



Summary Responses:

Adherence to ICN Recommended Practices
for Merger Notification Procedures

A Practitioner's Survey | April 2015

Adherence to ICN Recommended Practices for Merger Notification Procedures

A Practitioner's Survey

April 2015

Executive Summary

For the third consecutive year a group of Non-Government Advisors (NGAs) have led an effort to develop a practitioner survey to be released in conjunction with the annual meeting of the International Competition Network (ICN). The first two surveys were focused on the Investigative Process Project of the Agency Effectiveness Working Group and surveyed important issues like transparency, procedural fairness, and the handling of confidential information.

This year the survey topic was on the ICN's Recommended Practices for Merger Notification and Review Procedures (Recommended Practices) agreed to more than a decade ago. In late 2014 a steering committee of non-government advisors to the ICN as well as practitioners from around the world was formed to develop this year's survey that would assess the degree to which jurisdictions around the world adhere to the ICN's Recommended Practices.

The survey questions track with each of the ICN Recommended Practices with a few additional questions added to solicit suggestions on important next steps the ICN might consider taking and what, if anything, specific jurisdictions should do to increase adherence. Once the survey was developed it was shared for comment with the ICN Merger Working Group Co-Chairs to solicit their suggested input.

The survey was conducted between February 9, 2015 and March 30, 2015. It was broadly distributed through various networks of potentially interested parties, including competition law and antitrust practitioners in many different countries. Survey respondents were invited to submit their responses through a confidential, on-line interface. More than 113 practitioners took part in the survey representing more than 32 jurisdictions around the world. A full list of the agencies included in the survey's responses can be found in the answers provided to question Q1.

With pleasure the steering committee presents the following analysis and results from this year's NGA led practitioner survey.

Sean Heather –NGA United States
Heather Irvine –NGA South Africa
Youngjin Jung –NGA Korea
Rob Kwinter –NGA Canada
Frank Montag –NGA Germany
Eduardo Pérez Motta –NGA Mexico

Dave Poddar – NGA Australia
James Rill –NGA United States
Barbara Rosenberg –NGA Brazil
Pallavi Shroff –NGA India
Harumichi Uchida – NGA Japan

Key Takeaways

1. The results are in many cases very encouraging and positive indicating that the Recommended Practices set forward by the ICN have helped to bring jurisdictions around the world into a common alignment. For many of the Recommended Practices, practitioners cite their jurisdiction as nearly or consistently always adhering to the best practice. However, there were survey results that clearly identified the need for improved adherence as well as identification of jurisdictions that fall well short.
2. Importantly, while the vast majority of practitioners felt merger threshold notification in their jurisdiction did require a local nexus (Q3), a number of practitioners also felt that the local nexus threshold was not set at an appropriate level of materiality.
3. When asked whether the jurisdiction provided for an expedited review of non-problematic transactions, the response was decidedly “yes,” however, 15 jurisdictions solicited a “no” answer (Q10). Similarly high numbers of “no” responses came from Q11. That question asked about whether initial and extended timetables for review were subject to definitive and ascertainable deadlines.
4. Q14 asked whether the jurisdiction had accelerated reviews for certain special cases. This Recommended Practice was one of the few, based on this survey which is not commonly practiced around the world.
5. One Recommended Practice states the importance of ensuring that the initial merger notification requirements avoid unnecessary burdens being placed on the parties. Based on the responses (Q15) there is definitely more work that needs to be done. Q16 explores the range of ways jurisdictions attempt to reduce the burden and it is clear that there are plenty of options that appear to not be fully available across all jurisdictions. Finally the response to Q18 makes clear that translation remains a significant burden in many cases.
6. The responses to Q22 conclude that more can be done to adopt and adhere to internal procedures to ensure an investigation is completed in a timely manner.

Similarly, the answers to Q23 reveals practitioners also feel it is important to do more to avoid unnecessary burdens during the investigative phase.

7. With regard to procedural fairness in merger investigations (Q25-Q29) the survey results suggested most agencies, most of the time do a good job, although notably practitioner's felt several jurisdictions could do a better job of sharing the economic and factual basis for agency concerns.
8. With respect to independent review of an agency's adverse decision on the merits of a merger, practitioners' responses indicated strongly that far too many jurisdictions fail to consistently provide for timely review (Q29).
9. Questions 30-37 query issues related to transparency and confidentiality in merger investigations. Practitioners gave nearly universal high marks and identified a wide range of tools available across many agencies.
10. Similarly responses to Q40-Q43 with regard to Recommended Practices for merger remedies suggested a good degree of adherence by most agencies.
11. Positively, with respect to the importance of periodic review of merger control provisions, the survey found that an overwhelming number of jurisdictions have done so in the last five years (Q47).
12. The final series of questions (Q48-Q51) allowed practitioners to write in specific suggestions for potential work streams or improvement to the ICN Merger Working Group or their specific agency. Those responses can be read in the response section of this report.

Survey Results: ICN Recommended Practices for Merger Notification and Review

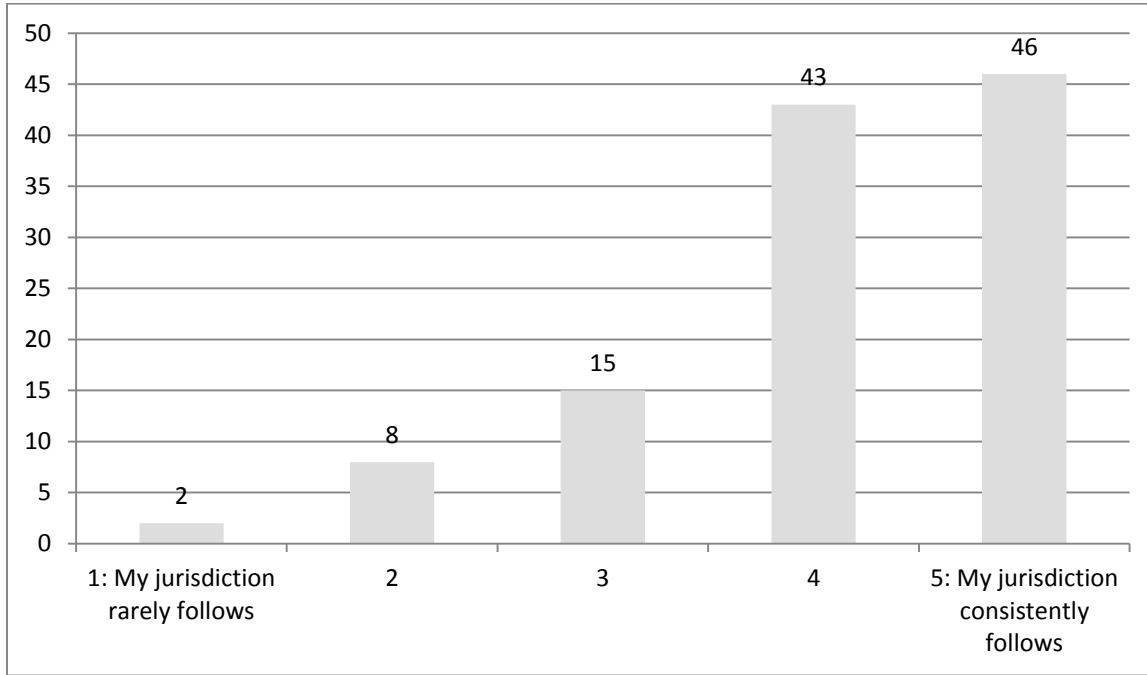
Procedures

Q1: Which jurisdiction will you be thinking about as you complete the survey?

Argentina (4), Australia (9), Austria, Belgium, Brazil (9), Canada (11), Chile, Colombia, Czech Republic, Estonia, the EU (8), France (2), Germany (11), Hungary, India, Indonesia, Italy, Japan (4), Mexico (13), Netherlands, Poland (2), Portugal (2), Romania, Russia (2), Slovak Republic, South Africa (9), Spain (3), Turkey, the United Kingdom (2), Ukraine (2), the United States (6), Zambia

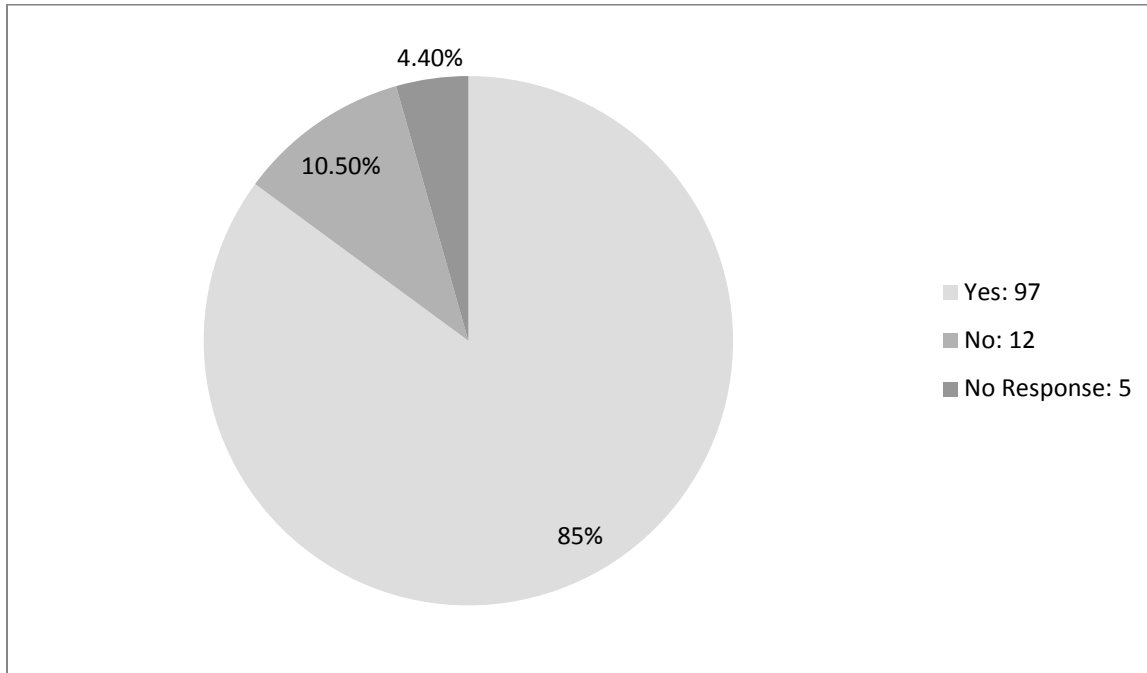
Notification Thresholds

Q2: Notification thresholds should be clear and understandable. (114 Responses, 0 No Response)



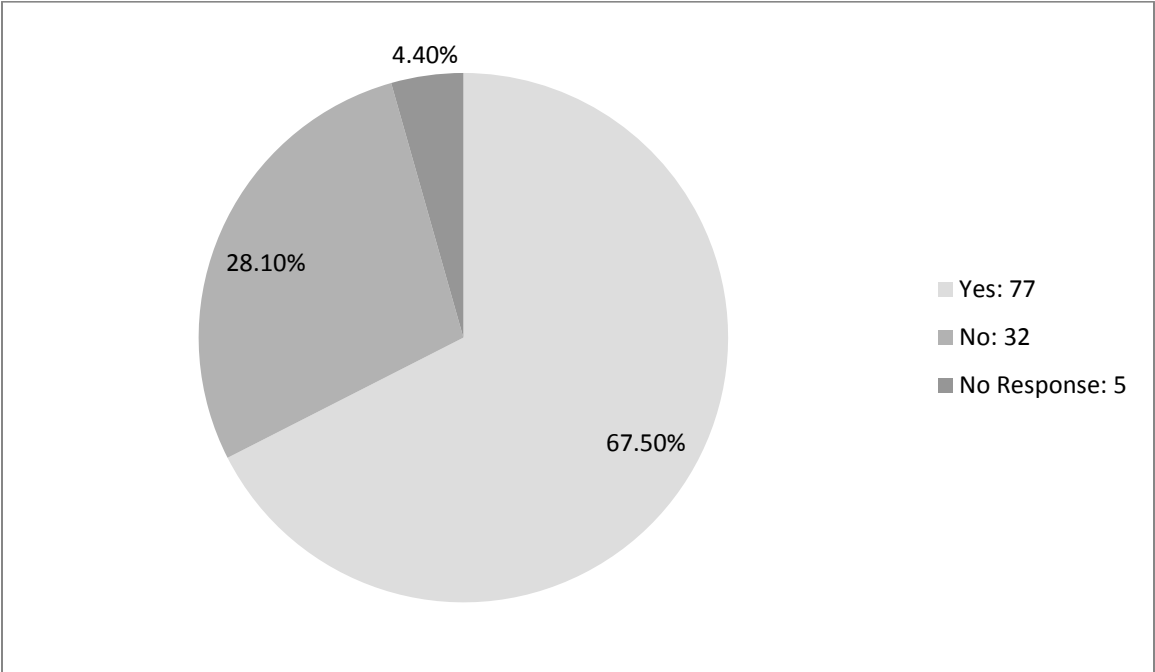
1	2	3	4	5
Australia	Australia Brazil Germany Spain UK	Argentina Australia Brazil Germany Mexico Poland Russia Spain Turkey United States	Argentina Australia Austria Brazil Canada Chile Colombia EU Germany India Japan Mexico Poland Portugal Romania Russia Slovak Republic South Africa Ukraine United States Zambia	Argentina Belgium Brazil Canada Czech Republic Estonia EU France Germany Hungary Indonesia Italy Japan Mexico Netherlands Portugal South Africa UK Ukraine United States

Q3: Do merger notification thresholds in your jurisdiction require a “local nexus”? (109 Responses, 5 No Response)



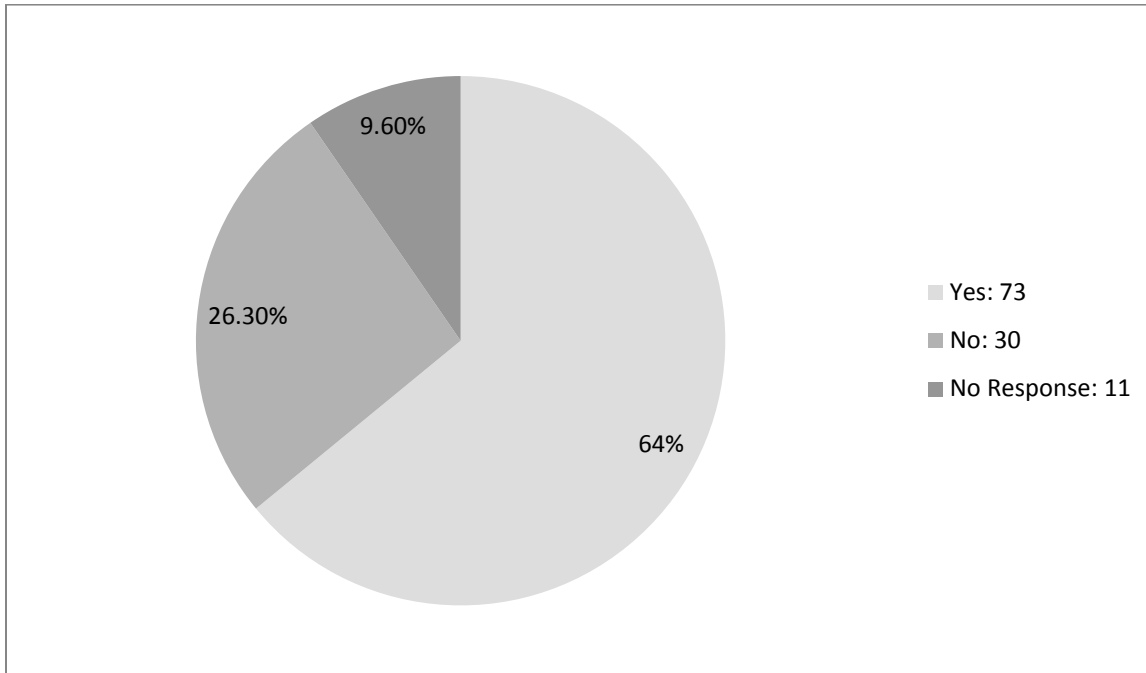
<u>Yes</u>	<u>No</u>
Argentina	Australia
Australia	Belgium
Austria	Canada
Brazil	Chile
Canada	Colombia
Czech Republic	EU
Estonia	United States
European Union	Zambia
France	
Germany	
Hungary	
India	
Indonesia	
Italy	
Japan	
Mexico	
Netherlands	
Poland	
Portugal	
Romania	
Russia	
Slovak Republic	
South Africa	
Spain	
Turkey	
UK	
Ukraine	
United States	

Is the local nexus at an appropriate level of materiality? (109 Responses, 5 No Response)



<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Brazil	Austria
Canada	Belgium
Czech Republic	Brazil
Estonia	Canada
EU	Chile
France	Colombia
Germany	EU
India	Germany
Indonesia	Hungary
Italy	Mexico
Japan	Russia
Mexico	Spain
Netherlands	Ukraine
Poland	
Portugal	
Romania	
Russia	
Slovak Republic	
South Africa	
Spain	
Turkey	
UK	
Ukraine	
United States	
Zambia	

