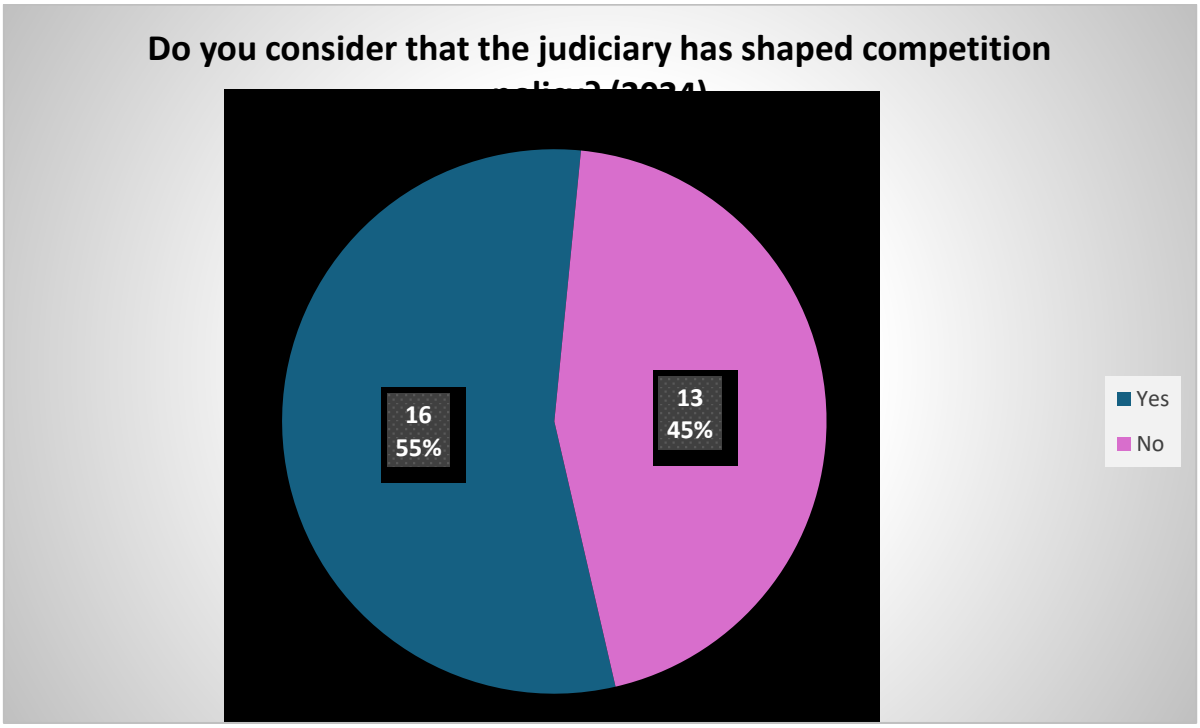


The 2005 Survey reported that among the respondents who answered NO to this question, only one was from a developed country with a relatively high level of institutional maturity regarding competition policy. Among the 2005 respondents who answered no to this question, only one was from a developed country with a relatively hight level of institutional maturity regarding competition policy. The 2006 report hypothesised as follows:[10]

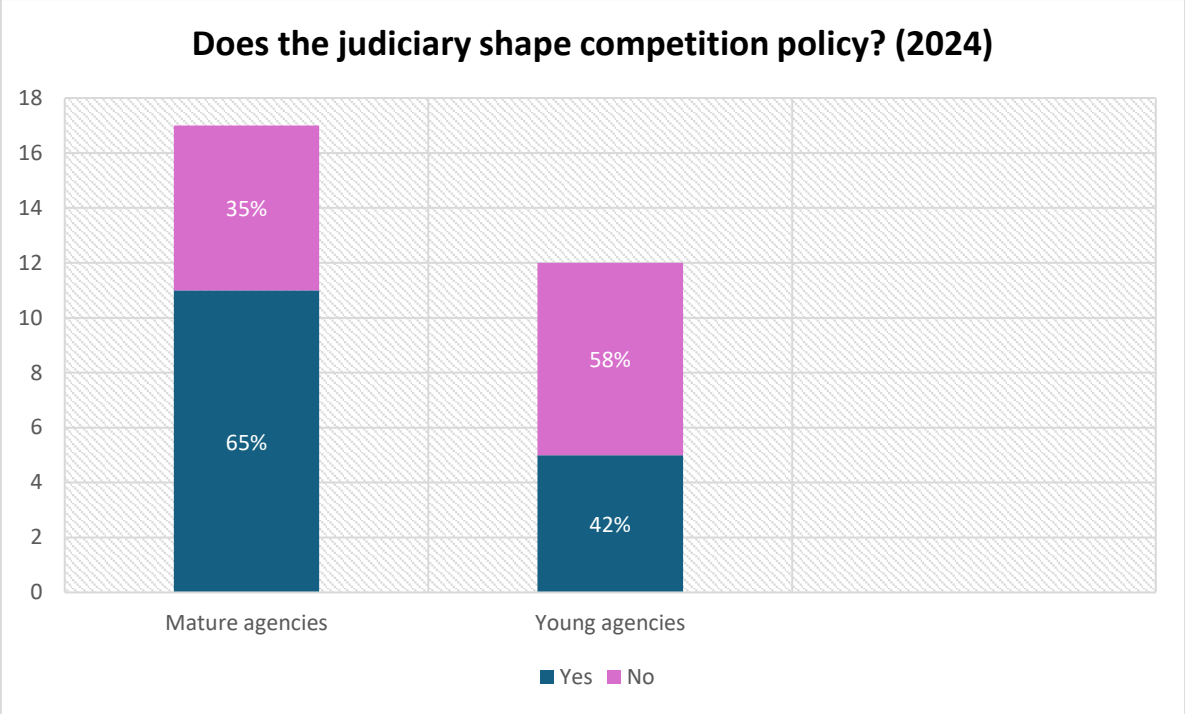
> *"One might conclude that the judiciary plays an increasingly prominent role in shaping competition policy as a jurisdiction builds experience with competition law."*

[10] 2006 Report, p.8.

All 29 respondents to the 2024 Survey answered this question. Of these, 55% were of the opinion that the judiciary shapes competition policy and 45% disagreed. The percentage of responses in each case was therefore almost identical to that observed in the 2005 Survey. Our conclusions taking into consideration the sample size is that this is more consistent with a view that respondents are fairly evenly split on whether the judiciary shapes competition policy in their jurisdiction.



However, breaking down the results by agency age indicates that a higher percentage of mature agencies (65%) consider that the judiciary shapes competition policy than was the case for young agencies (42%).



Agency maturity and the likelihood that an agency considers the judiciary to shape competition policy continue to correspond, with 65% of mature agencies and 42% of young agencies agreeing that the judiciary did so. As regimes mature however, the judiciary appears to play more of a role in shaping competition policy. This is probably due to the fact that judicial involvement is more likely in a jurisdiction where an agency has been operating for longer and so has made a larger number of appealable decisions than a less mature agency.

How does the judiciary shape competition policy?

The 2024 Survey indicates that the most significant way in which the judiciary shapes competition law for both mature and young agencies is by creating legal precedent or soft law through decision making.

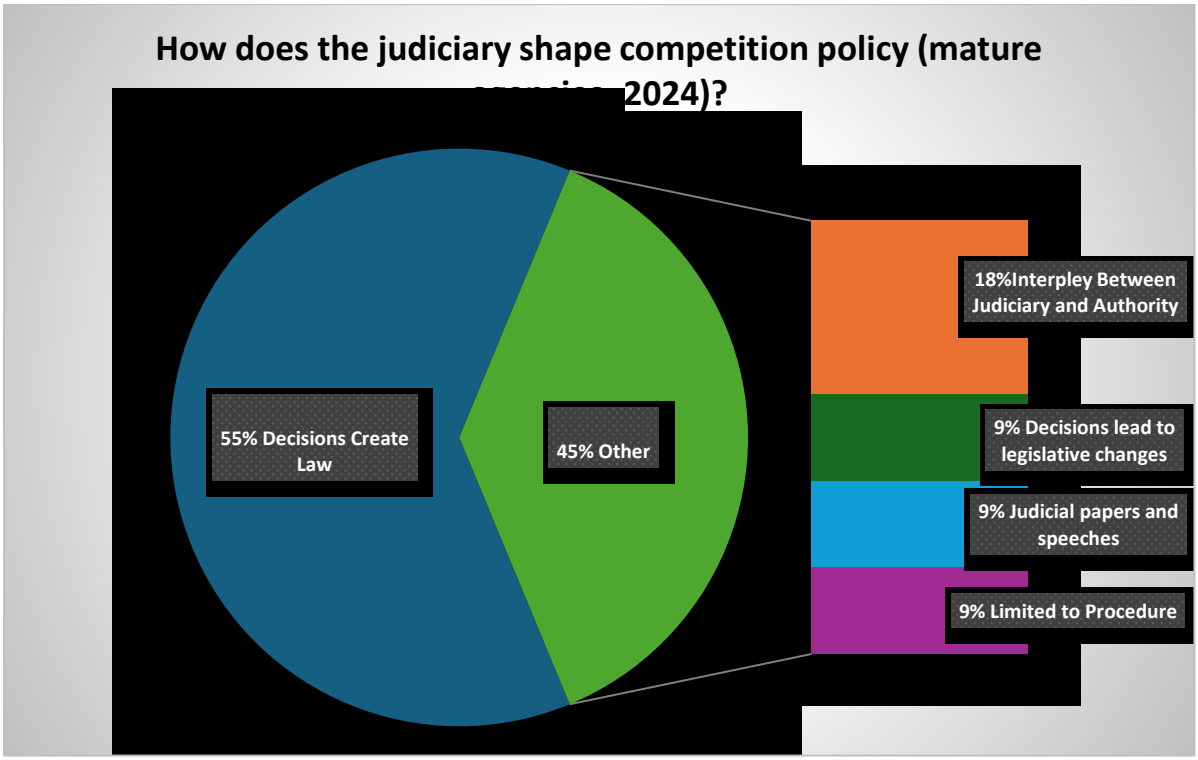
As can be seen from the graphic below, the view that the judiciary shapes competition policy through its decisions by essentially creating law is the most cited reason by both mature and young agencies (55% of mature agencies; 50% of young agencies). Other reasons were provided but given the number of responses it is difficult to rank them or reliably gauge the importance attached to them.