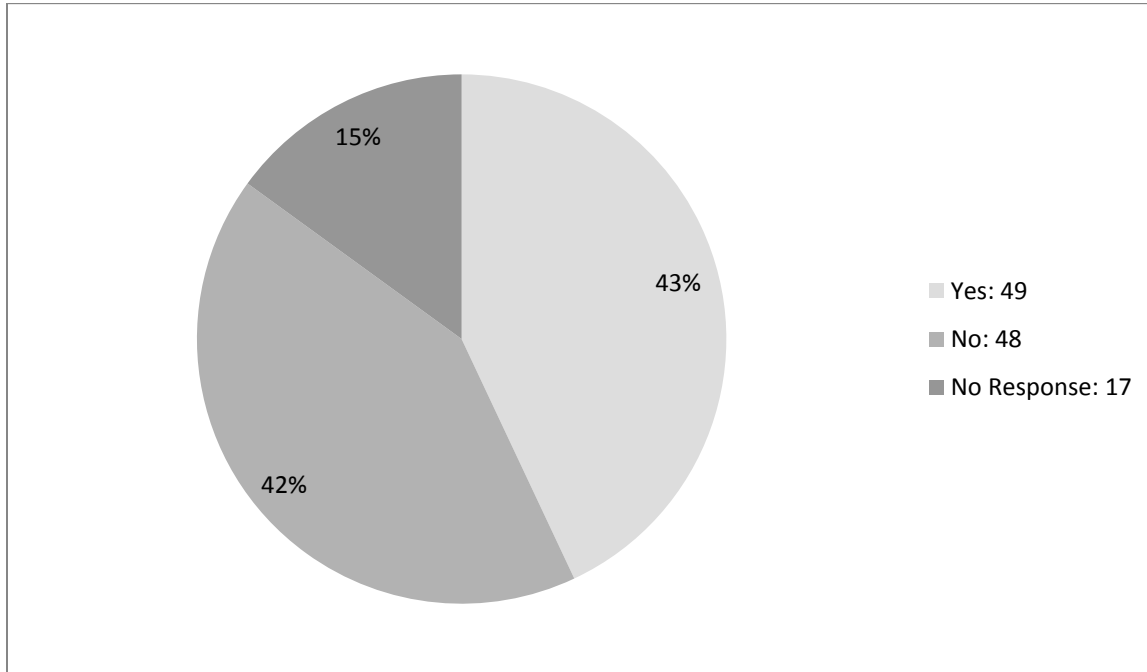
Q4: If the activities of the target trigger notification in your jurisdiction, are these activities limited to the business(es) being acquired from the target? (103 Responses, 11 No Response)



<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Austria	Brazil
Belgium	Canada
Brazil	Chile
Canada	Colombia
Czech Republic	EU
Estonia	Germany
EU	Indonesia
France	Mexico
Germany	Poland
Hungary	Russia
India	South Africa
Italy	UK
Japan	Ukraine
Mexico	United States
Netherlands	
Poland	
Portugal	
Romania	
Slovak Republic	
South Africa	
Spain	
Turkey	
UK	
United States	
Zambia	

Q5: Notification thresholds should be based on objectively quantifiable criteria. My jurisdiction does this by using the following:

Asset Value (97 Responses, 17 No Response)



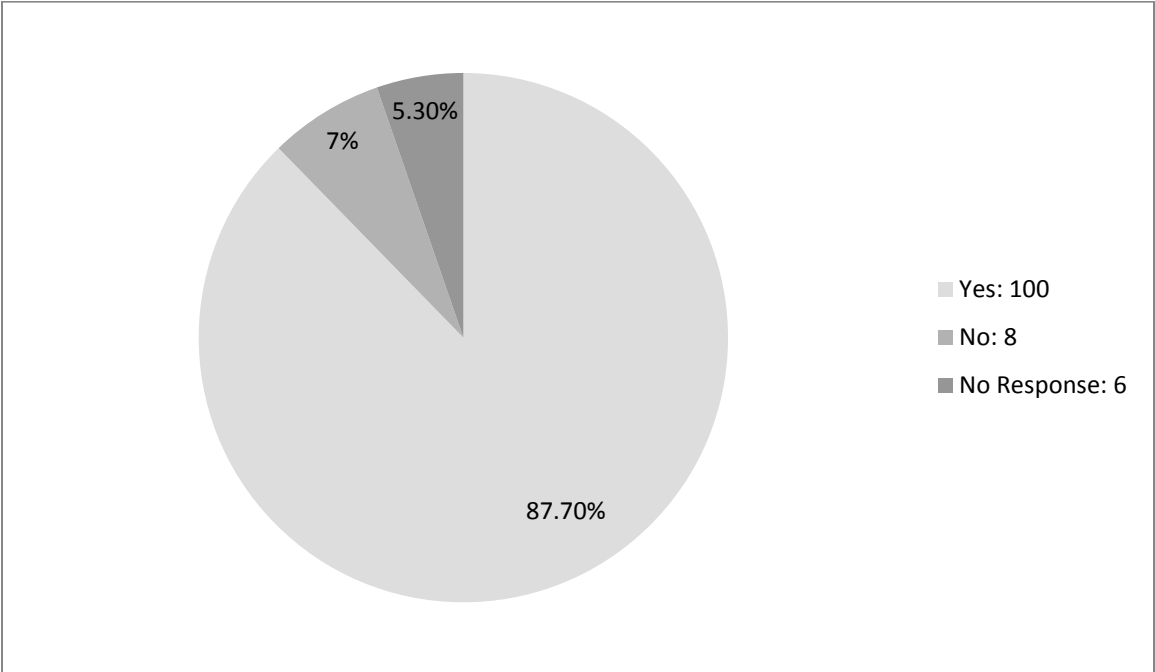
Yes

No

- Argentina
- Canada
- Colombia
- India
- Indonesia
- Mexico
- Russia
- South Africa
- Turkey
- Ukraine
- United States
- Zambia

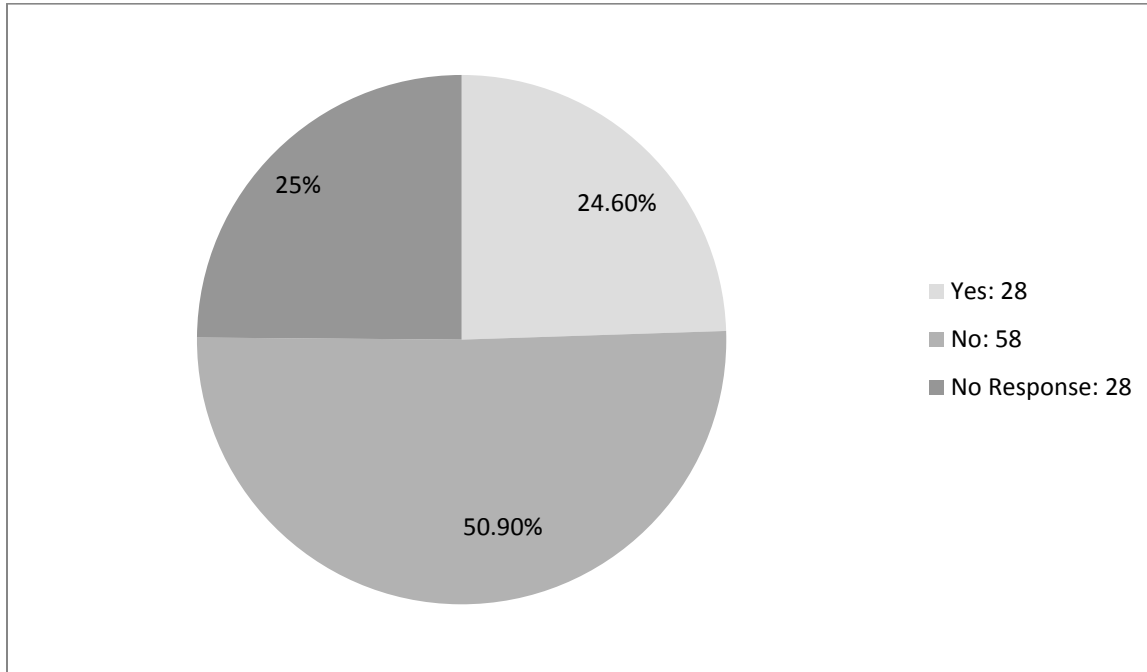
- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Chile
- Czech Republic
- Estonia
- EU
- France
- Germany
- Hungary
- Italy
- Japan
- Netherlands
- Poland
- Portugal
- Slovak Republic
- Spain
- UK
- United States

Sales/Revenue/Turnover (108 Responses, 6 No Response)



Yes		No
Argentina	Netherlands	Australia
Austria	Poland	Chile
Belgium	Portugal	United States
Brazil	Romania	
Canada	Russia	
Colombia	Russia	
Czech Republic	Slovak Republic	
Estonia	South Africa	
EU	Spain	
France	Turkey	
Germany	UK	
Hungary	Ukraine	
India	United States	
Indonesia	Zambia	
Italy		
Japan		
Mexico		

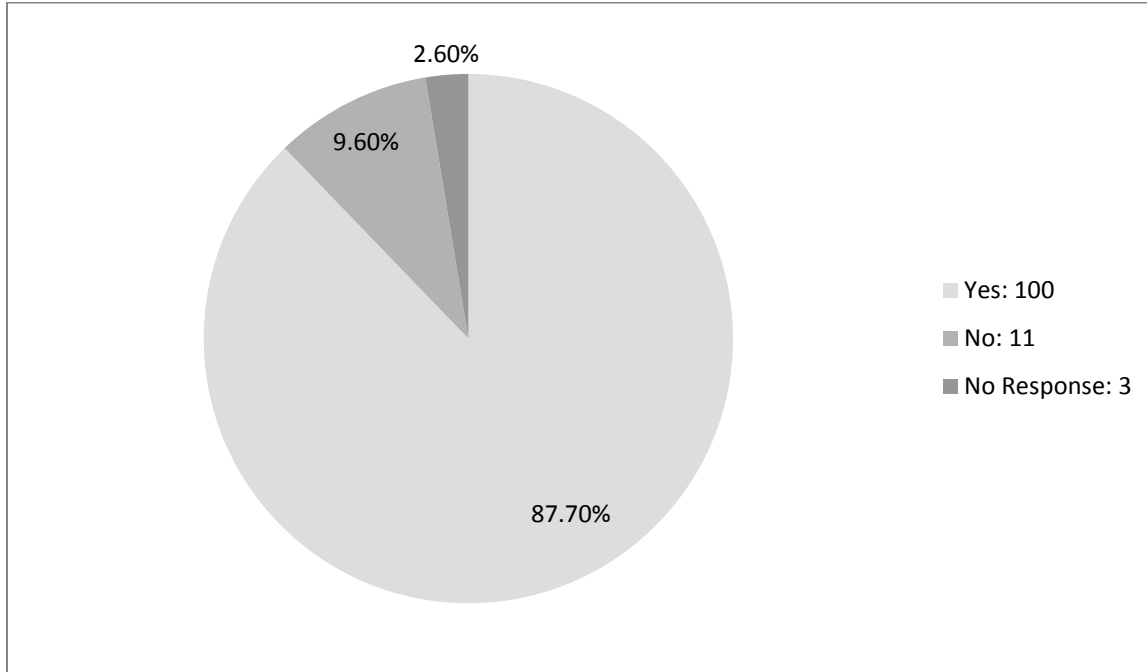
Other objectively quantifiable criteria (86 Responses, 28 No Response)



<u>Yes</u>	<u>No</u>	
Argentina	Argentina	Japan
Australia	Australia	Mexico
Canada	Austria	Netherlands
Germany	Belgium	Poland
India	Brazil	Portugal
Mexico	Canada	Russia
Portugal	Chile	Slovak Republic
Russia	Colombia	South Africa
Spain	Czech Republic	Spain
Turkey	Estonia	UK
UK	EU	Ukraine
United States	France	United States
	Germany	Zambia
	Hungary	
	Indonesia	
	Italy	

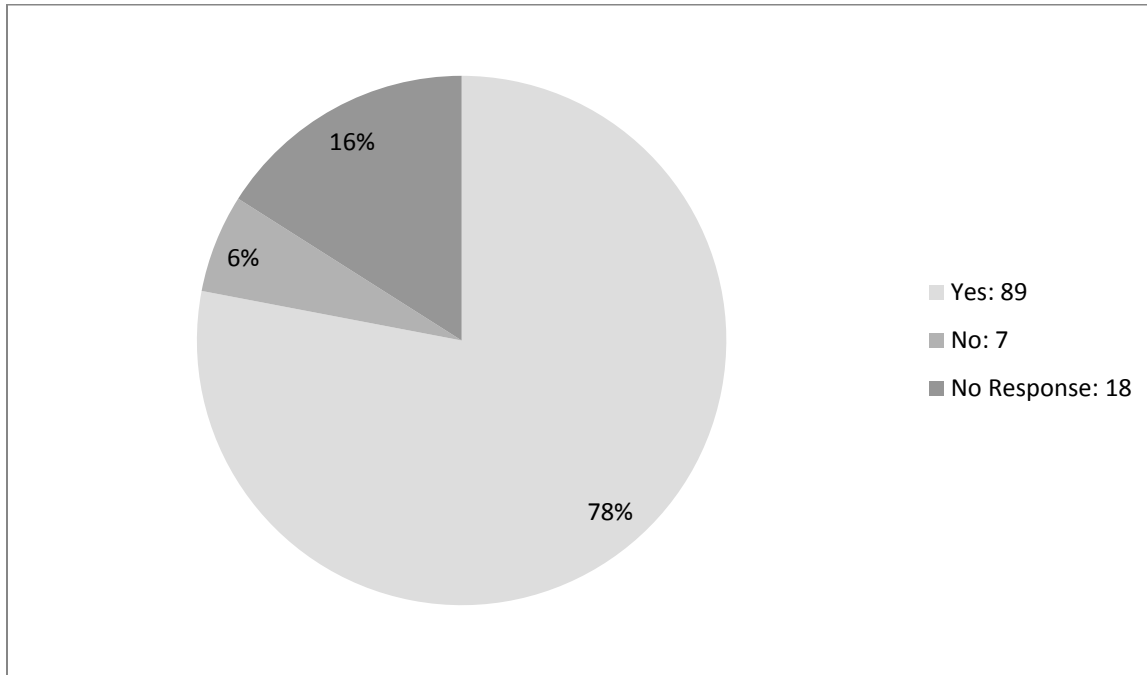
Timing of Notification

Q6: Parties should be permitted to notify proposed mergers upon certification of good faith intent to consummate the proposed transaction. Is this true in your jurisdiction?



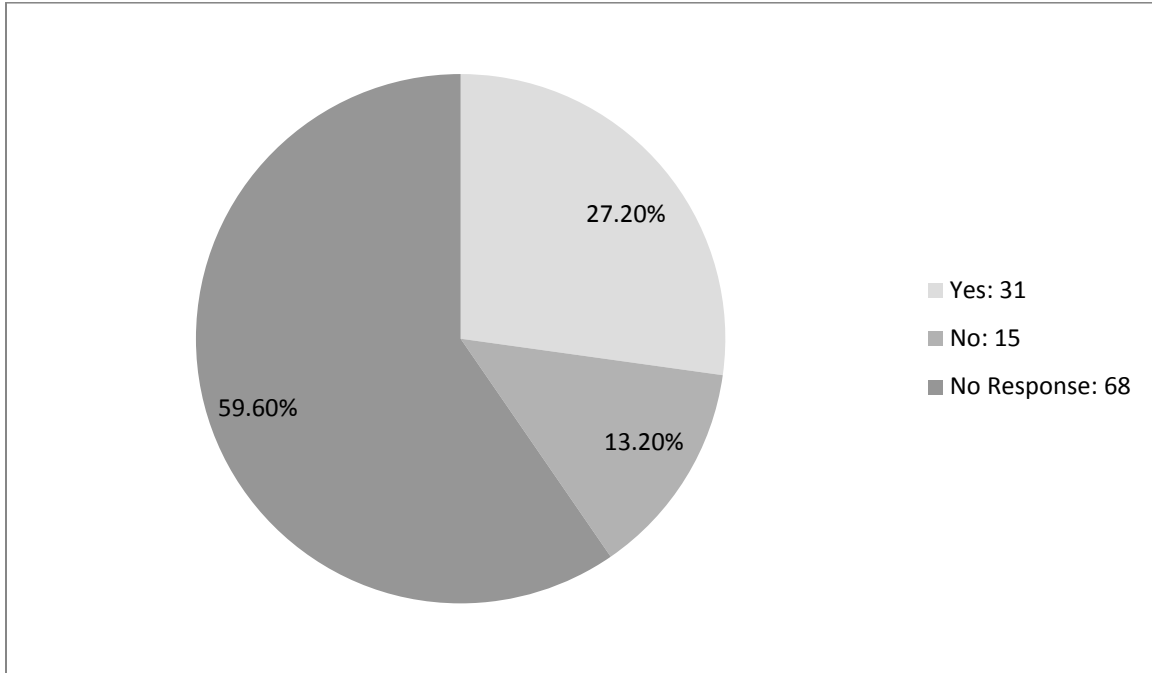
Yes		No
Argentina	Netherlands	Australia
Australia	Poland	Brazil
Austria	Portugal	Chile
Belgium	Romania	Colombia
Brazil	Russia	Hungary
Canada	Slovak Republic	India
Czech Republic	South Africa	Mexico
Estonia	Spain	Spain
EU	Turkey	
France	UK	
Germany	Ukraine	
Italy	United States	
Japan	Zambia	
Mexico		

Q7: If your jurisdiction does not allow parties to close notified transactions pending the expiration of a specified “waiting period”, are parties permitted to file at any time prior to closing the transaction (e.g. your jurisdiction does not impose a filing deadline for pre-merger notification)?