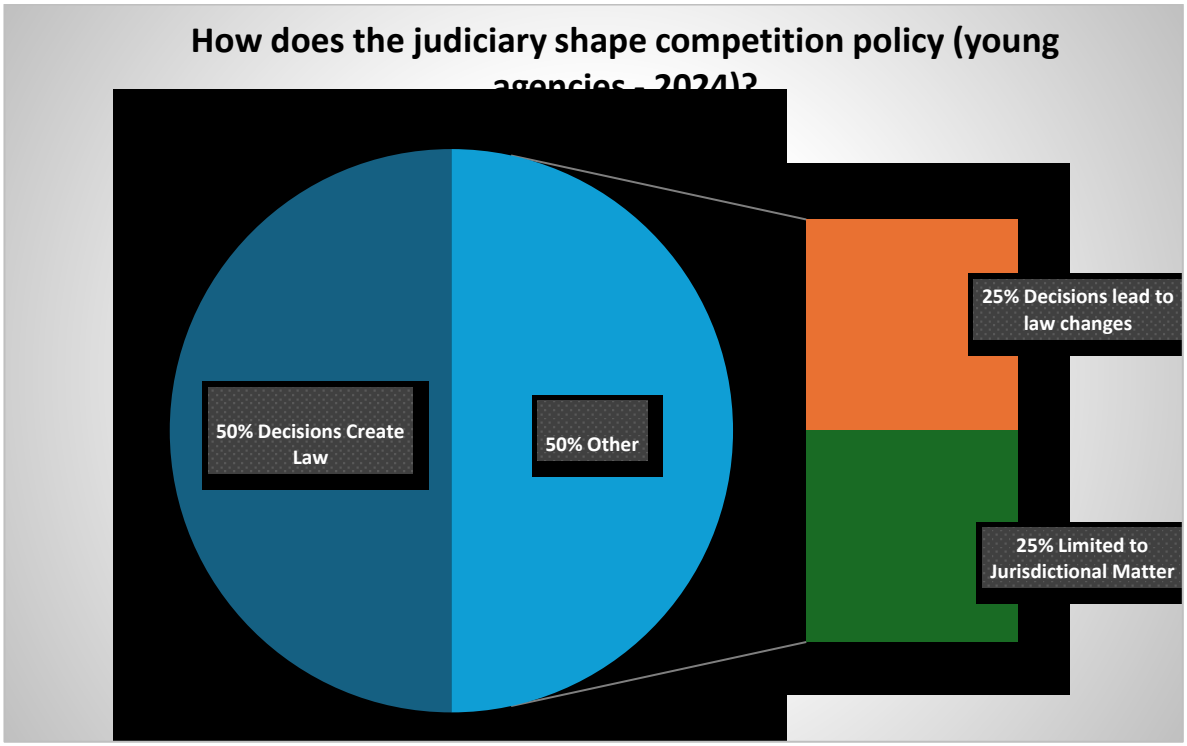
For mature agencies other reasons were:

- judicial decisions might lead to legislative changes,
- interplay between judicial decision making and competition authority action,
- judicial speeches and papers having some influence on competition policy, or
- limited to procedure.

For young agencies other reasons were:

- judicial decisions leading to changes in law,
- clarifying jurisdictional issues.





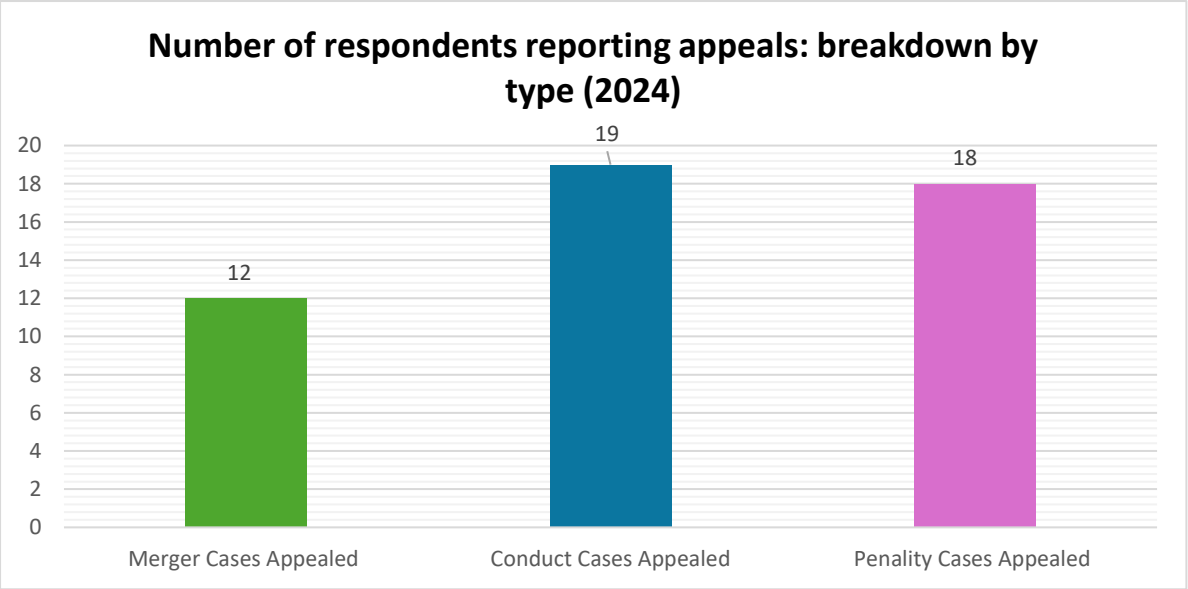
On the basis of responses, it appears that the most significant way in which the judiciary shapes competition law for both mature and young agencies is by creating legal precedent or soft law through decision making on appeals. The number of ways the judiciary shapes competition policy seems to increase as the competition regime matures.

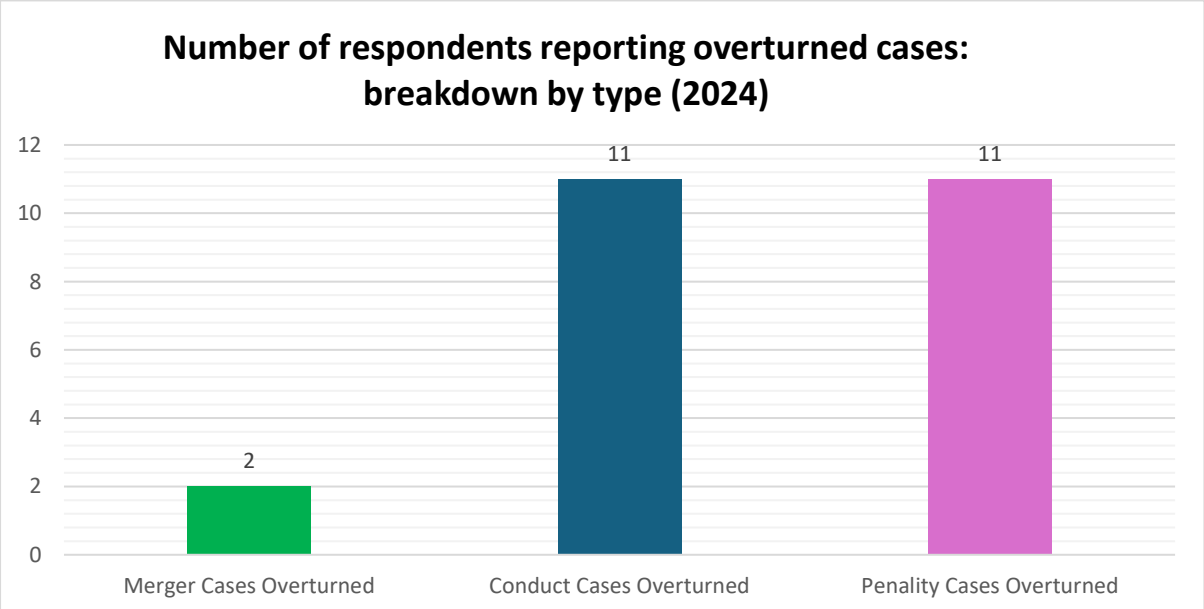
Issue 2 – When and why does the judiciary intervene in competition law decision making?

The second conclusion of the 2005 Survey had two main elements:

- Judicial interventions **after** a competition authority had made a binding decision were an area of greater concern for respondents than interventions made while an investigation was underway.
- Appeals against conduct or fining decisions are more likely to be successful than appeals against merger decisions.

This section examines the extent of judicial intervention reported by agencies in their investigation process and in their decisions.





Judicial interventions during an investigation

Of the 18 respondents to the 2005 Survey, 56% stated that the judiciary was not able to intervene whilst an investigation or decision process was underway. Of the jurisdictions where such judicial intervention was possible, 63% stated that the judiciary rarely intervened in this way.

The 2005 Survey concluded that:[11]

> *"The main concerns regarding judiciary expressed by respondent authorities seem to be related to interventions by the judiciary AFTER the competition authority has taken a binding decision."*

Of the 29 respondents to the 2024 Survey, 66% stated that the judiciary was not able to intervene whilst an investigation or decision process was underway.

In jurisdictions reporting that such judicial intervention was possible, 80% stated that the judiciary could intervene in merger investigations but that this had happened rarely.[12] None of the respondents reported that the judiciary had intervened in a conduct case, despite having the power to do so. The responses therefore suggest that in the case of mergers, judicial interventions in investigations by agencies that are still in progress are infrequent and in conduct cases do not tend to happen at all.

(18/29)62% of respondents reported that the judiciary had overturned a competition authority decision in their jurisdiction. When mature agencies alone are considered, this percentage rises to (14/17) 82%. When young agencies alone were considered, this percentage falls to (4/12)33%. A higher percentage of mature agencies therefore report that they experienced the judiciary overturning decisions than young agencies.

Consistent with the 2005 Survey judicial intervention during an investigation/decision making process is rare. Given the high proportion of respondents reporting that at some point the judiciary had overturned a decision, it is reasonable to conclude that judicial intervention after a decision has been taken is likely to be of more concern to respondent agencies than during the investigation phase. A more likely explanation for the higher proportion of mature agencies reporting this is that the likelihood of both an appeal and having a decision overturned is that much greater the older the agency is.

Likelihood of decisions being appealed and confirmed?

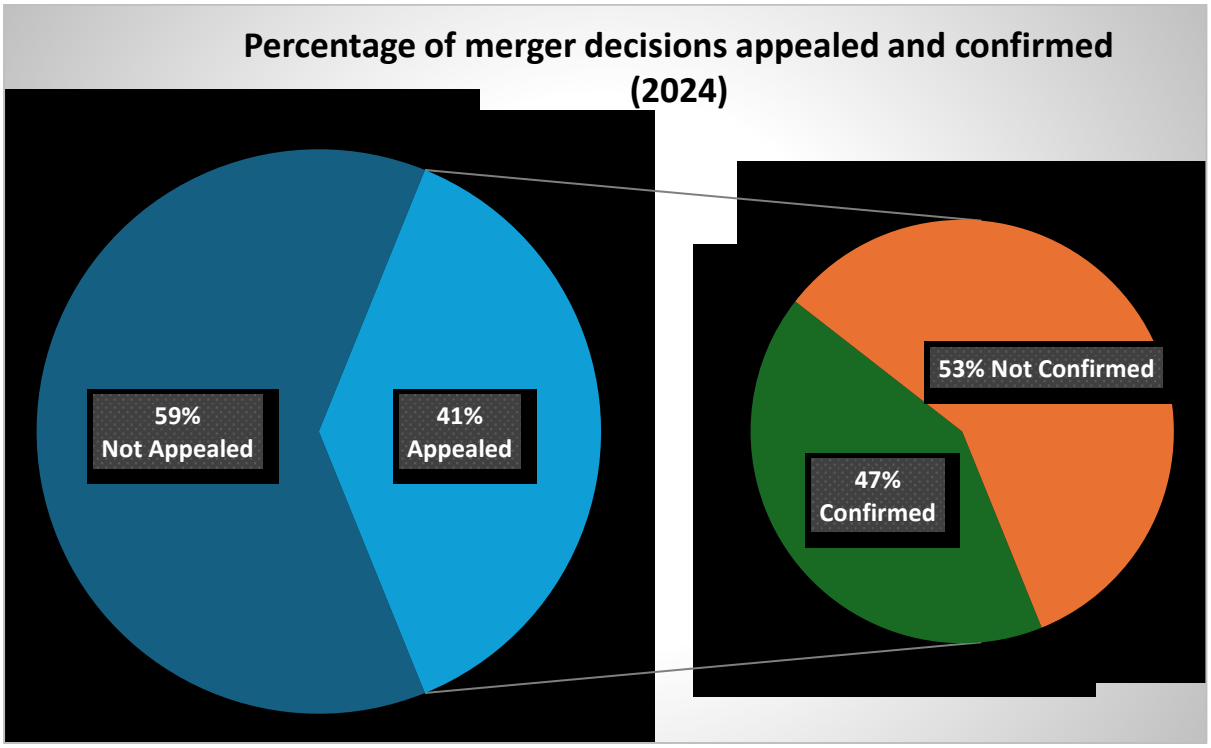
Of those respondents who answered the question on the 2005 Survey,[13] 62% stated that decisions in merger cases would always or almost always be upheld by the judiciary.[14] This compared to 40% in respect of conduct cases[15] and 51% in respect of financial penalty decisions.[16]

Mergers - 59% of all respondents to the 2024 Survey indicated that their merger decisions are either never appealed or that this question was not applicable to them. 41% of respondents stated that a merger decision had been appealed, but this was limited to a quarter or less of their merger decisions.

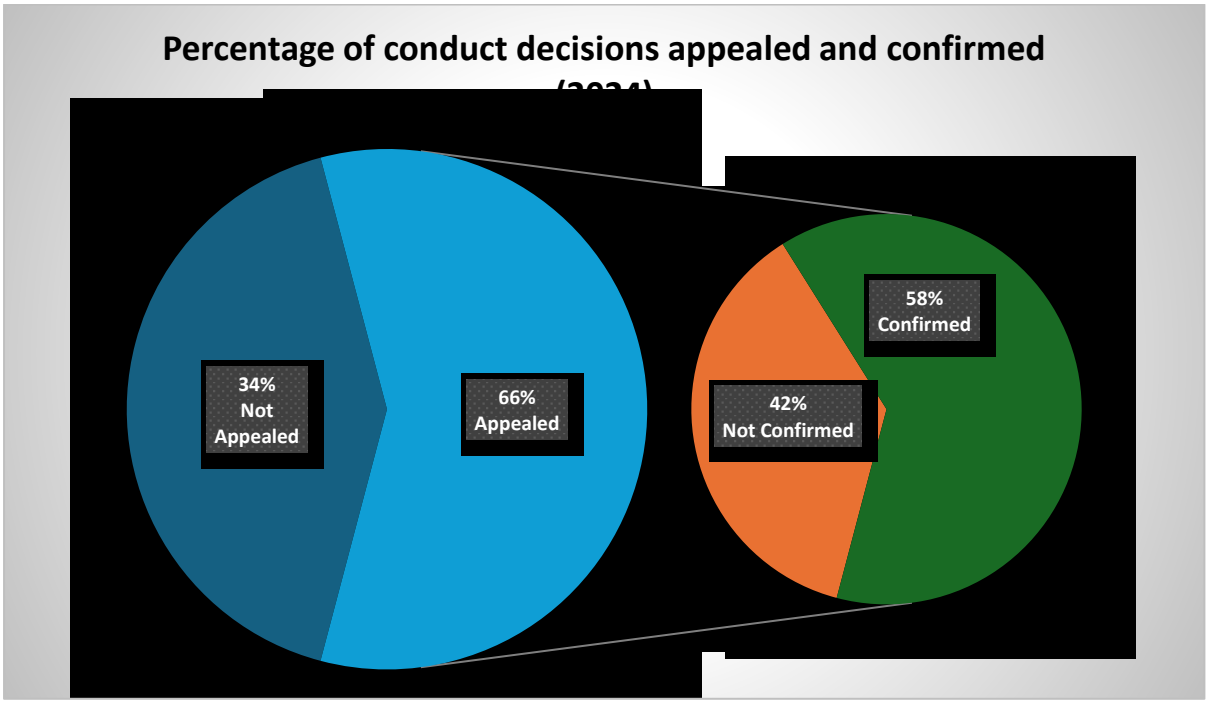
11 p.15

12 Judiciary had intervened in less than 25% of merger cases (range given 0 – 24%)

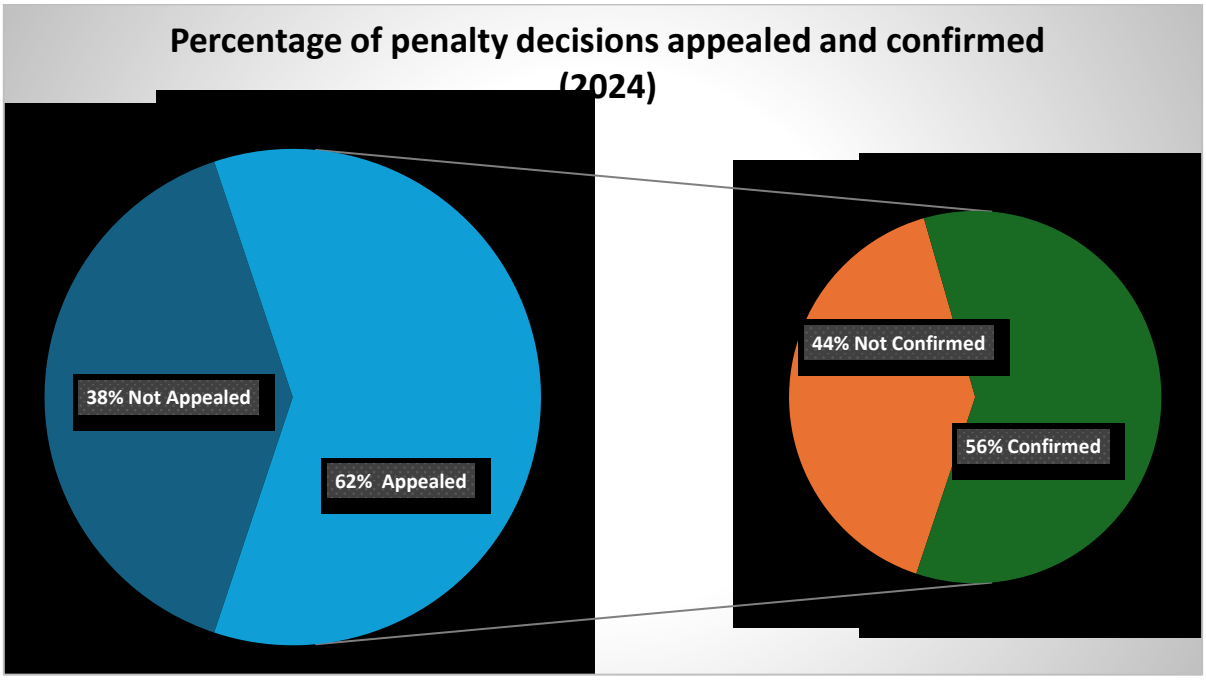
When merger decisions are appealed, agencies were successful in defending such appeals in 47% of cases.



Conduct - 66% of respondents said that their conduct decisions were appealed at least some of the time. Of those respondents reporting that conduct cases had been appealed, in 58% of cases they reported that their decisions were confirmed.



Financial penalties - Responses suggest a similar pattern to conduct decisions in respect of appeals against financial penalties. 62% of respondents said that a financial penalty decision had been appealed. 56% of these respondents indicated that those decisions were confirmed.



2024 survey responses indicate that the percentage of merger, conduct or penalty decisions that are appealed are respectively 41%, 66%, and 62%. It suggests merger decisions by agencies are less likely to be appealed than conduct or financial penalty decisions. Where decisions are appealed, in the case of merger decisions these were successfully defended in 47% of cases, compared to conduct (58%) and financial penalty (56%) decisions.

Based on these responses to the 2024 survey, conduct decisions and financial penalty decisions were more likely to be appealed than merger decisions. Taking account of variance associated with small sample sizes, there does not seem to be much difference in terms of outcome of appeals by type of decision. It would therefore seem that when an agency decision is appealed, the judiciary is as likely to confirm a decision as not, and there is not a significant difference in the likelihood of such an outcome by type of decision.