<u>Yes</u>		<u>No</u>
Argentina	Mexico	Australia
Australia	Netherlands	Chile
Austria	Poland	Germany
Belgium	Portugal	India
Brazil	Romania	Japan
Canada	Russia	South Africa
Colombia	Slovak Republic	
Czech Republic	South Africa	
Estonia	Spain	
EU	Turkey	
France	Ukraine	
Germany	United States	
Hungary	Zambia	
Japan		

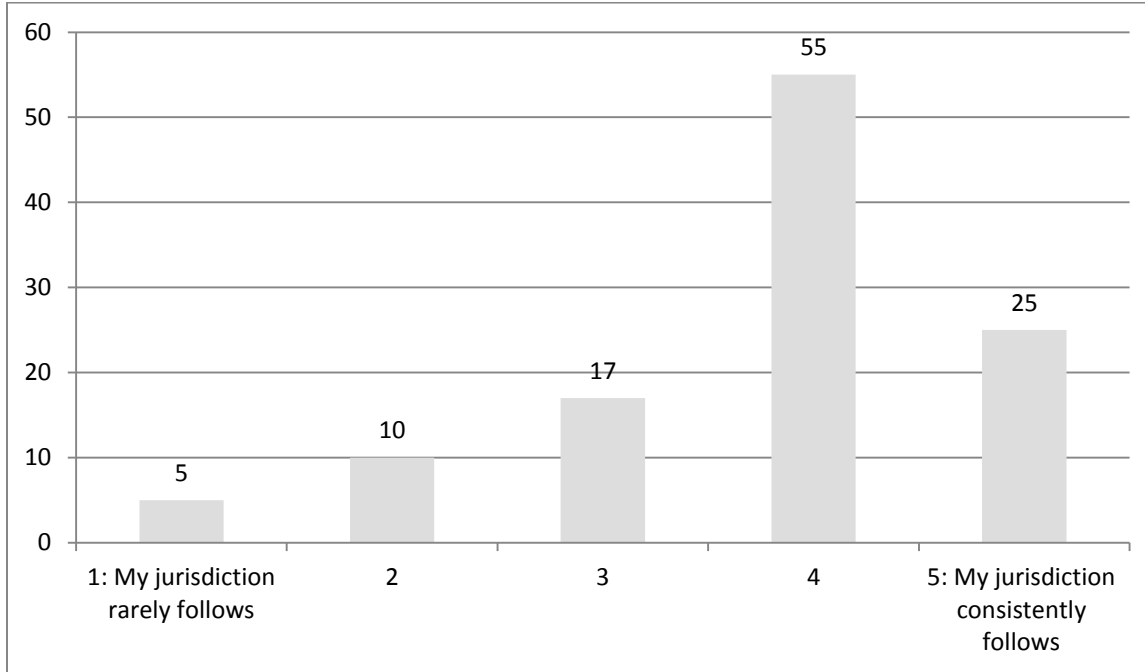
Q8: If your jurisdiction does not prohibit closing pending review by the competition agency, does it allow parties a reasonable time in which to file notification following a clearly defined triggering event?



<u>Yes</u>	<u>No</u>
Argentina	Belgium
Australia	Brazil
Brazil	Chile
Canada	Colombia
EU	Mexico
Germany	Poland
India	Portugal
Italy	Romania
Japan	South Africa
Mexico	Spain
Portugal	Zambia
Russia	
Slovak Republic	
South Africa	
UK	
Ukraine	

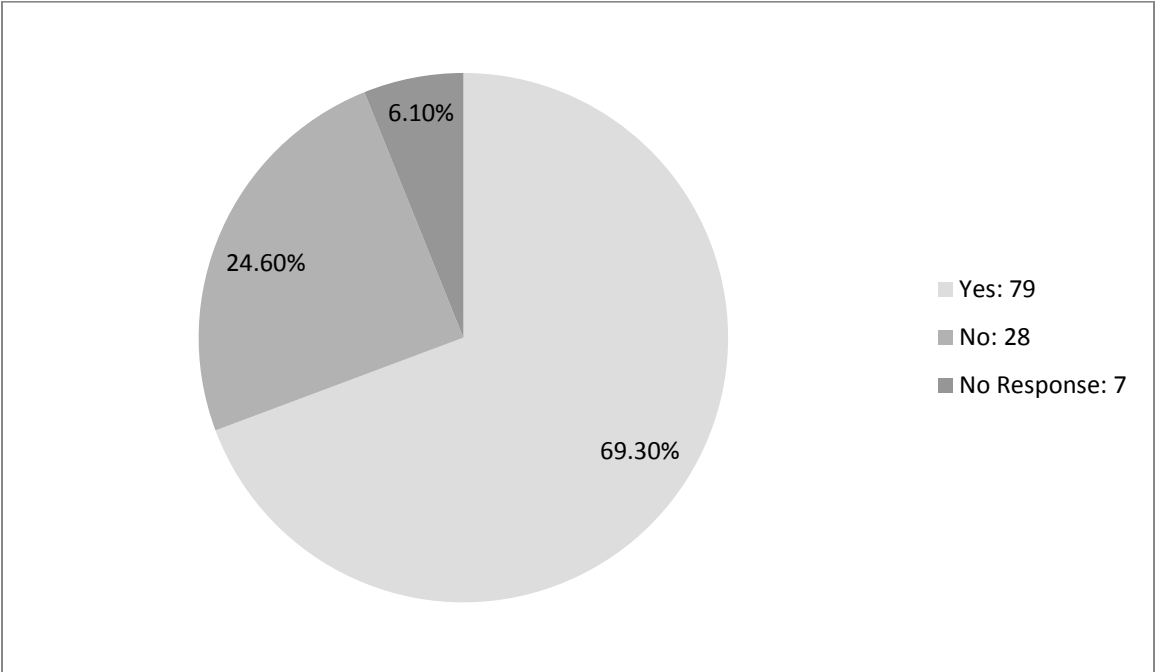
Review Periods

Q9: Merger reviews should be completed within a reasonable period of time. (113 Responses, 1 No Response)



1	2	3	4	5
Argentina	Argentina	Australia	Australia	Australia
Chile	Australia	Canada	Austria	Brazil
Colombia	Mexico	EU	Belgium	Canada
	South Africa	France	Brazil	Czech Republic
	Ukraine	Mexico	Canada	Estonia
		Poland	EU	France
		Portugal	Germany	Germany
		South Africa	Indonesia	Hungary
		Spain	Japan	India
			Mexico	Italy
			Netherlands	Japan
			Poland	Mexico
			Portugal	Romania
			Russia	Ukraine
			Slovak	United States
			Republic	
			South Africa	
			Spain	
			Turkey	
			UK	
			United States	
			Zambia	

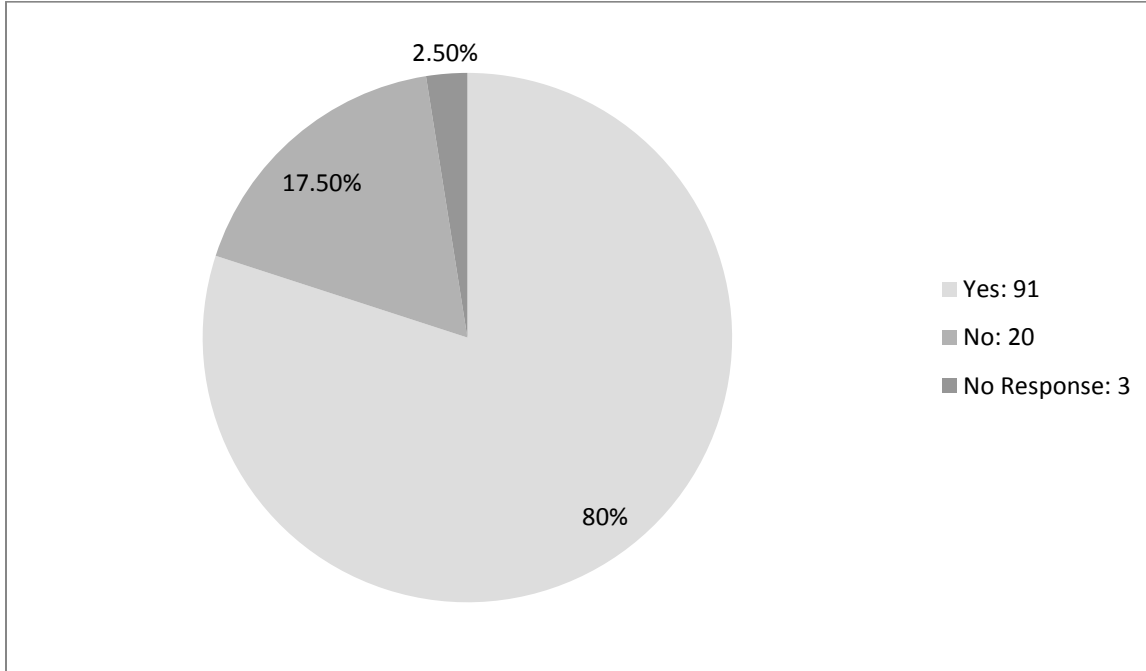
Q10: Does your jurisdiction provide for an expedited review of non-problematic transactions?



<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Austria	Chile
Brazil	EU
Canada	France
Colombia	Germany
Czech Republic	Indonesia
Estonia	Japan
EU	Poland
France	Russia
Germany	South Africa
Hungary	Spain
India	UK
Italy	Ukraine
Japan	Zambia
Mexico	
Poland	
Portugal	
Romania	
Slovak Republic	
South Africa	
Spain	
Turkey	
United States	

In my jurisdiction...

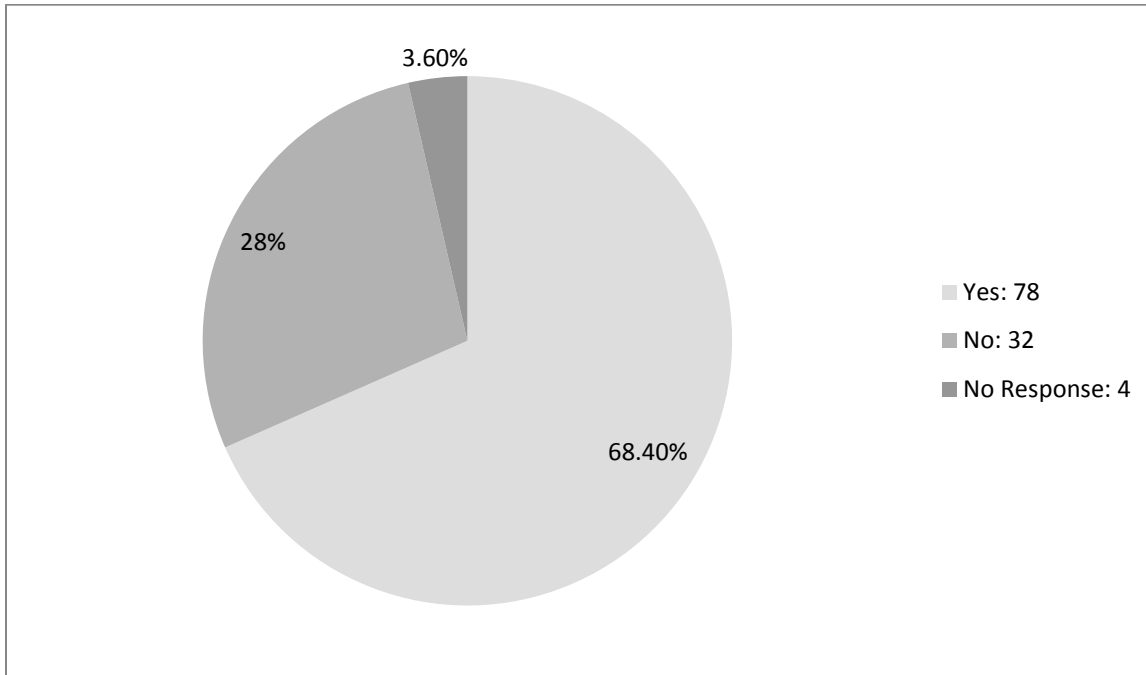
Q11: The initial review period is subject to definitive and readily ascertainable deadlines. (111 Responses, 3 No Response)



<u>Yes</u>		<u>No</u>
Australia	Netherlands	Argentina
Austria	Poland	Australia
Belgium	Portugal	Brazil
Brazil	Romania	Chile
Canada	Russia	EU
Colombia	Slovak Republic	Mexico
Czech Republic	South Africa	Poland
Estonia	Spain	South Africa
EU	The EU	Spain
France	UK	
Germany	Ukraine	
Hungary	United States	
India	Zambia	
Italy		
Japan		
Mexico		

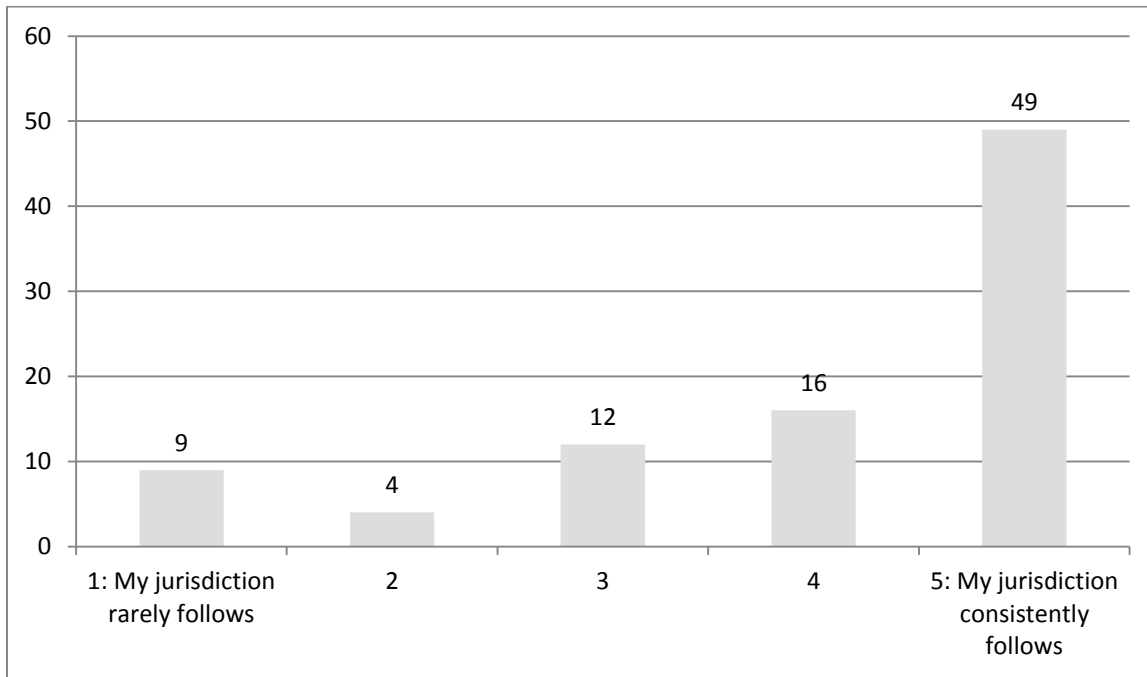
In my jurisdiction...

Extended reviews are subject to determinable time frames. (110 Responses, 4 No Response)



<u>Yes</u>		<u>No</u>
Australia	Netherlands	Argentina
Austria	Poland	Australia
Belgium	Portugal	Brazil
Brazil	Romania	Canada
Canada	Russia	Chile
Estonia	Slovak Republic	Colombia
EU	South Africa	EU
France	Spain	Germany
Germany	Turkey	Mexico
Hungary	UK	Poland
India	Ukraine	South Africa
Italy	United States	Spain
Japan	Zambia	Ukraine
Mexico		United States

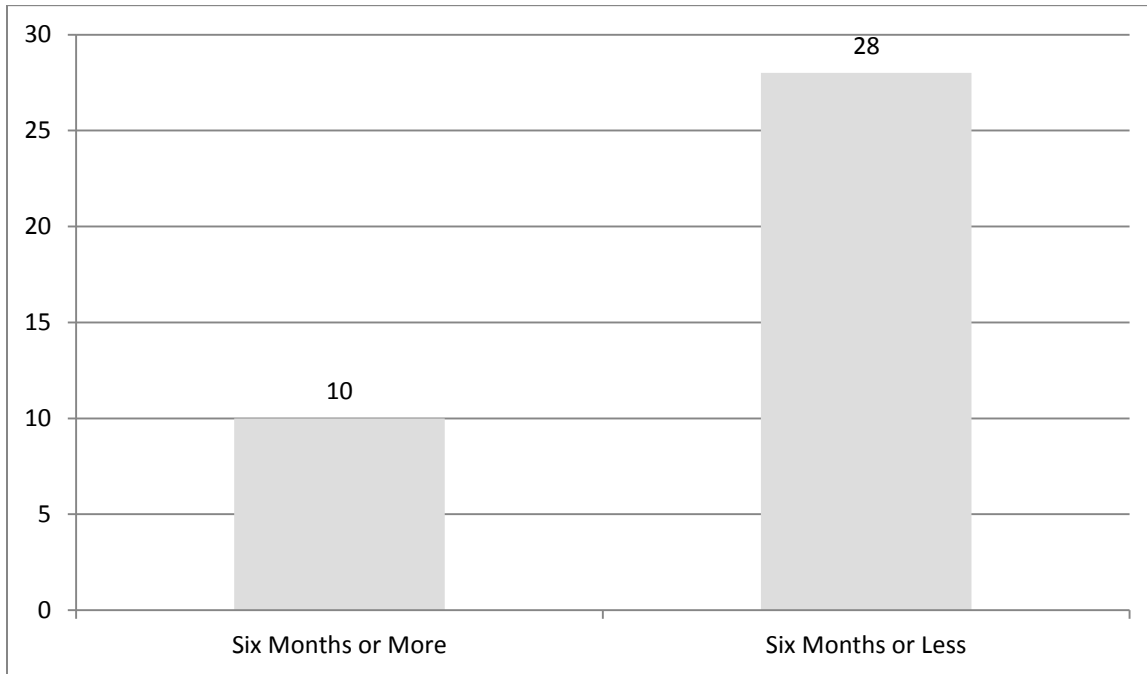
Q12: In suspensive jurisdictions, initial waiting periods should expire within a specified period following notification and any extended waiting periods should expire within a determinable time frame. (90 Responses, 24 No Response)



<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Australia	Argentina	Australia	Canada	Austria
Brazil	Mexico	Brazil	France	Belgium
Chile	Romania	Canada	Germany	Brazil
South Africa	South Africa	Colombia	Japan	Canada
Ukraine	Ukraine	Mexico	Mexico	Estonia
		Poland	Russia	EU
		Portugal	Slovak Republic	France
		South Africa	South Africa	Germany
		Spain	Turkey	Hungary
			United States	India
			Zambia	Japan
				Mexico
				Poland
				Spain
				United States

Q13: Whether your jurisdiction has a single review period or two phase review, does the agency complete its review in a determinable time period?

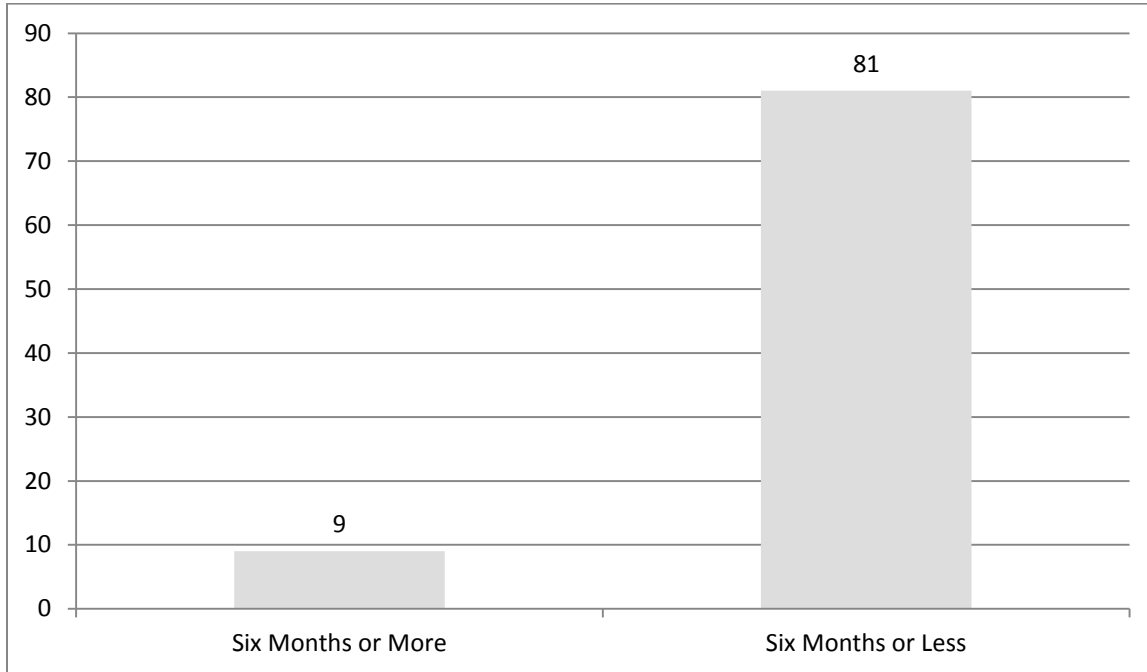
Jurisdiction has a single review period that takes (38 Responses, 76 No Response)



Argentina
Australia
Brazil
Chile
Mexico

Australia
Brazil
Canada
Colombia
India
Indonesia
Mexico
Russia
Slovak
Republic
South Africa
Spain
Turkey
United States
Zambia

Jurisdiction has two phase review, first phase completed in (90 Responses, 24 No Response)

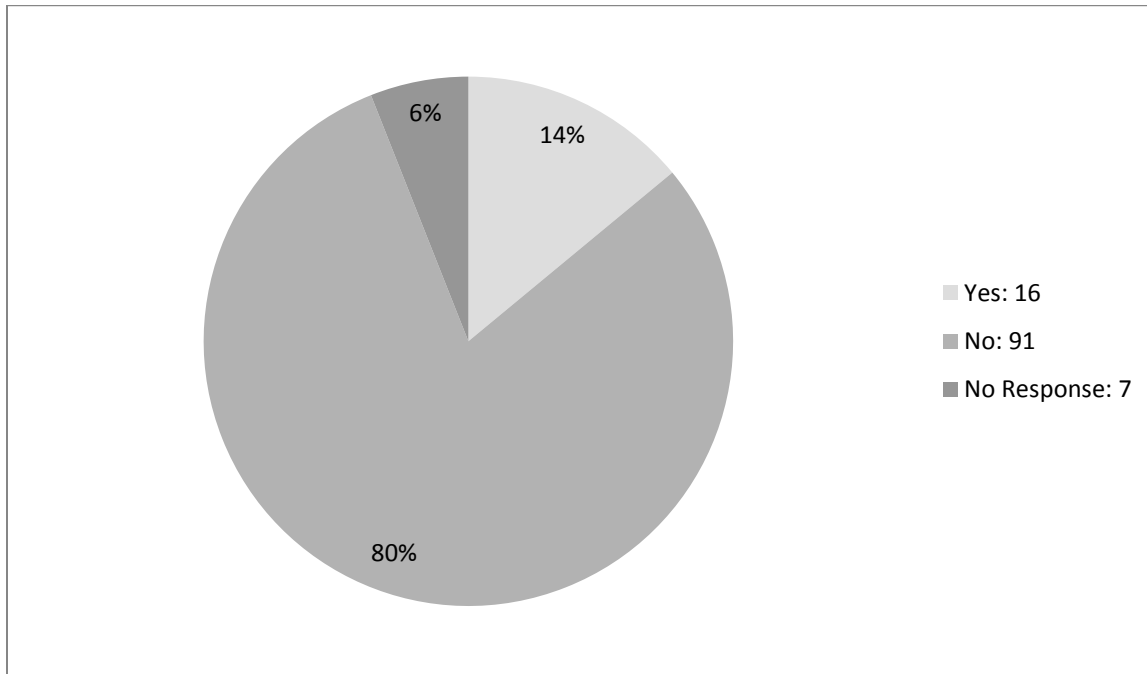


Argentina
Chile
Mexico
South Africa
United States

Australia
Austria
Belgium
Brazil
Canada
Colombia
Czech Republic
Estonia
EU
Germany
Hungary
Italy
Japan
Mexico
Netherlands
Poland
Portugal
Romania
Russia
Slovak Republic
South Africa
Spain
UK
Ukraine
United States

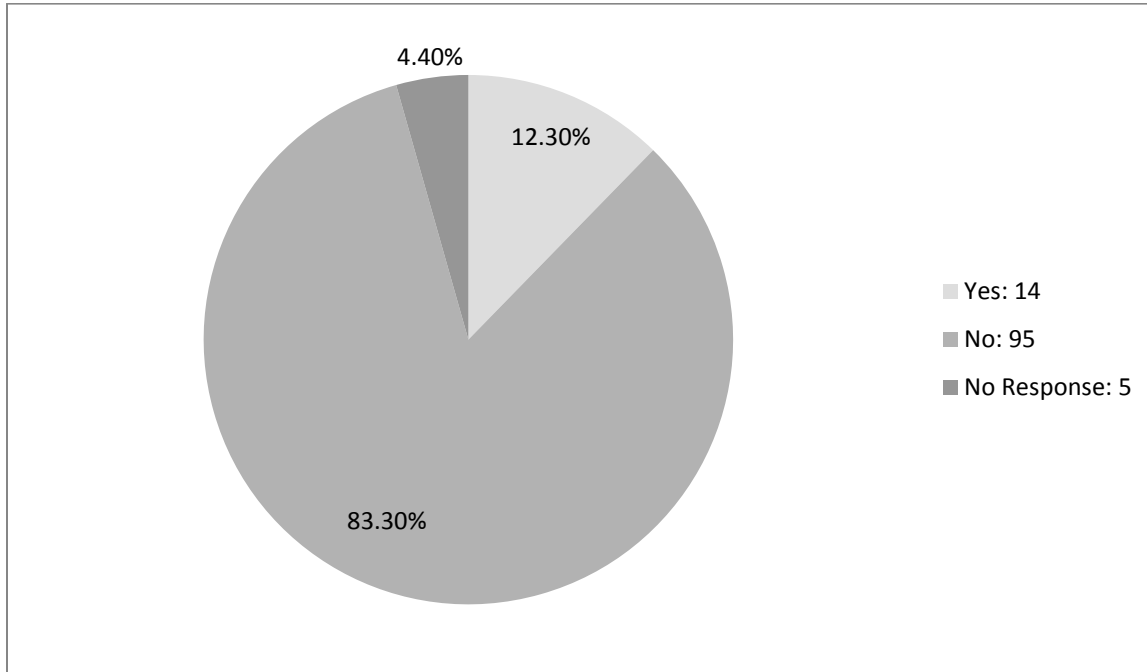
Q14: In your jurisdiction, are there procedures for accelerated review in the case of...

Non-Consensual Transactions (107 Responses, 7 No Responses)



<u>Yes</u>	<u>No</u>	
Brazil	Argentina	Italy
Canada	Australia	Japan
Japan	Austria	Mexico
Mexico	Belgium	Netherlands
South Africa	Brazil	Poland
United States	Canada	Portugal
	Chile	Romania
	Colombia	Russia
	Czech	Slovak
	Republic	Republic
	Estonia	South Africa
	EU	Spain
	France	Turkey
	Germany	UK
	Hungary	Ukraine
	India	Zambia
	Indonesia	

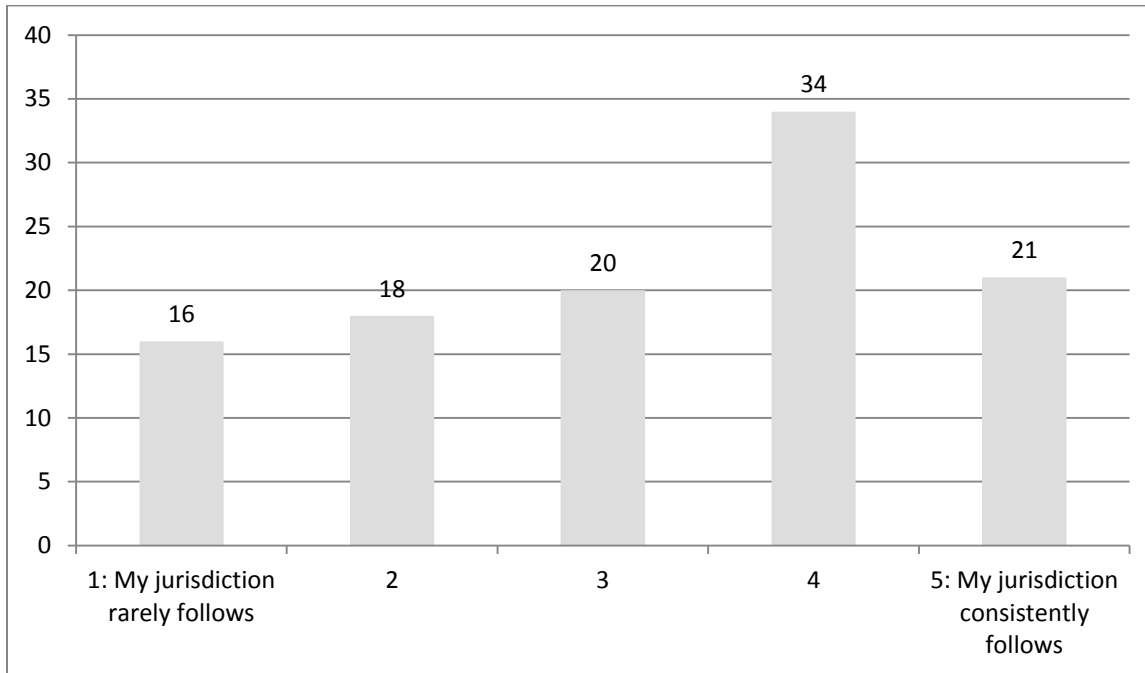
Companies in Bankruptcy (109 Responses, 5 No Responses)



<u>Yes</u>	<u>No</u>	
Brazil	Argentina	Italy
Canada	Australia	Japan
Germany	Austria	Mexico
South Africa	Belgium	Netherlands
United States	Brazil	Poland
	Canada	Portugal
	Chile	Romania
	Colombia	Russia
	Czech Republic	Slovak Republic
	Estonia	South Africa
	EU	Spain
	France	Turkey
	Germany	UK
	Hungary	Ukraine
	India	Zambia
	Indonesia	

Requirements for Initial Notification

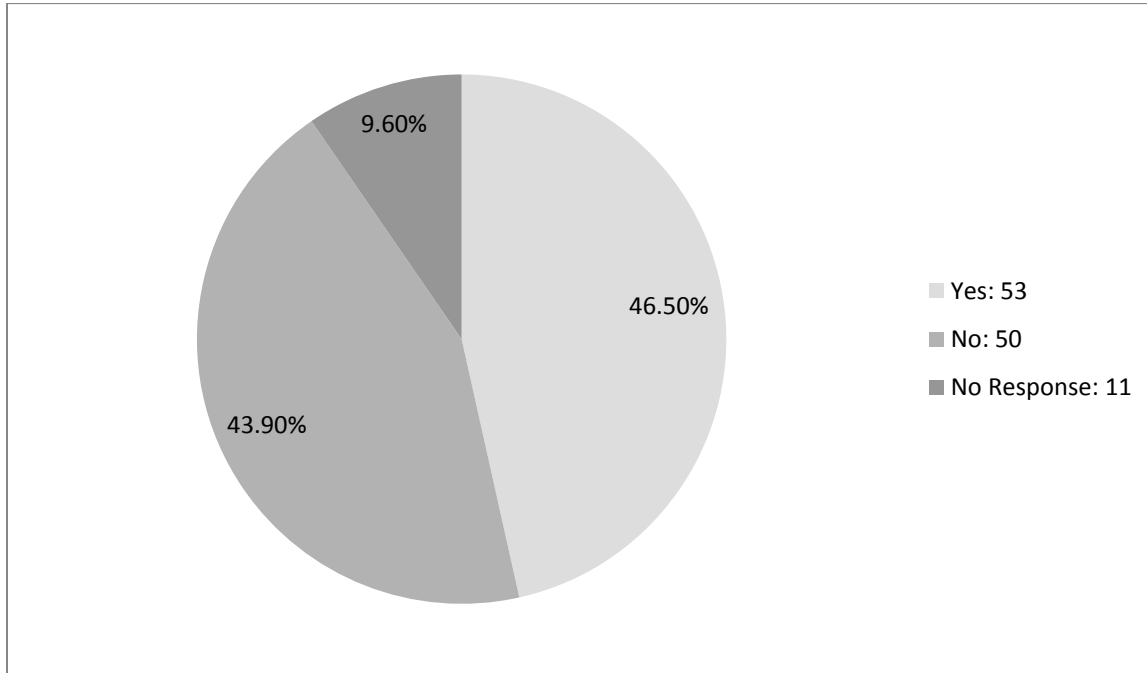
Q15: Initial notification requirements should be limited to the information needed to verify that the transaction exceeds jurisdictional thresholds, to determine whether the transaction raises competitive issues meriting further investigation, and to take steps necessary to terminate the review of transactions that do not merit further investigation. (109 Responses, 5 No Response)



<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Argentina	Argentina	Argentina	Australia	Austria
Australia	Australia	Australia	Brazil	Canada
Canada	Brazil	Belgium	Canada	Colombia
Mexico	Canada	Brazil	Chile	Germany
South Africa	EU	EU	Czech Republic	India
Spain	France	Mexico	Estonia	Japan
Turkey	Japan	Portugal	EU	Mexico
UK	Mexico	Russia	FRANCE	Netherlands
Ukraine	Poland	South Africa	Germany	United States
Zambia	South Africa	Spain	Hungary	
	Spain		Italy	
	UK		Japan	
			Mexico	
			Poland	
			Portugal	
			Romania	
			Slovak Republic	
			United States	

Q16: Initial notification requirements and/or practices should be implemented so as to avoid imposing unnecessary burdens on parties to transactions that do not present material competitive concerns. My jurisdiction attempts to do this through the use of the following:

Simplified procedures (103 Responses, 11 No Responses)



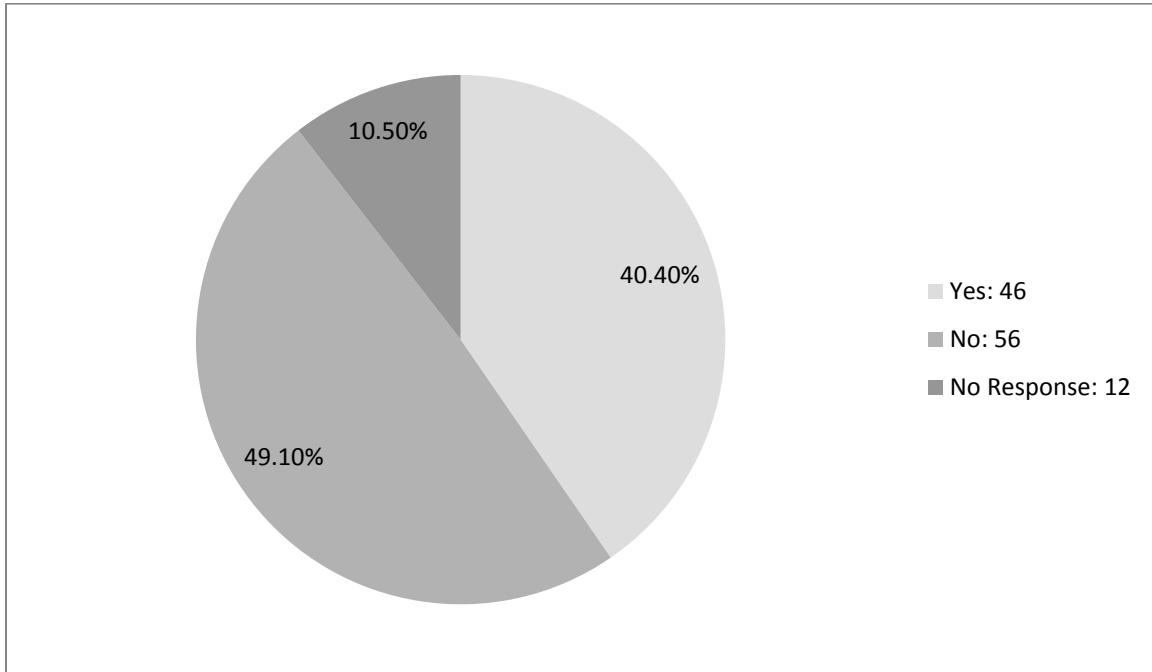
Yes

No

- Argentina
- Australia
- Belgium
- Brazil
- Canada
- Colombia
- Czech Republic
- EU
- France
- Hungary
- India
- Japan
- Mexico
- Poland
- Portugal
- Romania
- South Africa
- Spain
- United States