Issue 3 – General overview of the impact of judicial scrutiny of a competition authority's decision

The third set of conclusions in the 2005 Survey were that:

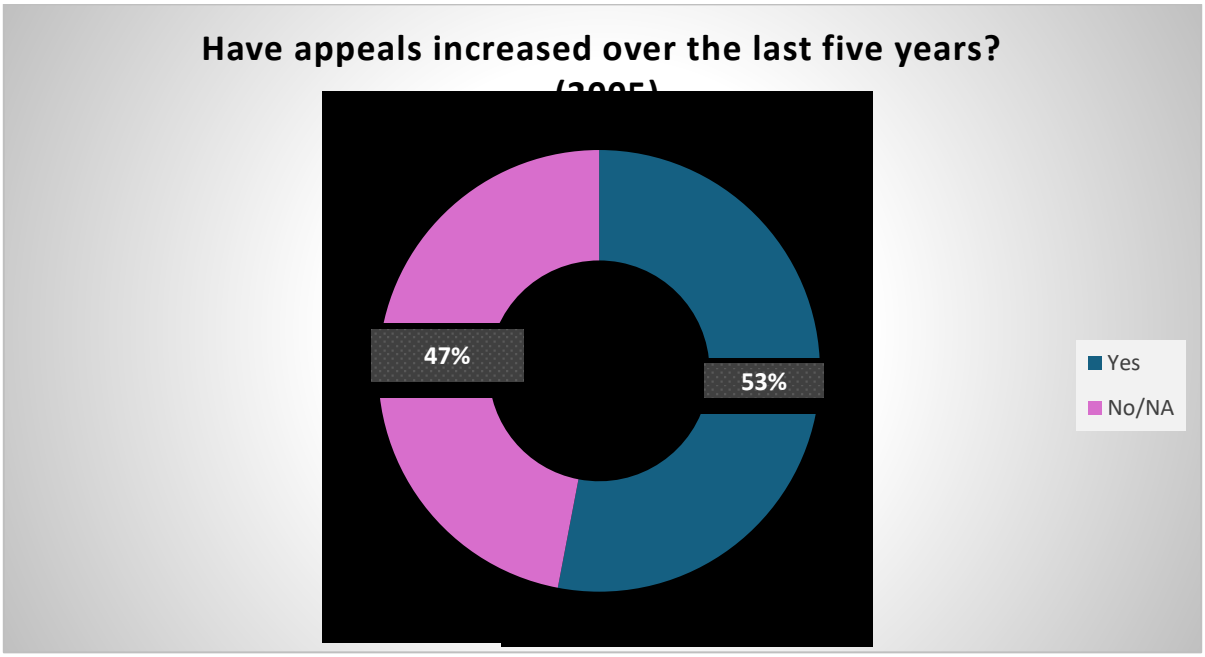
- There was a fairly even split between those respondents who considered that the number of appeals had increased over the last 3 -5 years (53%) and those who considered that they had not (41%).[17,18]
- Amongst respondents who stated that judicial appeals had increased, 78% were from young regimes. The 2006 Report suggested that this might be due to increasing institutional development, where increased enforcement efforts lead to increased appeals.[19]
- Competition authority decisions can be overturned for a variety of reasons. However, responses indicated that none of those reasons related to the integrity of the competition authority.[20]

This section evaluates responses in relation to the extent to which appeals have increased and whether the experience of mature agencies is substantively different to that of younger agencies. The reasons for why the decisions of agencies were overturned are then assessed.

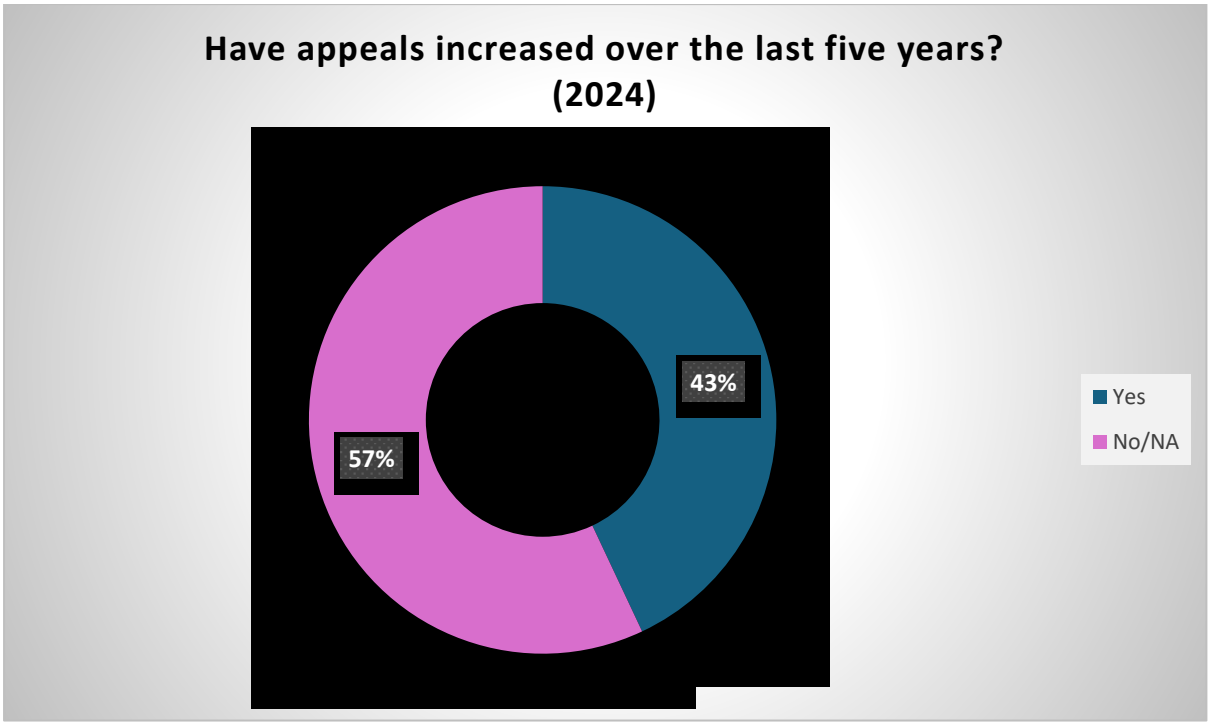
17 The remaining respondents (6%) had never had a competition decision appealed.
18 2006 Report, p.5.
19 2006 Report, p.5.
20 2006 Report, p.9.

Increase in extent of appeals

Respondents to the 2005 Survey were asked whether they considered that the number of appeals had increased in the previous 3 – 5 years. 53% of respondents answered "yes", 41% answered "no" and 6% said that this did not apply because none of their decisions had been appealed.



The results for the 2024 respondents are similar to those observed in 2005. Respondents to the 2024 Survey were asked the same question. 41% answered "yes", 52% answered no or not applicable. One respondent had no data (7%).

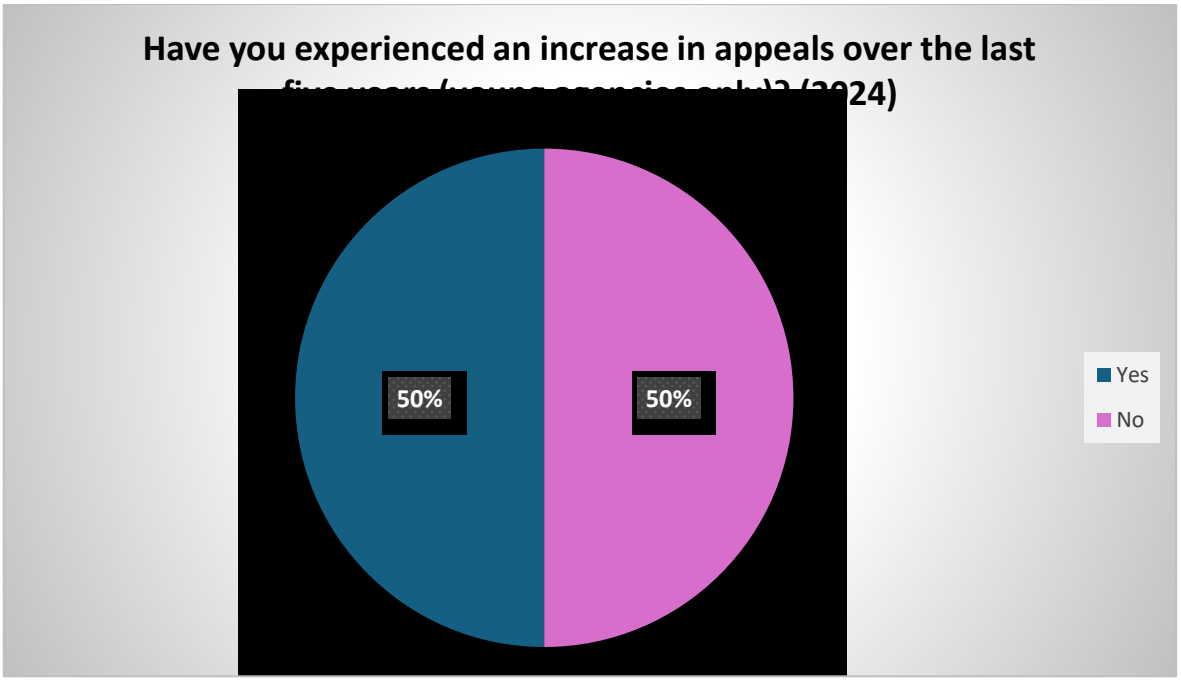


Is an increase in appeals more likely amongst young agencies?