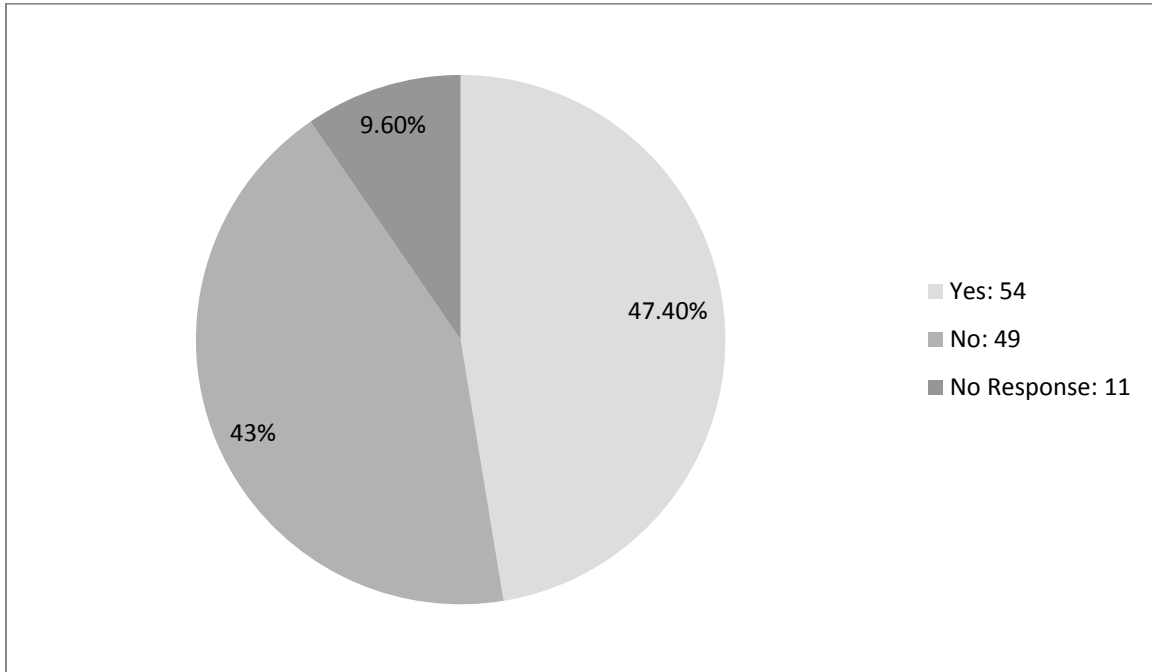
- Argentina
- Australia
- Austria
- Canada
- Chile
- Estonia
- France
- Germany
- Italy
- Japan
- Mexico
- Netherlands
- Poland
- Russia
- Slovak Republic
- South Africa
- Spain
- UK
- Ukraine
- United States
- Zambia

Short/long forms (102 Responses, 12 No Responses)



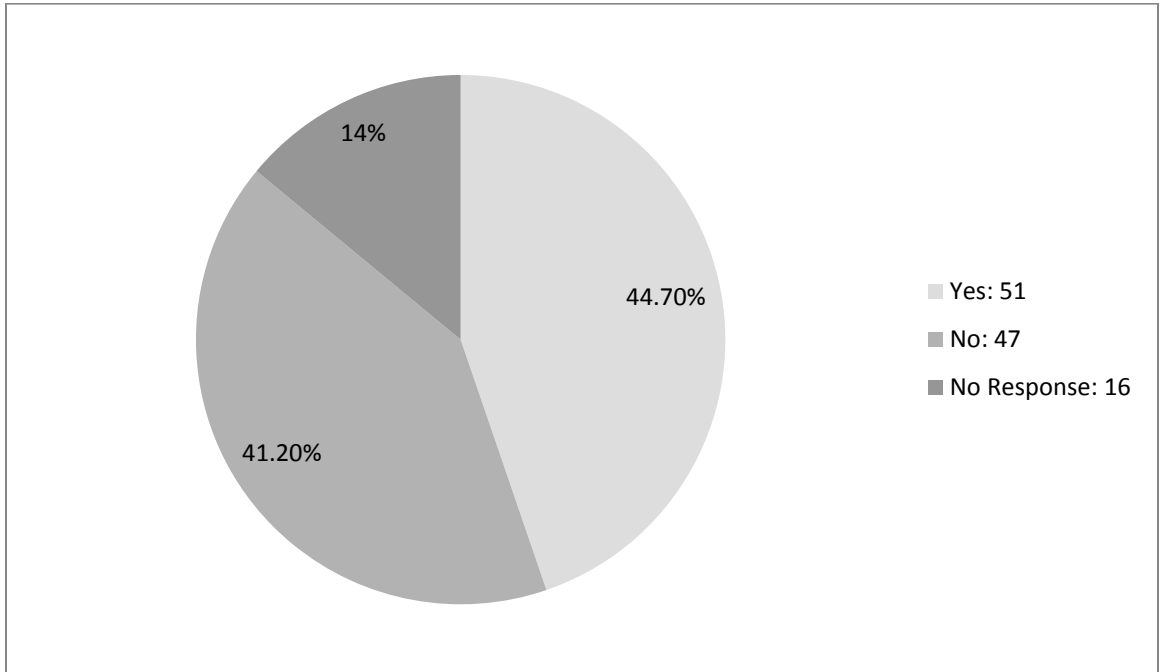
<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Austria	Canada
Belgium	Chile
Brazil	Czech Republic
Canada	France
Colombia	Germany
Estonia	Japan
EU	Mexico
Germany	Netherlands
Hungary	Russia
India	South Africa
Italy	UK
Japan	Ukraine
Mexico	United States
Poland	
Portugal	
Slovak Republic	
South Africa	
Spain	
United States	
Zambia	

Discretionary supplementation (103 Responses, 11 No Responses)



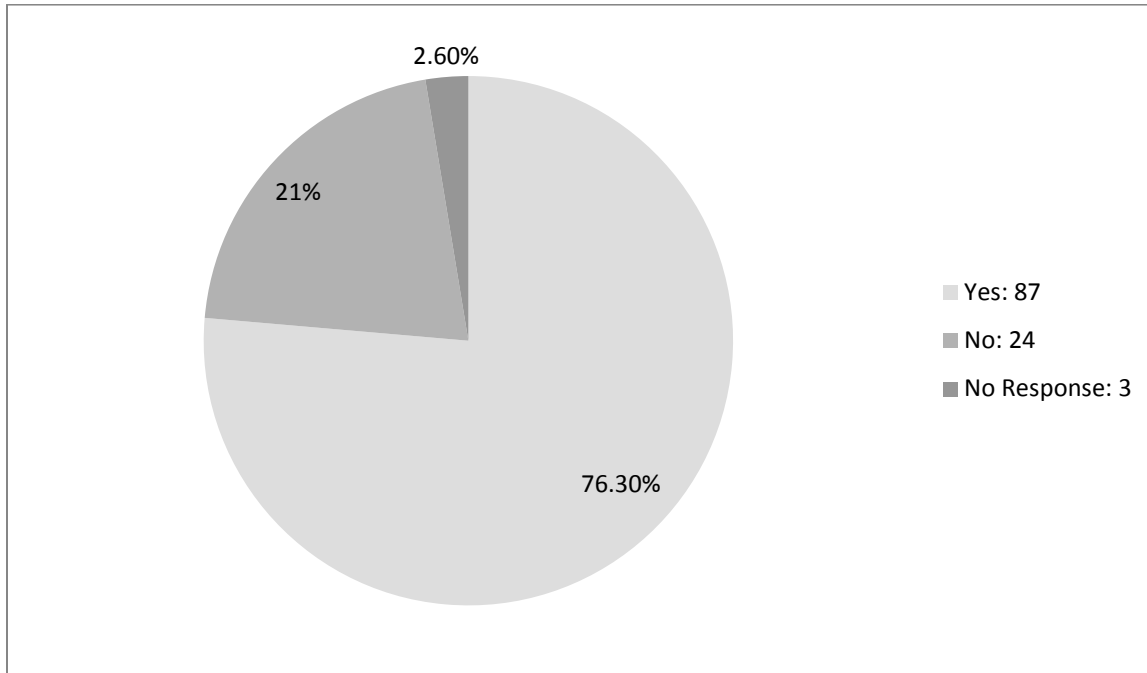
<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Brazil	Austria
Canada	Belgium
Colombia	Brazil
EU	Chile
Germany	Czech Republic
Hungary	Estonia
India	EU
Japan	France
Mexico	Germany
Portugal	Italy
South Africa	Japan
Spain	Mexico
UK	Netherlands
United States	Poland
Zambia	Portugal
	Russia
	Slovak Republic
	South Africa
	Spain
	Ukraine
	United States

Discretionary waiver (98 Responses, 16 No Response)



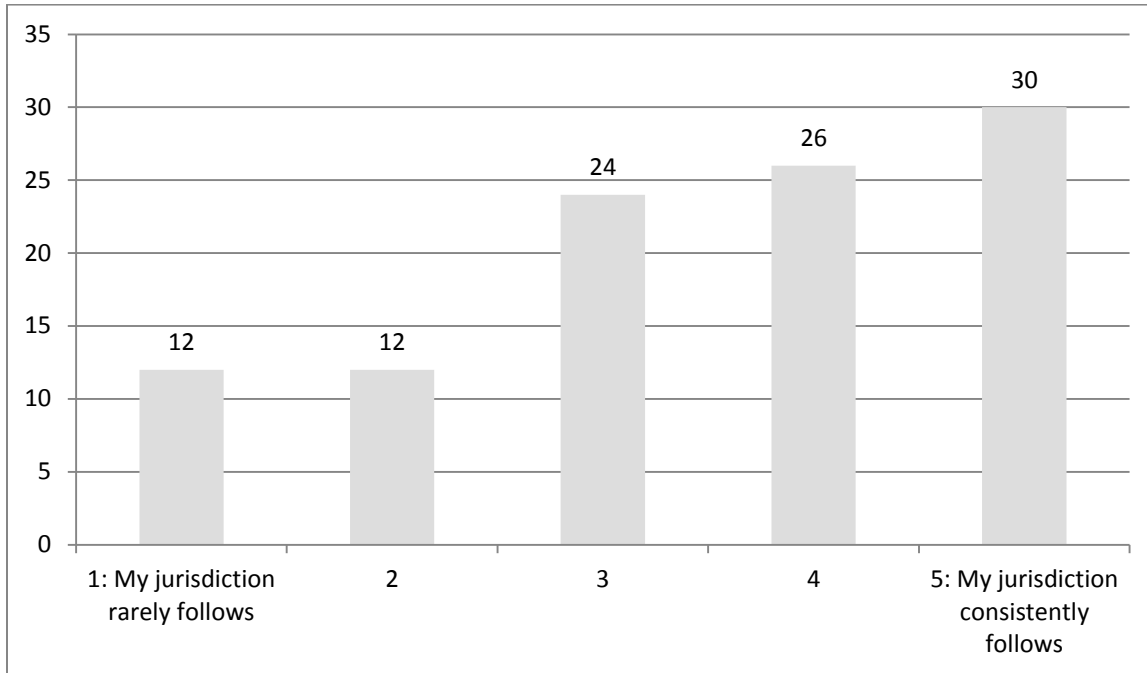
<u>Yes</u>	<u>No</u>
Australia	Argentina
Austria	Australia
Belgium	Brazil
Brazil	Canada
Canada	Chile
Estonia	Colombia
EU	Czech Republic
France	France
Germany	Germany
Hungary	Italy
India	Japan
Mexico	Mexico
Netherlands	Poland
Poland	Portugal
Portugal	Russia
South Africa	Slovak Republic
Spain	South Africa
UK	Ukraine
Ukraine	United States
United States	
Zambia	

Q17: Does the agency provide for the possibility of pre-notification guidance to parties on the notifiability of the transaction and the content of the intended notification? (111 Responses, 3 No Response)



<u>Yes</u>		<u>No</u>
Argentina	Italy	Argentina
Australia	Japan	Australia
Austria	Mexico	Brazil
Belgium	Netherlands	Chile
Brazil	Poland	Germany
Canada	Portugal	Mexico
Colombia	Romania	Poland
Czech Republic	Slovak Republic	Russia
Estonia	South Africa	South Africa
EU	Spain	Ukraine
France	UK	United States
Germany	Ukraine	
Hungary	United States	
India	Zambia	
Indonesia		

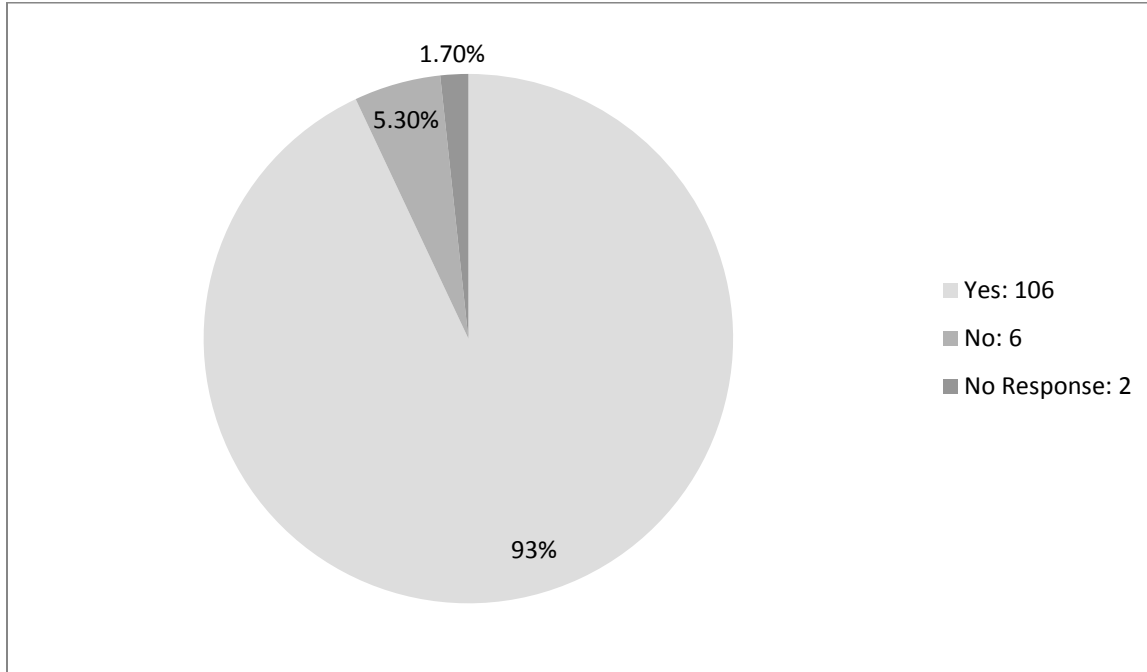
Q18: Jurisdictions should limit translation requirements and formal authentication burdens. (104 Responses, 10 No Response)



1	2	3	4	5
Argentina	Argentina	Argentina	Australia	Austria
Brazil	Australia	Australia	Brazil	Belgium
Chile	Brazil	Brazil	Canada	Canada
Colombia	Mexico	Czech Republic	EU	Estonia
Japan	Romania	EU	France	EU
Mexico	South Africa	Germany	Germany	Germany
Poland	Spain	Italy	Indonesia	Hungary
Russia	Ukraine	Japan Mexico	Mexico	India
Ukraine		Mexico	Poland	Japan
Zambia		Slovak Republic	South Africa	Netherlands
		South Africa	Spain	Portugal
		Turkey	United States	Portugal
				South Africa
				UK
				United States

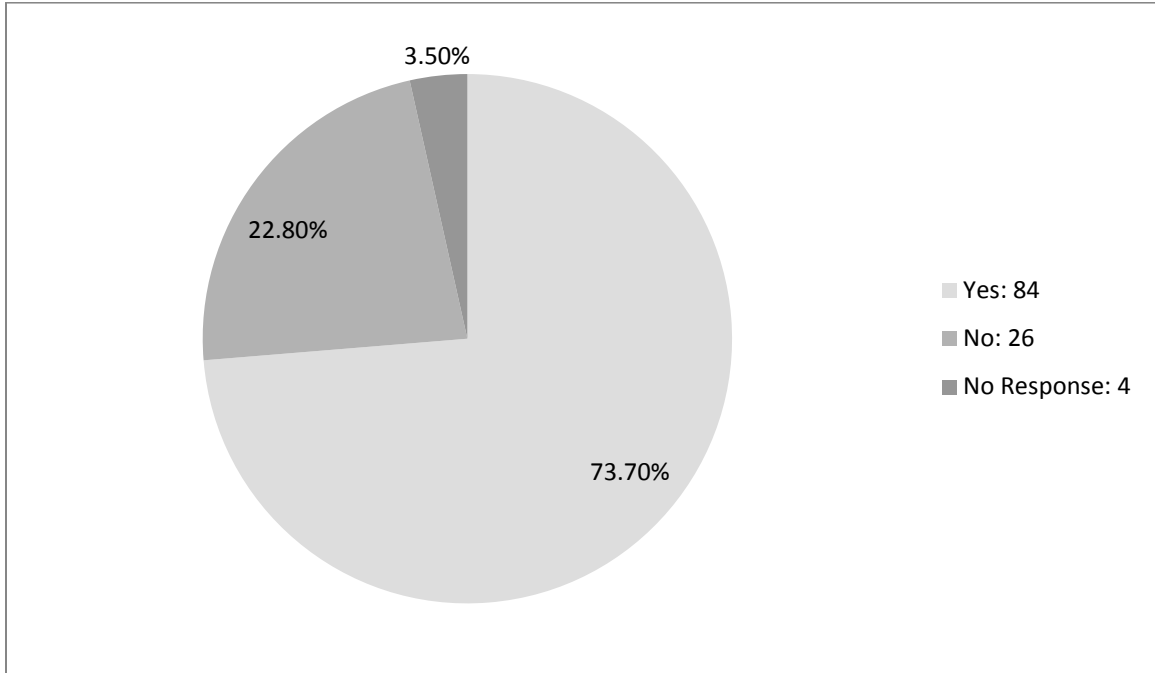
Conduct of the Merger Investigation

Q19: Is the agency available for consultation with the merging parties to inform them of any significant legal or practical issues that arise during the investigation?