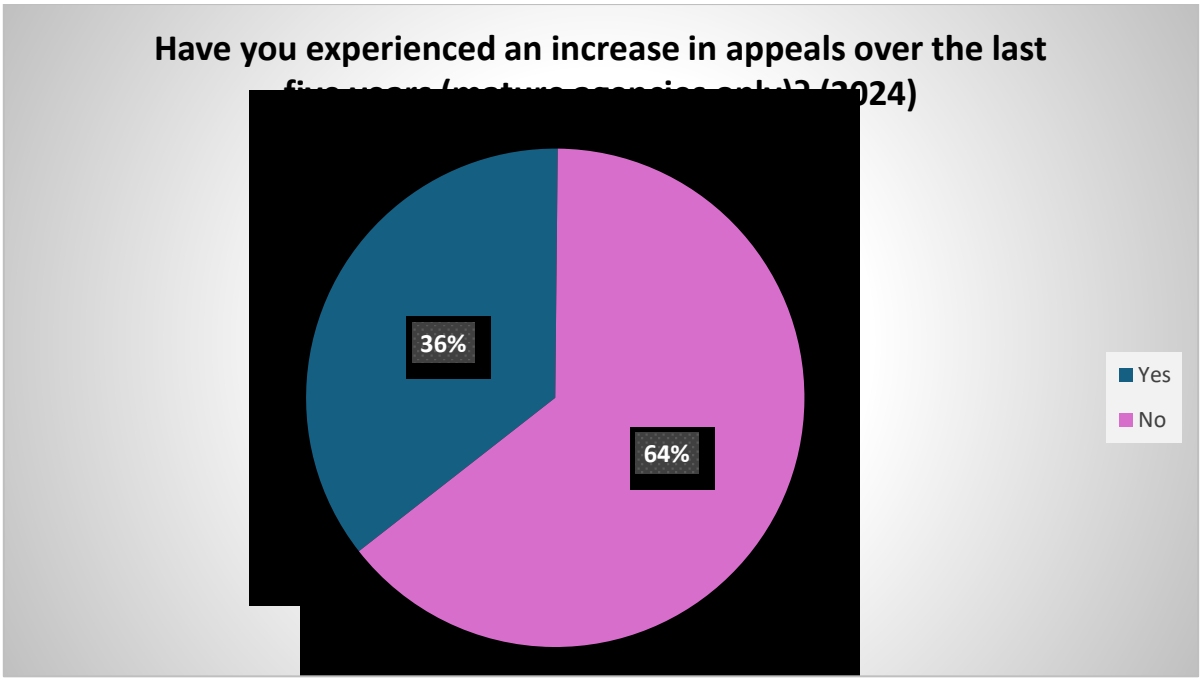
In the 2005 Survey, of the respondents that answered "yes", 78% were from young agencies. The 2006 Report hypothesised that:

> *These numbers may be a sign of institutional development in these countries, showing that increased enforcement efforts are leading to more appeals to the judiciary.*

The 2024 survey suggests that young agencies are just as likely not to have experienced an increase in appeals over the last five years than to have done so. This is not consistent with the 2005 Report.



Mature agencies, on the other hand, reported they were less likely to have experienced an increase in appeals than to have seen an increase over the last five years. The results suggest a difference between mature and young agencies in that respect.

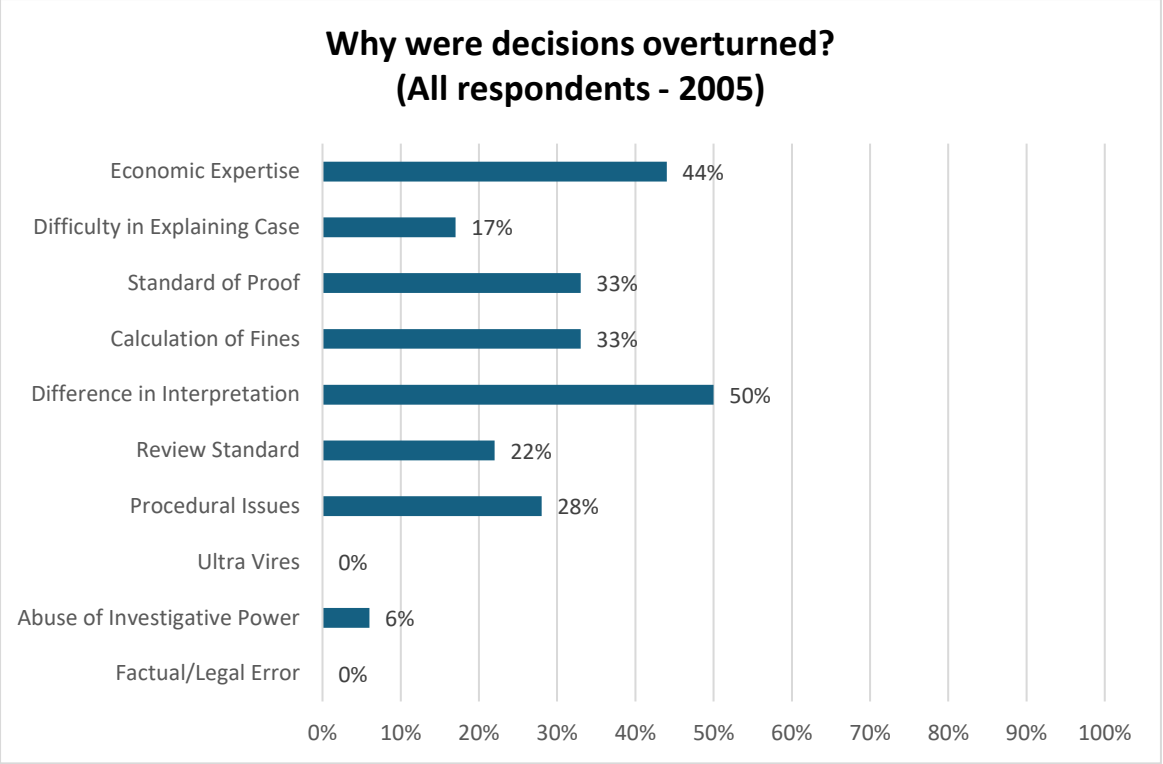


While young agencies are just as likely as not to have experienced an increase in appeals, a lower proportion of mature agencies reported an increase in appeals than young agencies over the past five years.[21]

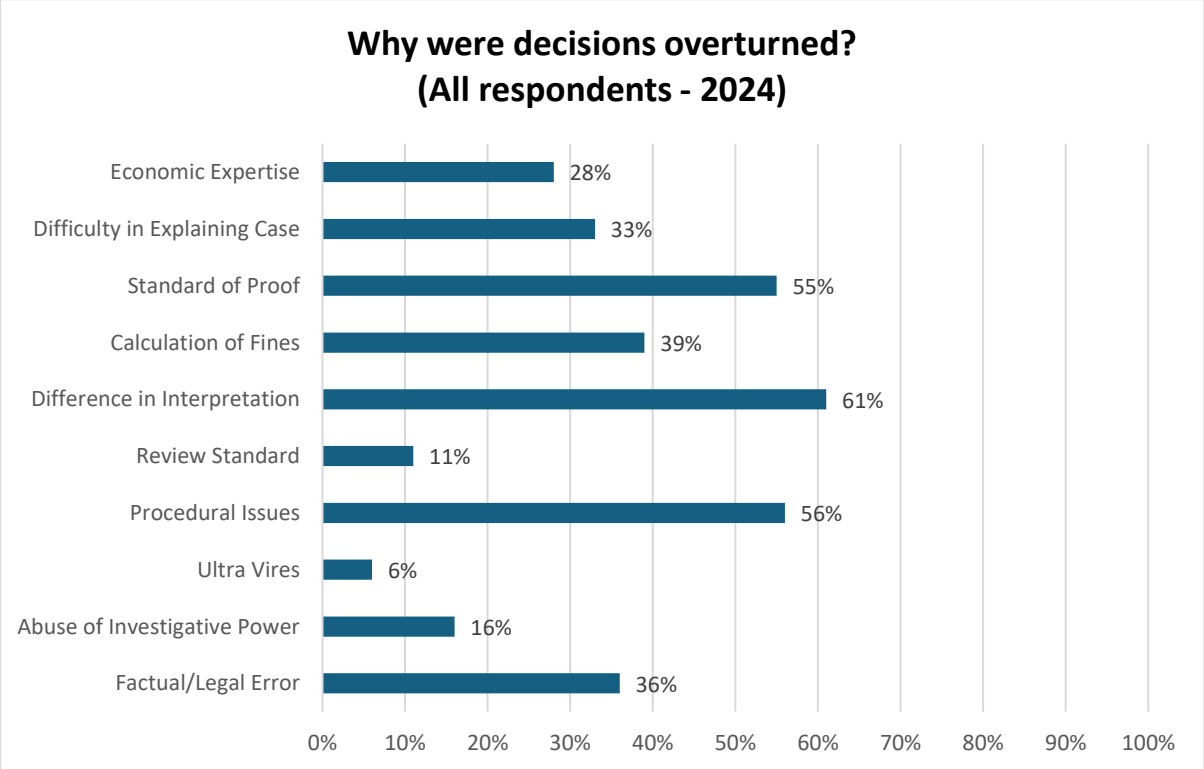
Why are competition authority decisions overturned?

Both the 2005 Survey and the 2024 Survey asked about the basis on which competition authority decisions had been overturned. Respondents were able to give multiple answers to this question. The most frequent reason given for why agencies consider their decisions were overturned in the 2005 Survey matches the 2024 results, namely that it was because of a difference in interpretation of the rules between the judiciary and the agency. Responses to the 2005 Survey indicated that there were multiple reasons why this occurred. The 2024 Survey asked the same questions with one additional question relating to factual or legal error.

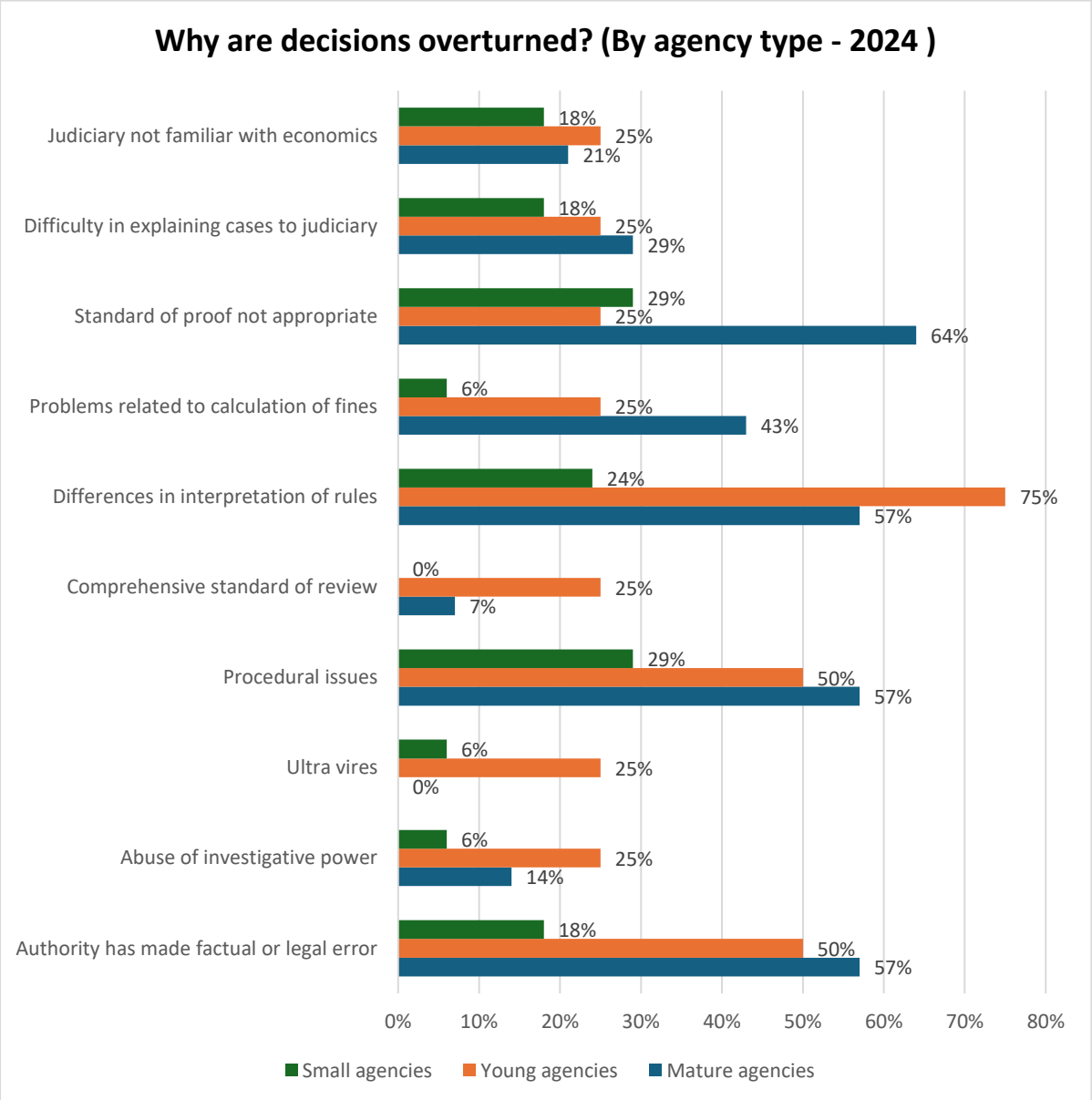
[21] For completeness, we note that of the 17 small agencies that responded to this question, 41% reported a rise in the number of appeals, whereas 59% did not. Of the 10 large agencies to whom this question was relevant, 50% said yes and 50% said no. Thus, there is no clear link between the size of an agency and the likelihood of appeals having increased over the past five years.



This reason given appears to have even increased since the 2005 Survey (50% to 61%). It is worth highlighting that procedural reasons rose in significance (28% rising to 56%) and standard of proof as a reason rose (33% to 55%).



When comparing the responses of mature agencies with those of young agencies in the 2024 Survey, there are differences. Younger agencies are more likely to respond that the reason for decisions being overturned was because of a difference in interpretation of the rules between the agency and judiciary (75%). 'Procedural issues' and 'the agency made factual or legal errors' were relatively less high (50% in both cases). Mature agencies were more widely spread in their main reasons given. 'Standard of proof required by the judiciary not being appropriate' was the most frequent reason cited (64%), closely followed by 'difference in interpretation of the rules', 'procedural issues' and 'the agency made factual or legal errors' (all 57%).



Issue 4 – Advocacy to the judiciary

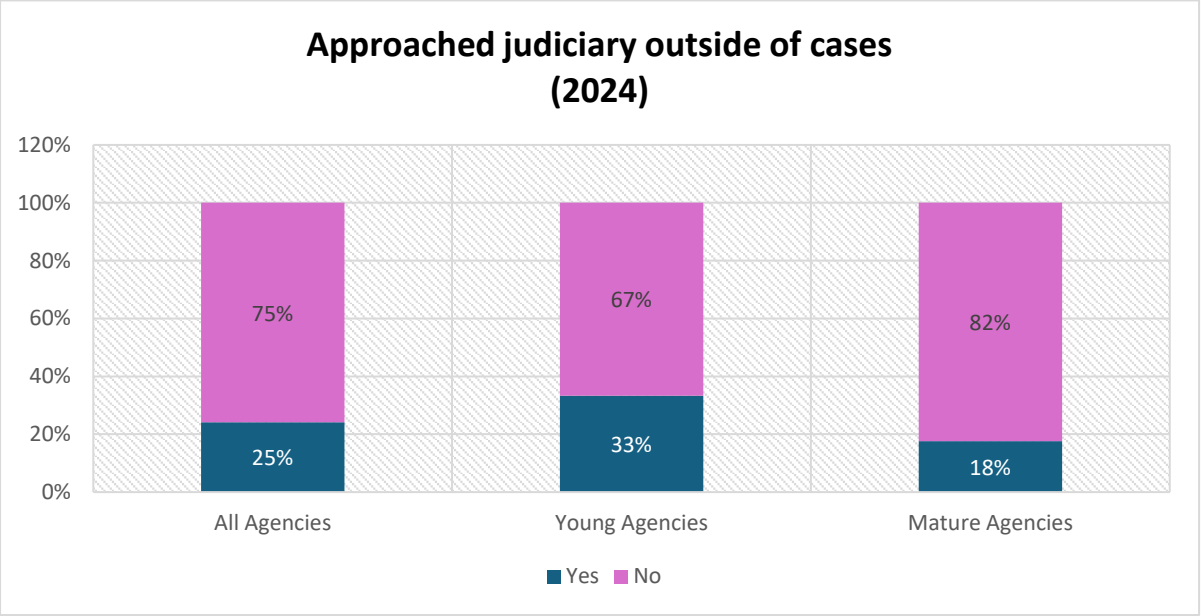
The fourth set of conclusions reached in the 2005 Survey related to advocacy efforts to the judiciary. The 2005 Survey asked a number of questions about the way in which competition agencies had approached the judiciary to assess what advocacy efforts had been made.

The 2005 Survey results concluded that the data suggested an urgent need to bring the judiciary closer to the technical analysis made by competition authorities and that this was particularly important for young agencies. It noted that competition authorities had already begun to take steps to support institutional strengthening, such as organising seminars and workshops with the judiciary.

This section therefore reports on responses to questions in the 2024 survey on the extent to which agencies have reached out to the judiciary and what form that took. The reasons why responding agencies consider there are challenges with the judiciary and the relative success in seeking to address those perceived weaknesses are also examined.

Has the competition agency approached the judiciary outside of the context of an ongoing case?

78% of respondents to the 2005 Survey responded that they approached the judiciary for matters other than specific cases. The data obtained through the 2024 Survey indicated that this percentage was much lower overall (24%) than in 2005, with little discernible difference between mature agencies and young agencies.



The reasons given for approaching the judiciary were:[22]

- Partnerships, workshops, or other similar engagement
- Other reasons were:
    - Obtain a legal opinion in relation to a judgment in a private competition law case.
    - Assist the judiciary in drafting procedural rules.

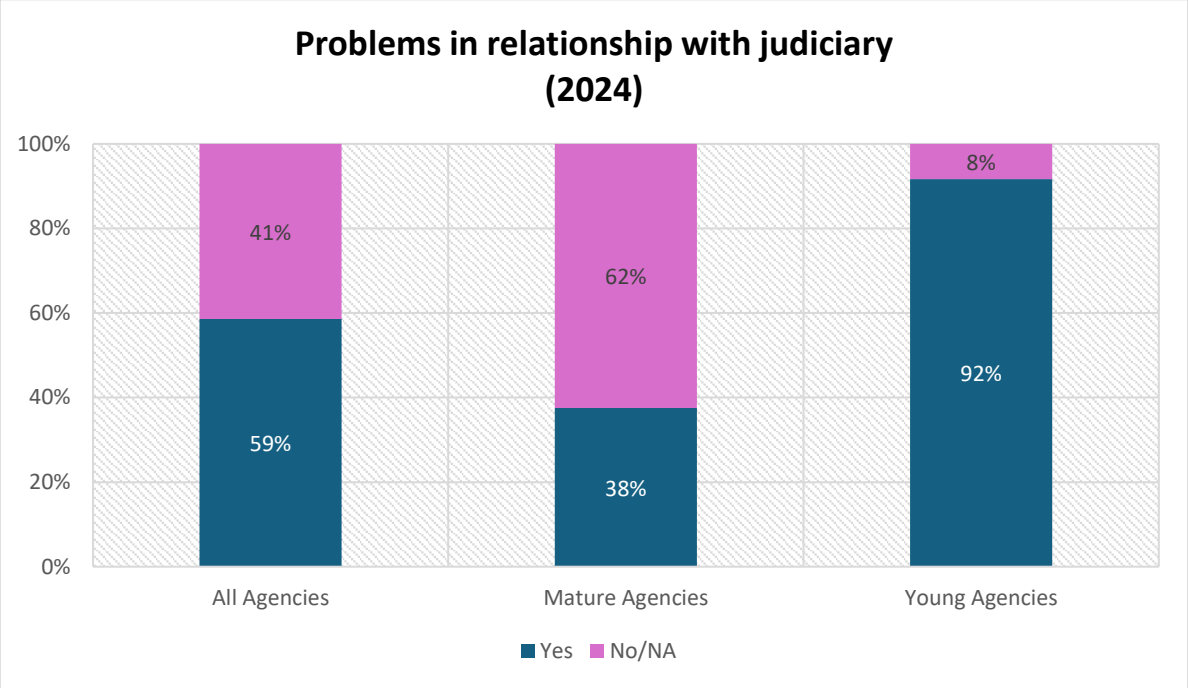
[22] Respondents able to choose more than one option.

- Engage in capacity building or training.

What problems does the competition agency encounter in its relationship with the judiciary?

The 2005 Survey does not indicate how many of the respondents indicated (in general terms) that they had encountered some problems in their relationship with the judiciary.