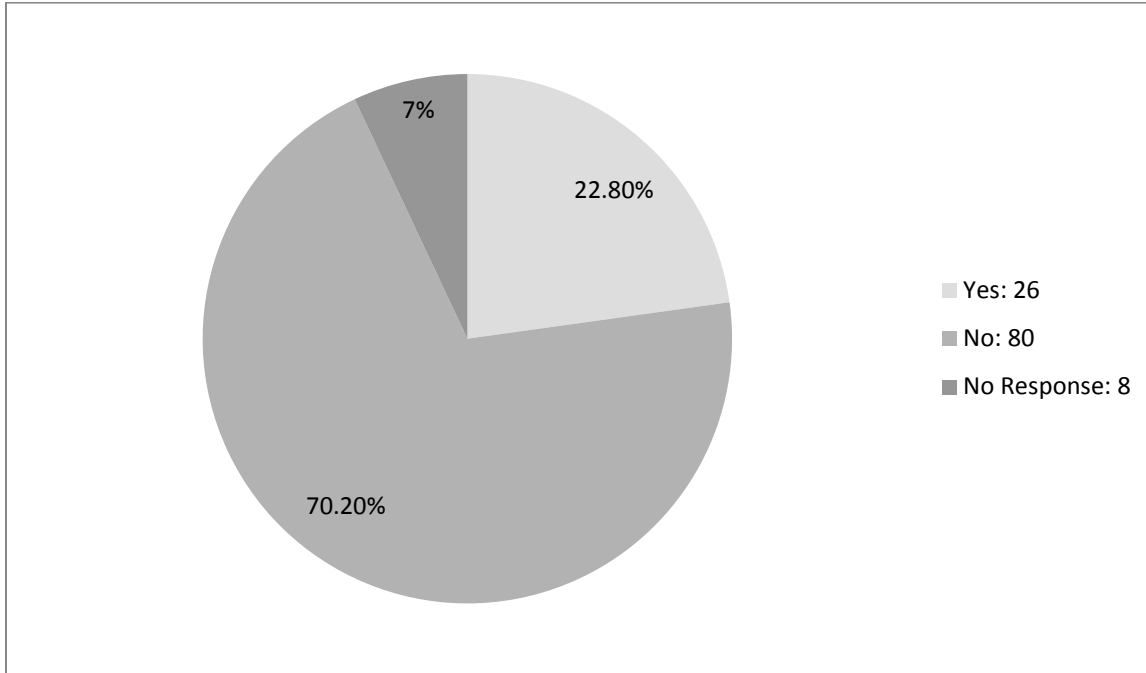
Yes		No
Argentina	Japan	Argentina
Australia	Mexico	Chile
Austria	Netherlands	Portugal
Belgium	Poland	Russia
Brazil	Portugal	Spain
Canada	Romania	Ukraine
Colombia	Russia	
Czech Republic	Slovak Republic	
Estonia	South Africa	
EU	Spain	
France	Turkey	
Germany	UK	
Hungary	Ukraine	
India	United States	
Italy	Zambia	

Q20: Does the competition agency provide merging parties, no later than at the beginning of a second-stage inquiry, an explanation of the competitive concerns that motivated an in-depth review?



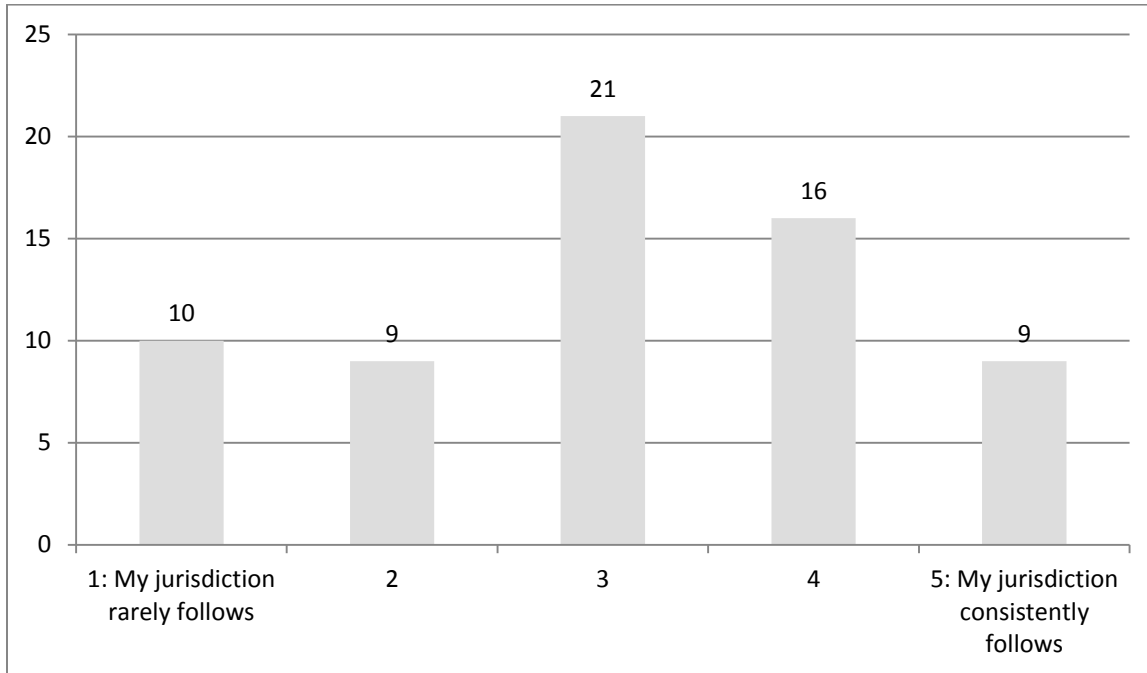
<u>Yes</u>		<u>No</u>
Argentina	Mexico	Argentina
Australia	Netherlands	Brazil
Austria	Poland	Canada
Belgium	Portugal	Chile
Brazil	Romania	Colombia
Canada	Russia	Germany
Czech Republic	South Africa	Mexico
Estonia	Spain	Russia
EU	Turkey	Slovak Republic
France	UK	South Africa
Germany	Ukraine	Spain
Hungary	United States	Ukraine
India	Zambia	
Italy		
Japan		

Q21: If the review period is determined by the date of party compliance with information requests, are there limits on the number or scope of compulsory requests that an agency can make?



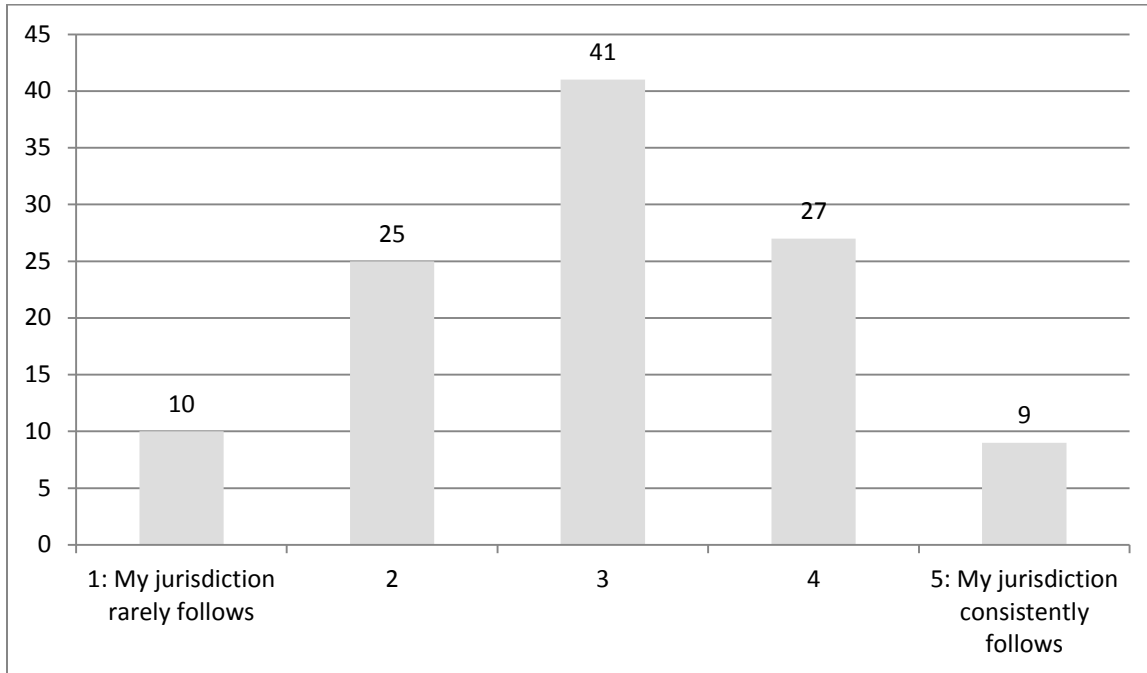
<u>Yes</u>	<u>No</u>	
Brazil	Argentina	Mexico
Canada	Australia	Netherlands
Germany	Austria	Poland
India	Belgium	Portugal
Japan	Brazil	Romania
Mexico	Canada	Russia
United States	Chile	Slovak Republic
	Colombia	South Africa
	Czech Republic	Spain
	Estonia	Turkey
	EU	UK
	France	Ukraine
	Germany	United States
	Hungary	Zambia
	Indonesia	
	Italy	
	Japan	

Q22: Where investigation periods are not subject to definitive deadlines, procedures should be adopted to ensure that the investigation is completed without undue delay. (65 Responses, 49 No Response)



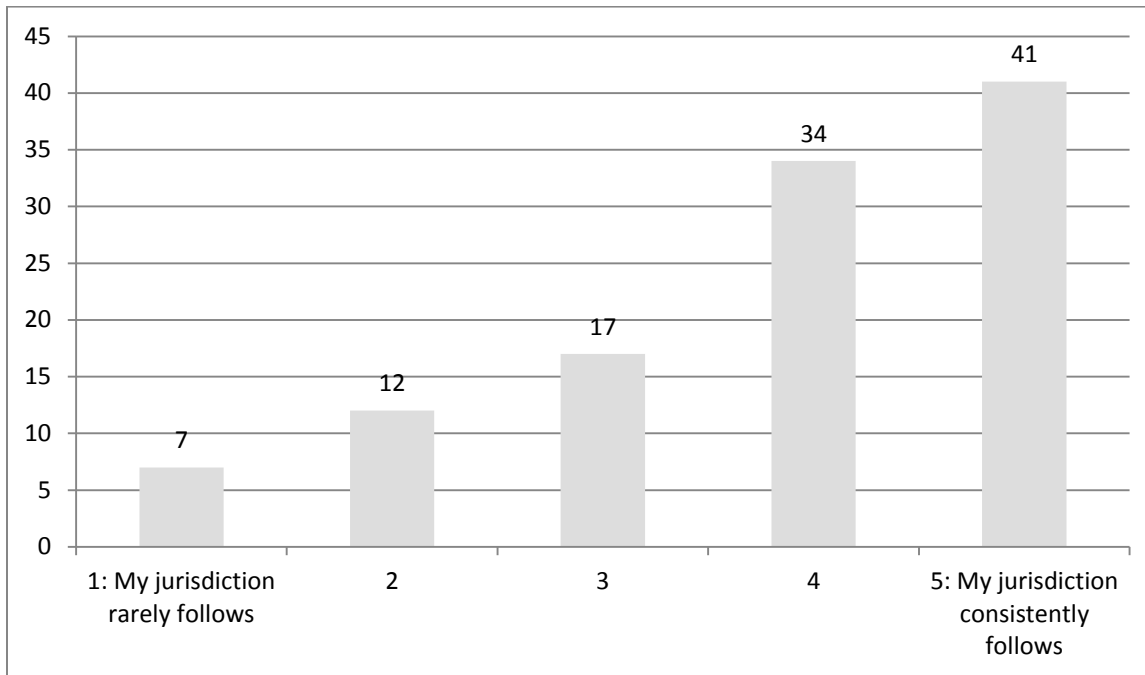
1	2	3	4	5
Argentina	Argentina	Australia	Australia	Brazil
Australia	Australia	Brazil	Belgium	Canada
Brazil	Mexico	Canada	Canada	India
Chile	Poland	EU	Germany	Japan
Colombia	South Africa	Mexico	Mexico	Mexico
Japan	Ukraine	Poland	Russia	Romania
South Africa		Portugal	South Africa	South Africa
Ukraine		South Africa	Turkey	United States
		Spain	United States	
		United States		
		Zambia		

Q23: Competition agencies should seek to avoid imposing unnecessary or unreasonable costs and burdens on merging parties and third parties in connection with merger investigations. (112 Responses, 2 No Response)



1	2	3	4	5
Argentina	Argentina	Australia	Australia	Australia
Australia	Australia	Austria	Belgium	Germany
Brazil	Brazil	Brazil	Brazil	India
Chile	Canada	Canada	Canada	Romania
Colombia	EU	EU	Czech Republic	Russia
Mexico	France	France	Estonia	South Africa
South Africa	Mexico	Hungary	EU	
Turkey	Portugal	Indonesia	Germany	
Ukraine	South Africa	Italy	Japan	
	Spain	Japan	Mexico	
	Ukraine	Mexico	Netherlands	
	United States	Poland	Poland	
		Portugal	South Africa	
		Slovak	Zambia	
		Republic		
		South Africa		
		Spain		
		UK		
		United States		

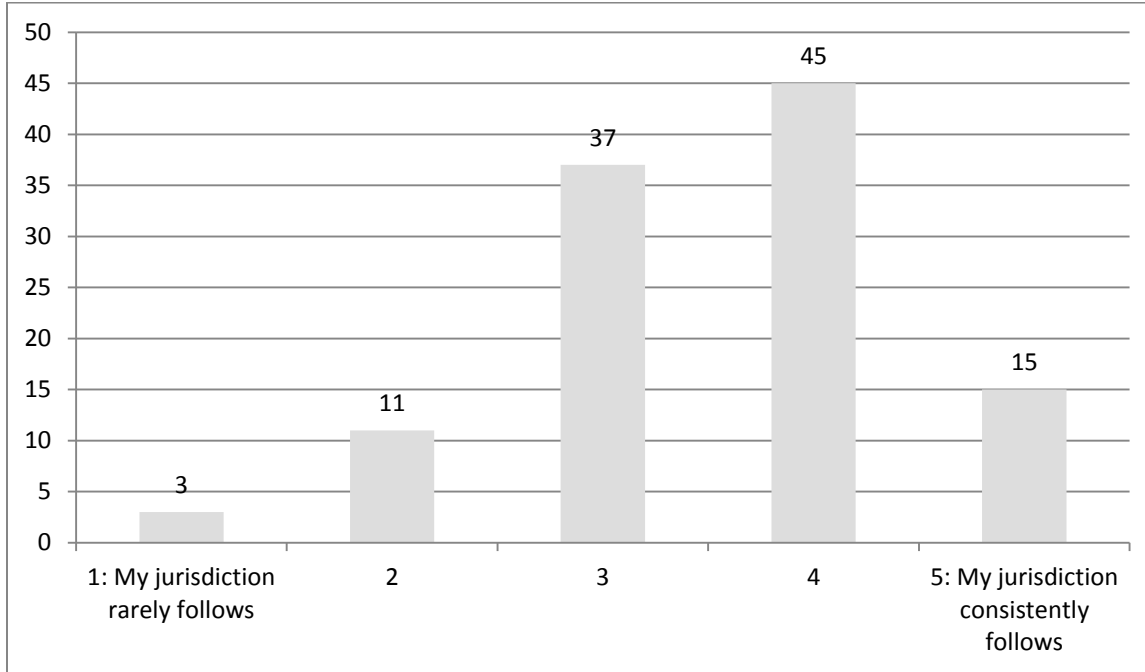
Q24: Merger investigations should be conducted with due regard for applicable legal privileges and related confidentiality doctrines. (111 Responses, 3 No Response)



1	2	3	4	5
Japan	Argentina	Argentina	Argentina	Australia
Mexico	Australia	Australia	Belgium	Brazil
Russia	Brazil	Austria	Brazil	Canada
South Africa	Germany	Brazil	Canada	Chile
	Mexico	EU	Colombia	EU
	Russia	Germany	Czech Republic	Germany
	Turkey	Mexico	Estonia	India
	Ukraine	Poland	EU	Italy
		Slovak Republic	France	Mexico
		Spain	Germany	Poland
			Hungary	Romania
			Japan	South Africa
			Mexico	Spain
			Netherlands	UK
			Portugal	United States
			Spain	Zambia
			UK	
			United States	

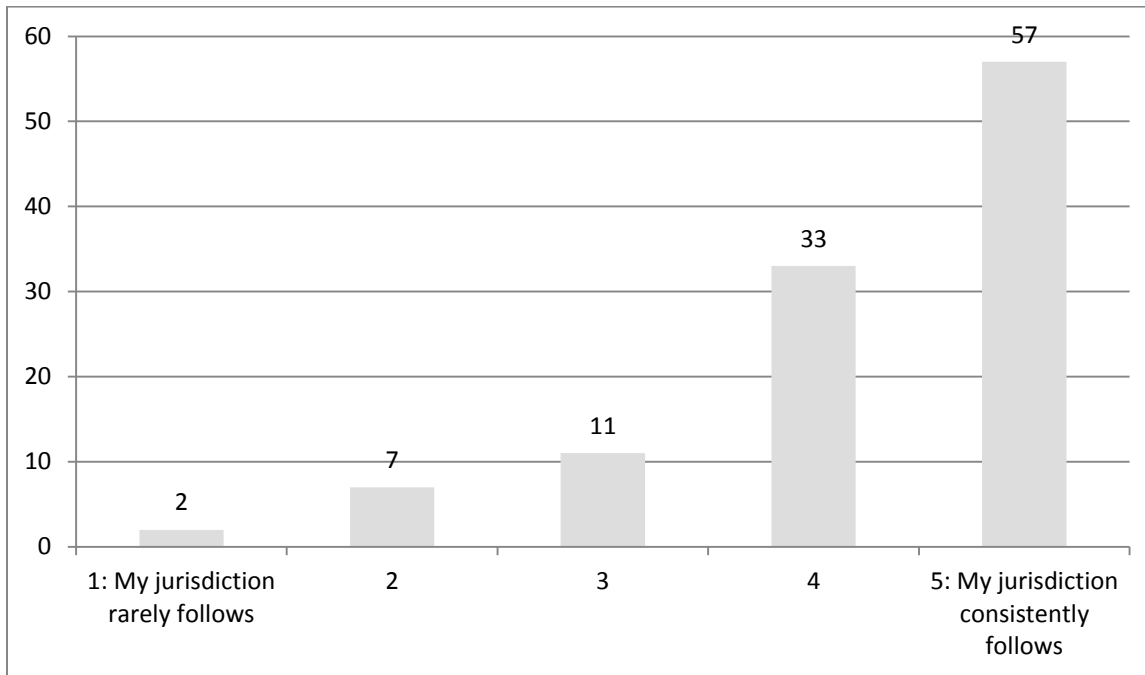
Procedural Fairness

Q25: The competition agency should manage the merger review process to ensure that the process is implemented fairly, efficiently, and consistently. (111 Responses, 3 No Response)



1	2	3	4	5
Argentina	Australia	Argentina	Australia	Brazil
Mexico	Brazil	Australia	Austria	Canada
Spain	Canada	Brazil	Belgium	Colombia
	Mexico	Canada	Brazil	EU
	South Africa	Chile	Canada	Germany
	Ukraine	EU	Czech Republic	India
		France	Estonia	Italy
		Germany	EU	Mexico
		Japan	France	Romania
		Mexico	Germany	UK
		Netherlands	Hungary	United States
		Portugal	Japan	
		Russia	Mexico	
		South Africa	Poland	
		Spain	Slovak Republic	
		Turkey	South Africa	
		Ukraine	Spain	
			UK	
			United States	
			Zambia	

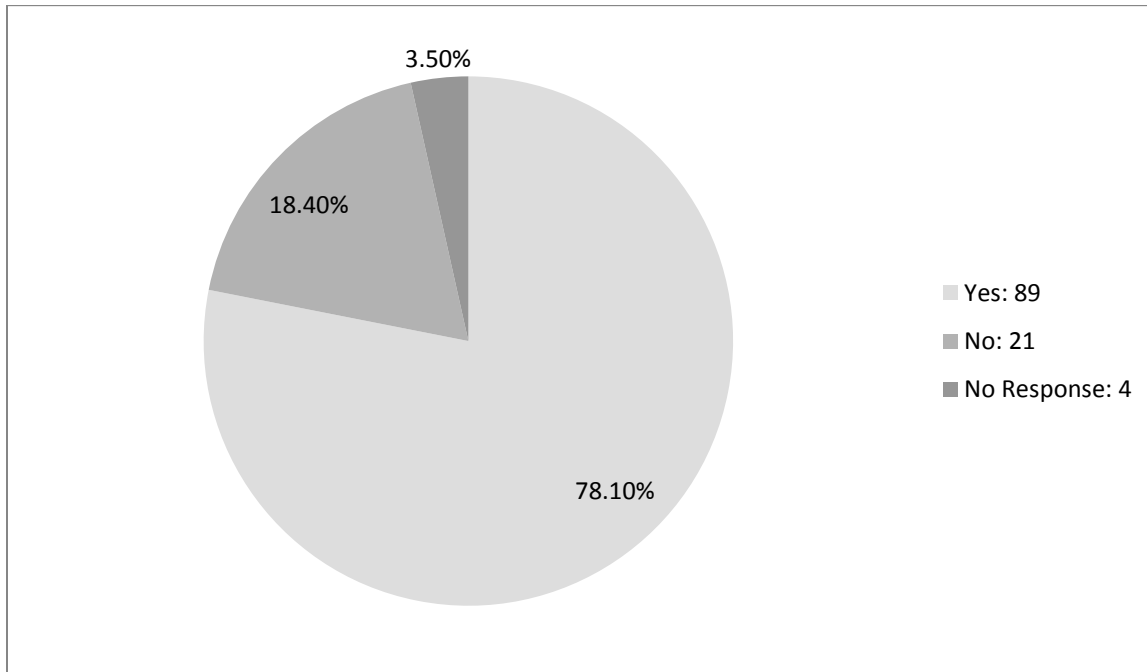
Q26: Third parties should be allowed to express their views during the merger review process. (113 Responses, 1 No Response)



1	2	3	4	5
Australia	Japan	Argentina	Argentina	Australia
Russia	Mexico	Australia	Australia	Brazil
		Belgium	Austria	Canada
		Brazil	Brazil	Chile
		Mexico	Canada	Colombia
		Portugal	EU	Czech Republic
		South Africa	Germany	Estonia
		Turkey	Japan	EU
		Ukraine	Mexico	France
			Poland	Germany
			South Africa	Hungary
			Spain	India
			United States	Italy
			Zambia	Japan
				Mexico
				Netherlands
				Portugal
				Romania
				Russia
				Slovak Republic
				South Africa
				UK
				United States

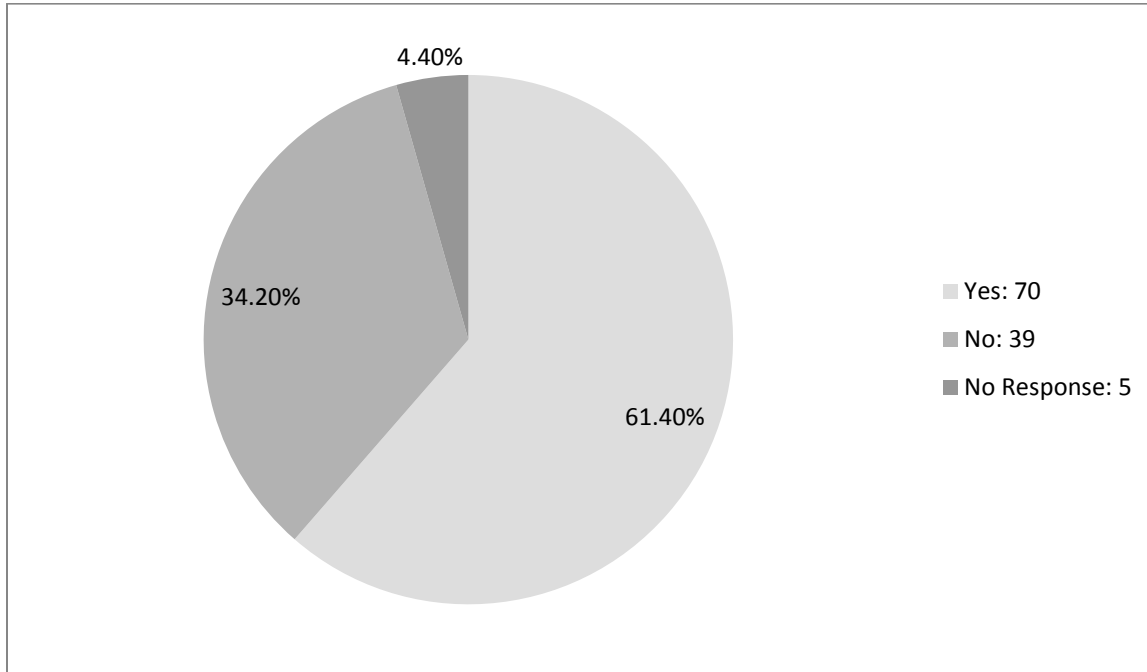
Q27: Are merging parties provided with sufficient information on the basis for the agency's material competition concerns?

Legal Basis: (110 Responses, 4 No Response)



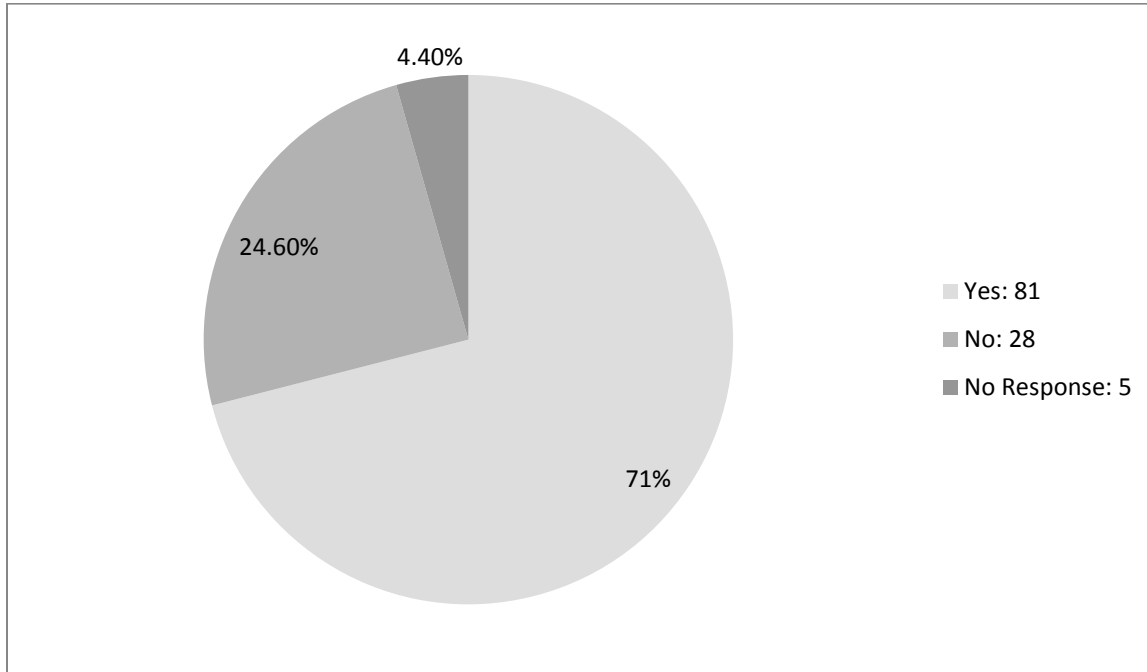
Yes		No
Argentina	Mexico	Argentina
Australia	Netherlands	Australia
Austria	Poland	Brazil
Belgium	Portugal	Canada
Brazil	Romania	France
Canada	Slovak Republic	Germany
Chile	South Africa	Japan
Colombia	Spain	Mexico
Czech Republic	Turkey	Russia
Estonia	UK	South Africa
EU	Ukraine	
France	United States	
Germany	Zambia	
Hungary		
India		
Italy		
Japan		

Economic Basis: (109 Responses, 5 No Response)



<u>Yes</u>	<u>No</u>
Argentina	Argentina
Australia	Australia
Austria	Brazil
Belgium	Canada
Brazil	France
Canada	Germany
Chile	Japan
Colombia	Mexico
Czech Republic	Poland
Estonia	Russia
EU	South Africa
Germany	Spain
Hungary	Turkey
India	Ukraine
Italy	United States
Japan	
Mexico	
Netherlands	
Portugal	
Romania	
Slovak Republic	
South Africa	
Spain	
UK	
Ukraine	
United States	
Zambia	

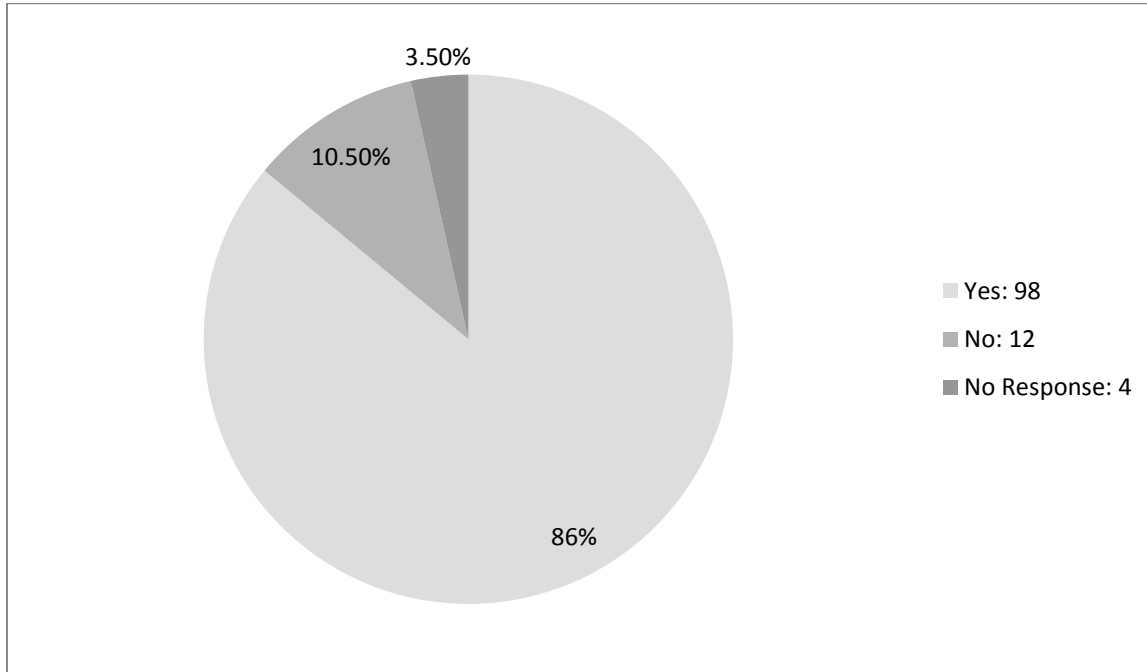
Factual Basis: (109 Responses, 5 No Response)



Yes		No
Argentina	Italy	Argentina
Australia	Japan	Australia
Austria	Mexico	Brazil
Belgium	Netherlands	Canada
Brazil	Poland	France
Canada	Portugal	Japan
Chile	Romania	Mexico
Colombia	Slovak Republic	Russia
Czech Republic	South Africa	South Africa
Estonia	Spain	Spain
EU	UK	Turkey
France	Ukraine	United States
Germany	United States	
Hungary	Zambia	
India		

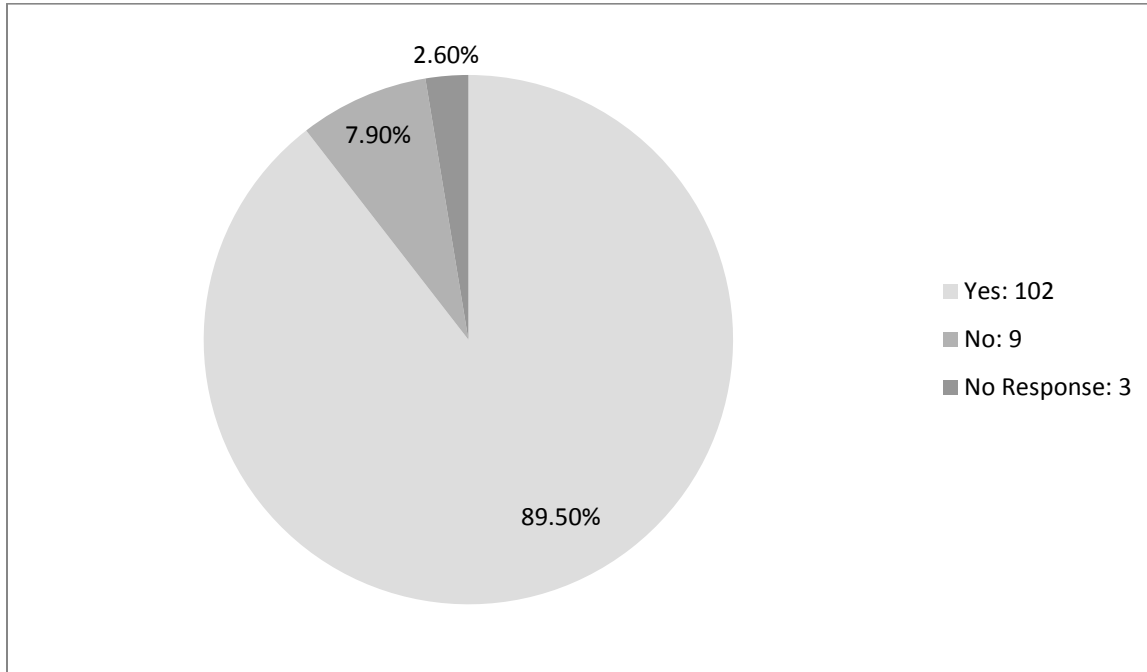
Q28: Prior to a merger enforcement decision, merging parties have a timely opportunity to...