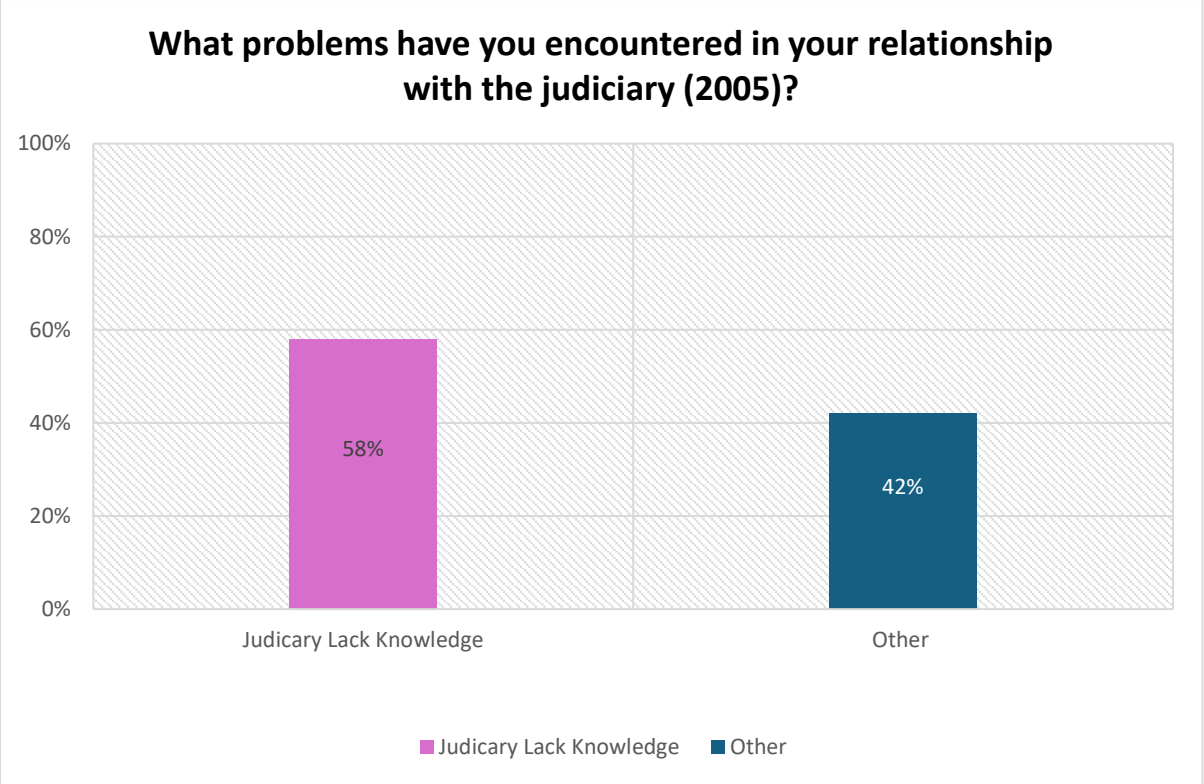
While the majority of respondents to the 2024 Survey reported that they were not satisfied with their current relationship with the judiciary, the difference between young and mature agencies is marked. Mature agencies were generally less likely to respond that they had problems in relationship with the judiciary (35%). A large majority of young agencies reported that they were unsatisfied with their relationship with their judiciary (92%).

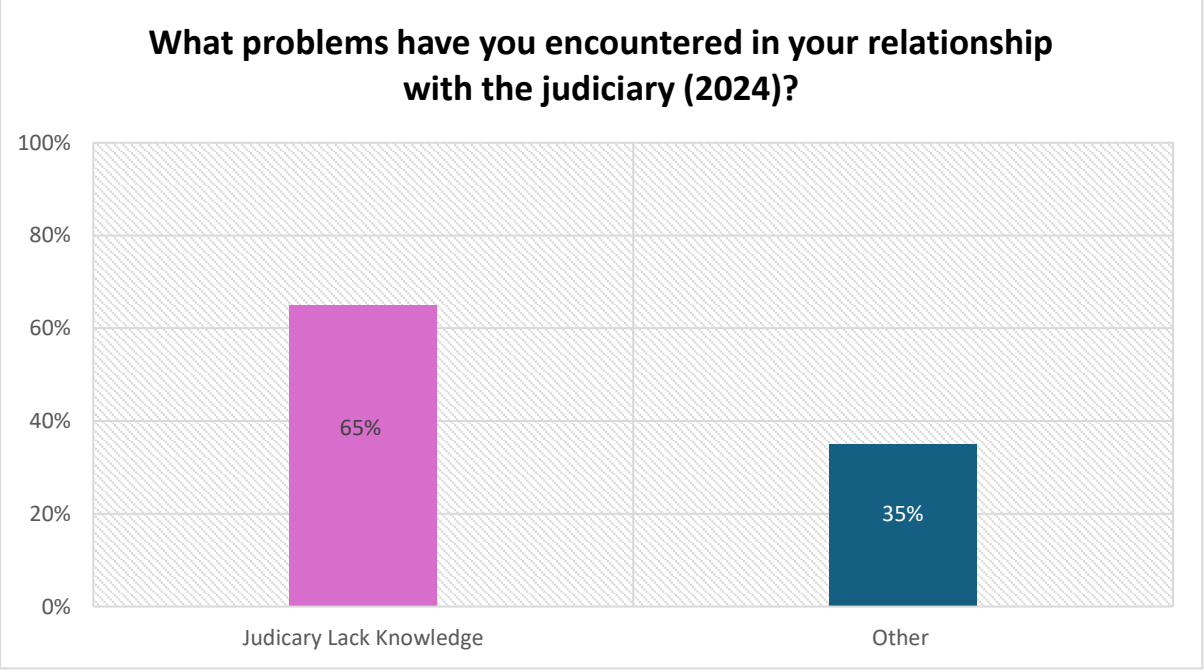


Respondents to both the 2005 Survey and the 2024 Survey were asked to indicate the nature of the problems they encountered in their relationship with the judiciary.[23] In both surveys, respondents were able to give more than one answer. Given the prominence of certain reason given by respondents and the relatively lower frequency scores denoting level of importance of other reasons, these were combined into a category 'Other' to aid meaningful comparison.

A perceived lack of judicial knowledge remains the most common problem perceived by agencies. This was the case for the 2005 Survey and remains the case for the 2024 Survey.

[23] In the 2005 Survey, respondents also provided answers that were not directly related to their relationship with the judiciary, such as lack of competition authority resources, lack of competition authority powers (e.g. no leniency programme) and the need for law changes. Since these do not relate directly to the relationship between a competition authority and the judiciary, they have been omitted from this report.



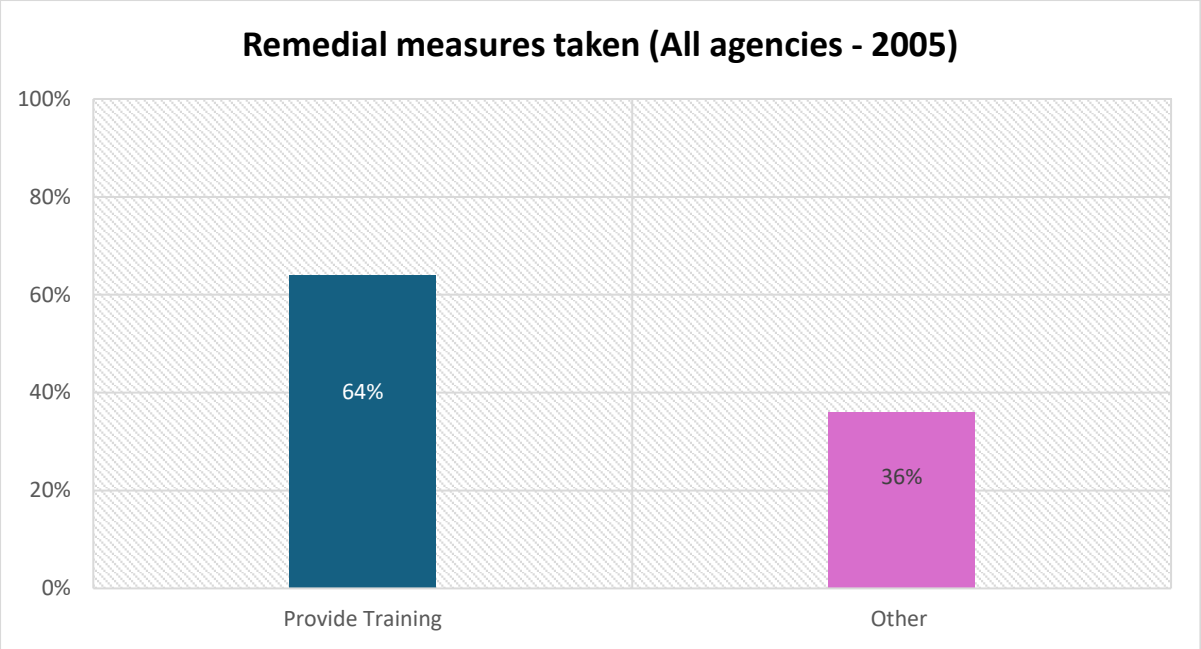


What steps has your agency taken to overcome these problems?

Respondents were asked to describe what steps they had taken to overcome the problems identified and to assess how successful these had been.

The 2005 Survey describes the remedial measures taken by competition agencies, but the data is not available to link the measures taken to the specific problem they were designed to address. For similar reasons to above, the remaining reasons are grouped under the category 'Other'.

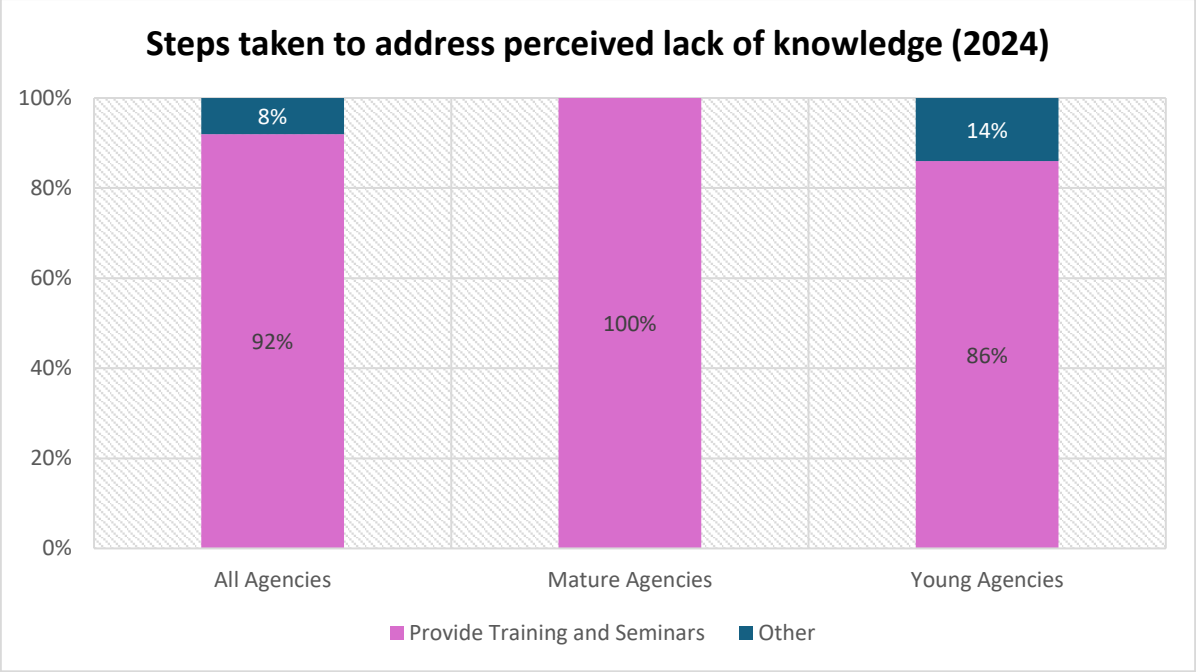
The most common measure reported by 2005 respondents was to provide training (64% of all respondents).[24] The other remedial measures that were taken include: sending material to the judiciary, formal meetings to discuss the cases, the judiciary appointing an economist, increasing the authority's staff and amending the law.[25]



The graphic below displays the measures taken by the 2024 respondents to address perceived issues with the judiciary, broken down by maturity of the agency. The approach most frequently cited (92%) was to arrange training for the judiciary either directly through training programmes or indirectly through workshops, seminars, and conferences. There does not appear to be a significant difference between young agencies and mature agencies reporting this as an initiative.

[24] Percentage calculated on basis of total survey respondents.

[25] Amendments proposed in order to (i) facilitate review of cases at the Supreme Court; (ii) facilitate and clarify the standard of proof to be used.



How successful have these measures been?

No data is available for the 2005 respondents linking measures to success.

In the case of the 2024 respondents, the extent to which **mature agencies** consider their measures were successful is equivocal. The type of issues cited were:

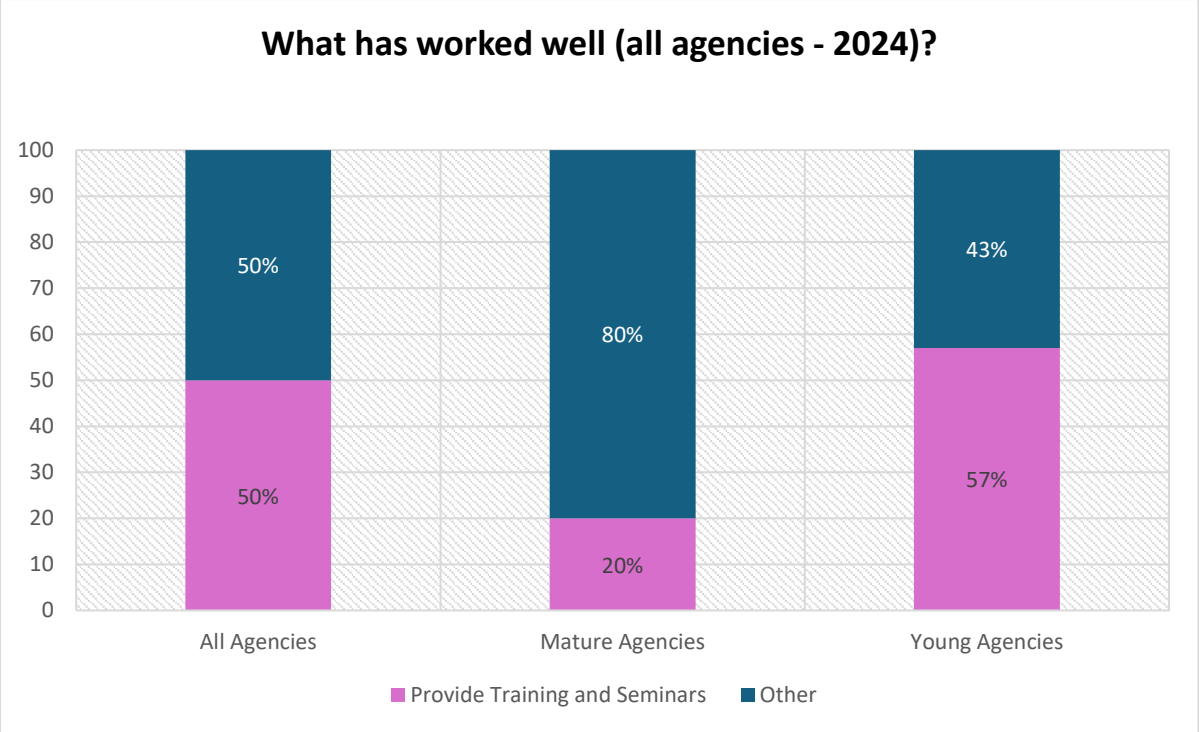
- Civil courts rarely requested the assistance of the competition authority (presumably on an amicus curiae basis).
- While the judiciary appeared to understand the importance for the jurisdiction of having a competition law, the competition authority and the judiciary were nevertheless still trying to formalise co-operation.

The **young agencies** that organised training report varying degrees of success. There were some positive anecdotes, such as the judiciary welcoming approaches and being open to receiving more training and that certain applications had been processed by the judiciary more quickly. But this was qualified by opinions that it was not considered sufficient to solve the problem or that success was difficult to assess at a general level or progress was not expected immediately. The extent to which young agencies report issues with the judiciary discussed in previous sections suggest that reports of some success need to be heavily qualified.

What has worked well?

Respondents were asked to describe any areas of interaction with the judiciary that had worked well.[26]

[26] As this question could be interpreted as a different way of asking the previous question (steps taken to address problems in relationship with the judiciary), there is a degree of overlap between the responses to these two questions.



The steps taken by competition authorities to address a perceived lack of judicial knowledge were directly through training programmes or indirectly through workshops, seminars, conferences and, in one case, collaborative working with judges to develop guidelines for the judiciary.[27] While there were some positive anecdotes, further work would be needed to establish what would constitute a "good" outcome of judicial training. Although some authorities report that they have "worked well" in general terms, the more granular responses seem to show that the steps taken have limitations, especially given judicial rotations through a generalist court. There is a difference between the approach of mature and young agencies in this regard, with mature agencies placing less emphasis on providing training and seminars (20%), compared to younger agencies (57%). Not many jurisdictions report having specialist courts hearing competition appeals but it is notable that none of the mature agencies reporting lack of knowledge as an issue had their appeals heard by specialist courts. Results suggest a focus on improving the knowledge of judges in a specialist area of law like competition within a generalist court may be challenging. Mature agencies deploy a wider range of advocacy, and it may be that a diversity of approaches yields better meaningful improvement.

Recommendations

1. The designations "generalist court" and "specialist court" appear to be overly simplistic in characterizing the features of judicial entities. Such oversimplifications can lead to invalid responses and conclusions.

[27] One agency reported that it had worked together with judges to develop a guide, which aims to assist judges and courts quantify the compensation for harm and to disseminate good practices to all stakeholders involved in these proceedings.

2. There is need for a deeper understanding of the alternative approaches undertaken by mature agencies to address the perceived lack of knowledge within the judiciary. There can be much value in conducting a follow-up assessment to explore these alternative approaches.

Appendix – Respondent ICN Members and key code

Contributions to this report were received from the following ICN member agencies:

S & Y	*Regulatory Competition Authority*	*Angola*
S & Y	*The Competition and Consumer Authority Botswana*	*Botswana*
L & M	*Conselho Administrativo de Defesa Econômica (CADE)*	*Brazil*
S & M	*Bulgarian Commission on Protection of Competition*	*Bulgaria*
S & M	*Commission for the Protection of Competition for the Republic of Cyprus*	*Cyprus*
L & M	*The Danish Competition and Consumer Authority*	*Denmark*
L & Y	*Superintendence of Economic Competition*	*Ecuador*
L & M	*The Finnish Consumer and Competition Authority (FCCA)*	*Finland*
S & Y	*Georgian Competition and Consumer Agency (GCCA)*	*Georgia*
L & M	*Bundeskartellamt*	*Germany*
S & Y	*Hong Kong Competition Commission (HKCC)*	*Hong Kong*
S & M	*The Irish Competition and Consumer Protection Commission (CPPC)*	*Ireland*
L & M	*AGCM*	*Italy*
L & M	*Japan Fair Trade Commission*	*Japan*
S & Y	*Competition Authority of Kenya*	*Kenya*
S & M	*Competition Authority of the Republic of Kosovo*	*Kosovo*
S & M	*New Zealand Commerce Commission*	*New Zealand*
S & Y	*Instituto Nacional de Promoción de la Competencia PROCOMPETENCIA*	*Nicaragua*
L & M	*The Norwegian Competition Authority*	*Norway*
S & Y	*CONACOM*	*Paraguay*
L & Y	*Philippine Competition Commission*	*Philippines*
S & Y	*General Authority of Competition*	*Saudi Arabia*
S & M	*The Commission for Protection of Competition, Republic of Serbia*	*Serbia*
S & Y	*Seychelles Fair Trading Commission*	*Seychelles*
L & M	*Comisión Nacional de los Mercados y la Competencia (CNMC)*	*Spain*
S & Y	*Trinidad and Tobago Fair Trading Commission*	*Trinidad and Tobago*
L & M	*Turkish Competition Authority*	*Turkey*
L & M	*(MA+LA) United States Department of Justice*	*USA*
S & M	*Competition and Consumer Protection Commission*	*Zambia*

KEY:

Y: Young Agencies – Authorities that have been in existence for less than 15 years.

M: Mature Agencies – Authorities that have been in existence for 15 or more years.

S: Small Agencies – Authorities that have less than 50 staff.

L: Large Agencies – Authorities that have 50 or more staff.