Respond to agency concerns: (110 Responses, 4 No Response)



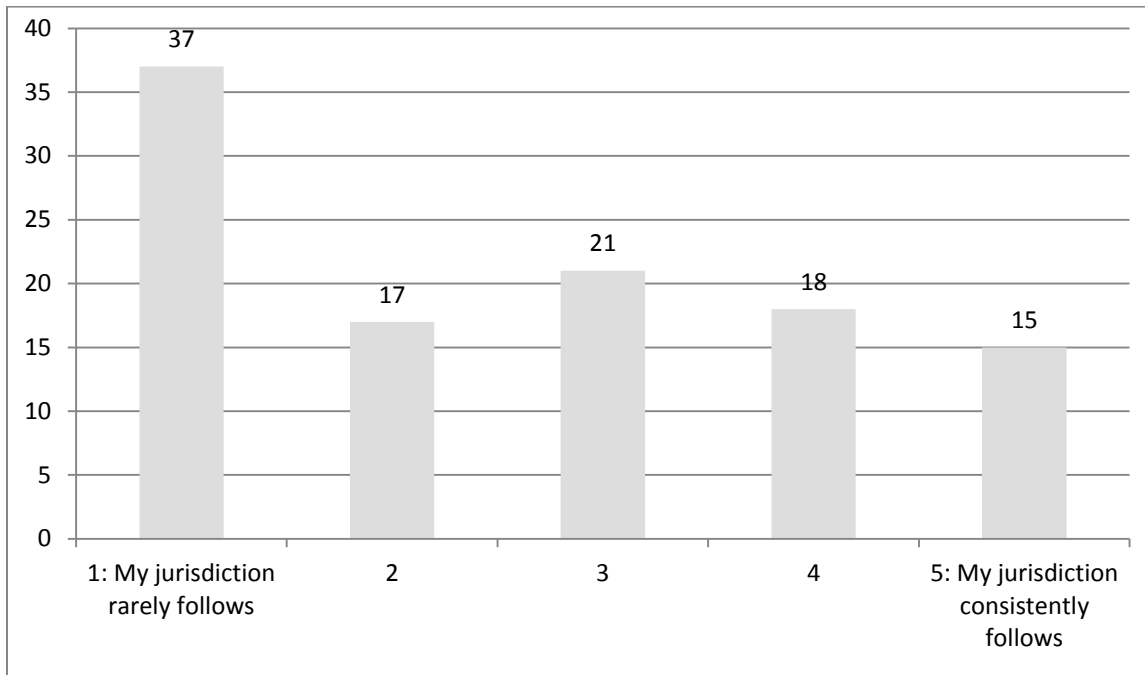
<u>Yes</u>		<u>No</u>
Argentina	Japan	Argentina
Australia	Mexico	Canada
Austria	Netherlands	Chile
Belgium	Poland	Mexico
Brazil	Portugal	Russia
Canada	Romania	South Africa
Colombia	Slovak Republic	Spain
Czech Republic	South Africa	
Estonia	Spain	
EU	Turkey	
France	UK	
Germany	Ukraine	
Hungary	United States	
India	Zambia	
Italy		

Consider and propose remedies: (111 Responses, 3 No Response)



Yes		No
Argentina	Mexico	Argentina
Australia	Netherlands	Chile
Austria	Poland	Mexico
Belgium	Portugal	Russia
Brazil	Romania	South Africa
Canada	Slovak Republic	
Colombia	South Africa	
Czech Republic	Spain	
Estonia	Turkey	
EU	UK	
France	Ukraine	
Germany	United States	
Hungary	Zambia	
India		
Italy		
Japan		

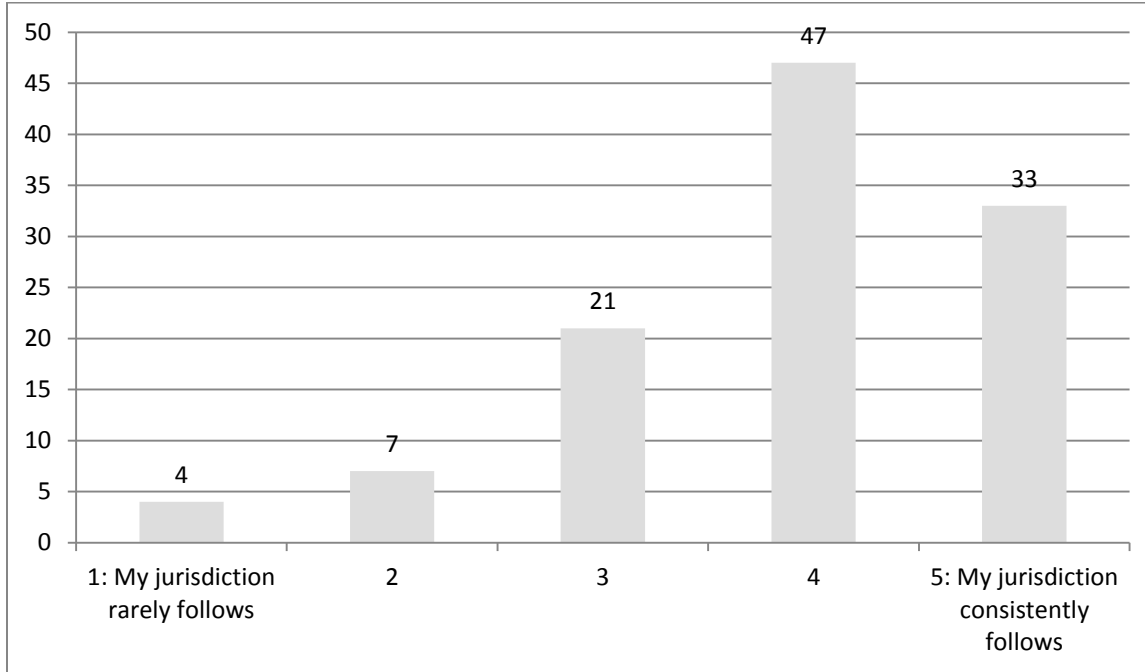
Q29: Merger review systems should provide an opportunity for timely review by a separate adjudicative body of a competition agency’s final adverse decision on the merits of a merger. (110 Responses, 4 No Response)



<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Argentina	Australia	Argentina	Australia	Australia
Australia	Canada	Brazil	Belgium	Austria
Brazil	Czech Republic	Canada	Canada	Brazil
Canada	France	Chile	Italy	Canada
Estonia	Germany	Colombia	Japan	Germany
EU	Hungary	EU	Mexico	India
Germany	Mexico	France	Russia	Mexico
Japan Mexico	Portugal	Germany	South Africa	South Africa
Netherlands	Slovak Republic	Japan	UK	
Poland	Turkey	South Africa	United States	
Portugal	Ukraine	Spain		
Romania	United States			
Russia				
South Africa				
Spain				
UK				
Ukraine				
Zambia				

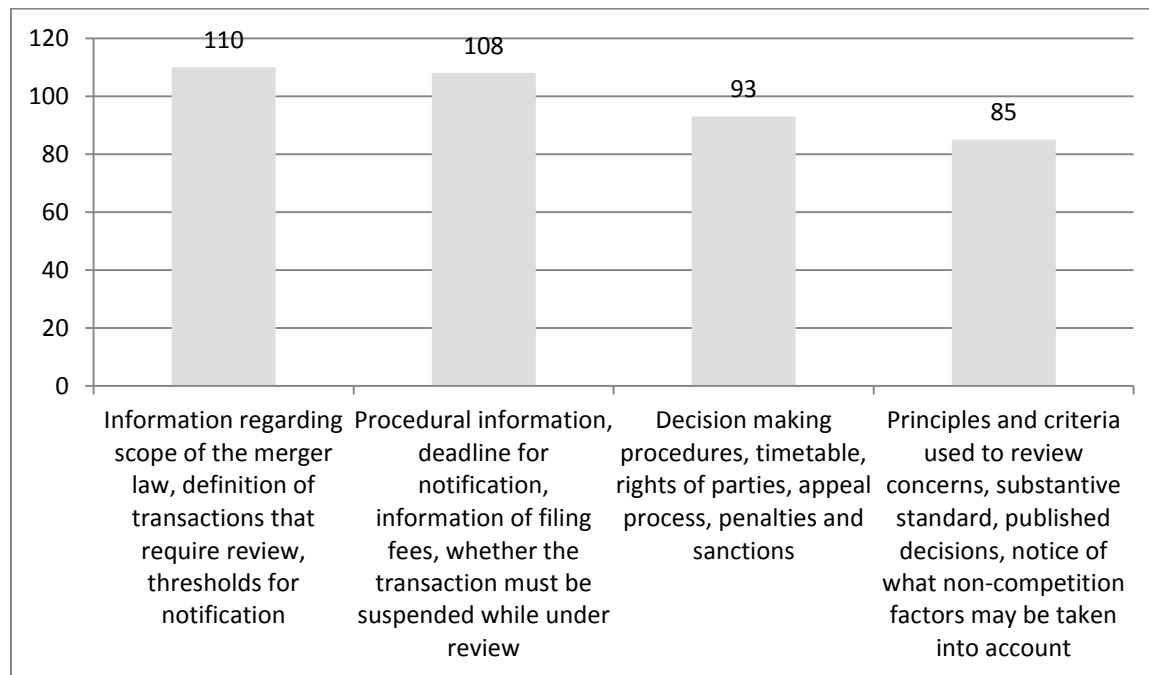
Transparency

Q30: Competition agencies should promote transparency by making information about the current state of merger control law, policy, and practice readily available to the public. (112 Responses, 2 No Response)



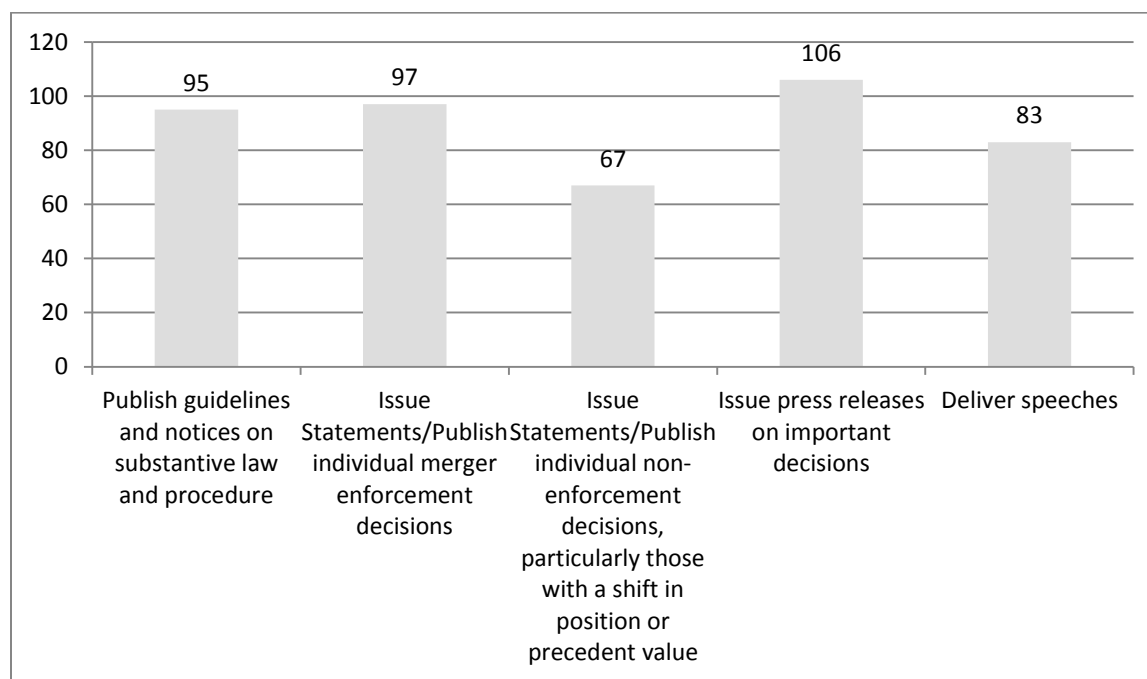
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Australia	Argentina	Argentina	Argentina	Australia
Mexico	Australia	Australia	Australia	Austria
Romania	Brazil	Brazil	Brazil	Brazil
Ukraine	Mexico	Canada	Canada	Canada
	Turkey	Germany	EU	Chile
	Ukraine	Mexico	France	Colombia
		Poland	Germany	Czech Republic
		Russia	India	Estonia
		South Africa	Indonesia	EU
		Spain	Japan	France
			Mexico	Germany
			Netherlands	Hungary
			Poland	Italy
			Portugal	Japan
			South Africa	Portugal
			Spain	Russia
			United States	Slovak Republic
			Zambia	Spain
				UK
				United States

Q31: Is the following information made readily available to the public?



Argentina	Argentina	Argentina	Argentina
Australia	Australia	Australia	Australia
Austria	Austria	Austria	Austria
Belgium	Belgium	Belgium	Belgium
Brazil	Brazil	Brazil	Brazil
Canada	Canada	Canada	Canada
Chile	Chile	Chile	Chile
Colombia	Colombia	Czech Republic	Colombia
Czech Republic	Czech Republic	Estonia	Czech Republic
Estonia	Estonia	EU	Estonia
EU	EU	France	EU
France	France	Germany	France
Germany	Germany	Hungary	Germany
Hungary	Hungary	India	Hungary
India	India	Indonesia	India
Indonesia	Indonesia	Italy	Indonesia
Italy	Italy	Japan	Japan
Japan	Japan	Mexico	Mexico
Mexico	Mexico	Netherlands	Netherlands
Netherlands	Netherlands	Poland	Portugal
Poland	Poland	Portugal	Russia
Portugal	Portugal	Russia	Slovak Republic
Romania	Romania	Slovak Republic	South Africa
Russia	Russia	South Africa	Spain
Slovak Republic	Slovak Republic	Spain	UK
South Africa	South Africa	Turkey	Ukraine
Spain	Spain	UK	United States
UK	UK	Ukraine	Zambia
Ukraine	Ukraine	Zambia	
United States	United States		
Zambia	Zambia		

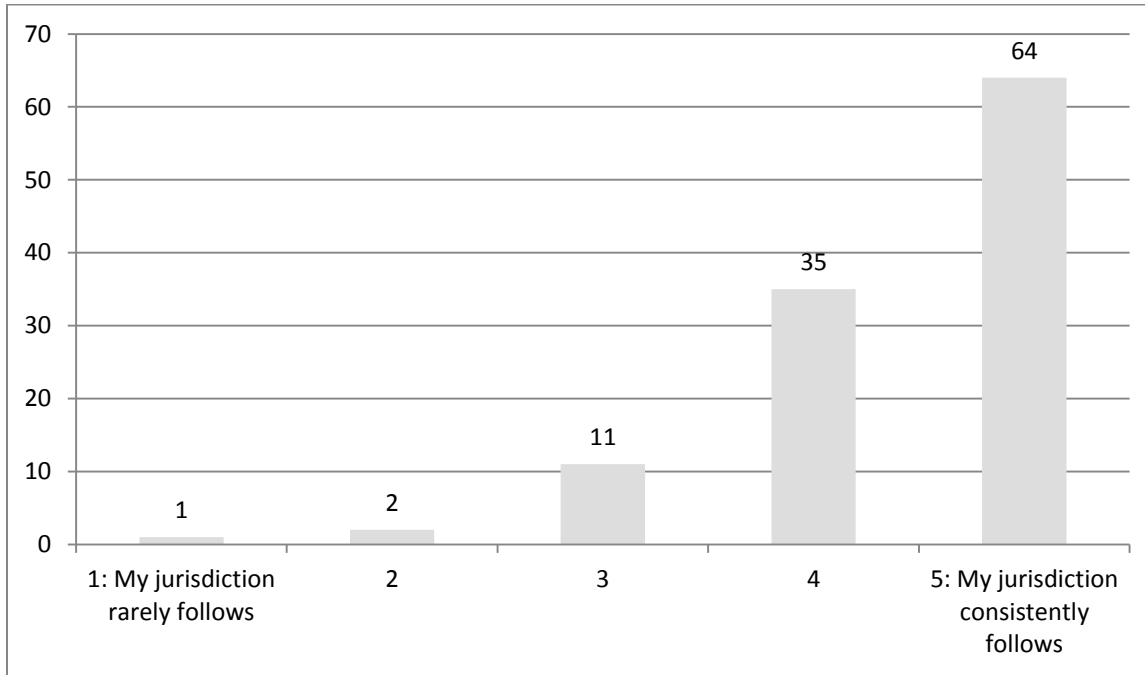
Q32: Which of the following does your agency do to promote transparency? Check all that apply.



- | | | | | |
|-----------------|----------------|-----------------|-----------------|----------------|
| Argentina | Argentina | Argentina | Argentina | Australia |
| Australia | Australia | Australia | Australia | Austria |
| Austria | Austria | Austria | Austria | Belgium |
| Belgium | Belgium | Brazil | Belgium | Brazil |
| Brazil | Brazil | Canada | Brazil | Canada |
| Canada | Canada | Czech Republic | Canada | Czech Republic |
| Chile | Czech Republic | Estonia | Chile | EU |
| Colombia | Estonia | EU | Colombia | France |
| Czech Republic | EU | France | Czech Republic | Germany |
| Estonia | France | Germany | Estonia | Hungary |
| EU | Germany | Hungary | EU | India |
| European Union | Hungary | Italy | European Union | Japan |
| France | India | Japan | France | Mexico |
| Germany | Indonesia | Mexico | Germany | Netherlands |
| Hungary | Italy | Netherlands | Hungary | Poland |
| India | Japan | Portugal | India | Portugal |
| Indonesia | Mexico | Russia | Indonesia | Romania |
| Italy | Netherlands | Slovak Republic | Italy | Russia |
| Japan | Poland | South Africa | Japan | Slovak |
| Mexico | Portugal | Spain | Mexico | Republic |
| Netherlands | Russia | UK | Netherlands | South Africa |
| Poland | Slovak | United States | Poland | Spain |
| Portugal | Republic | Zambia | Portugal | UK |
| Slovak Republic | South Africa | | Slovak Republic | Ukraine |
| South Africa | Spain | | South Africa | United States |
| South Africa | UK | | South Africa | Zambia |
| South Africa | United States | | South Africa | |
| Spain | Zambia | | Spain | |
| Turkey | | | UK | |
| UK | | | Ukraine | |
| Ukraine | | | United States | |
| United States | | | Zambia | |
| Zambia | | | | |

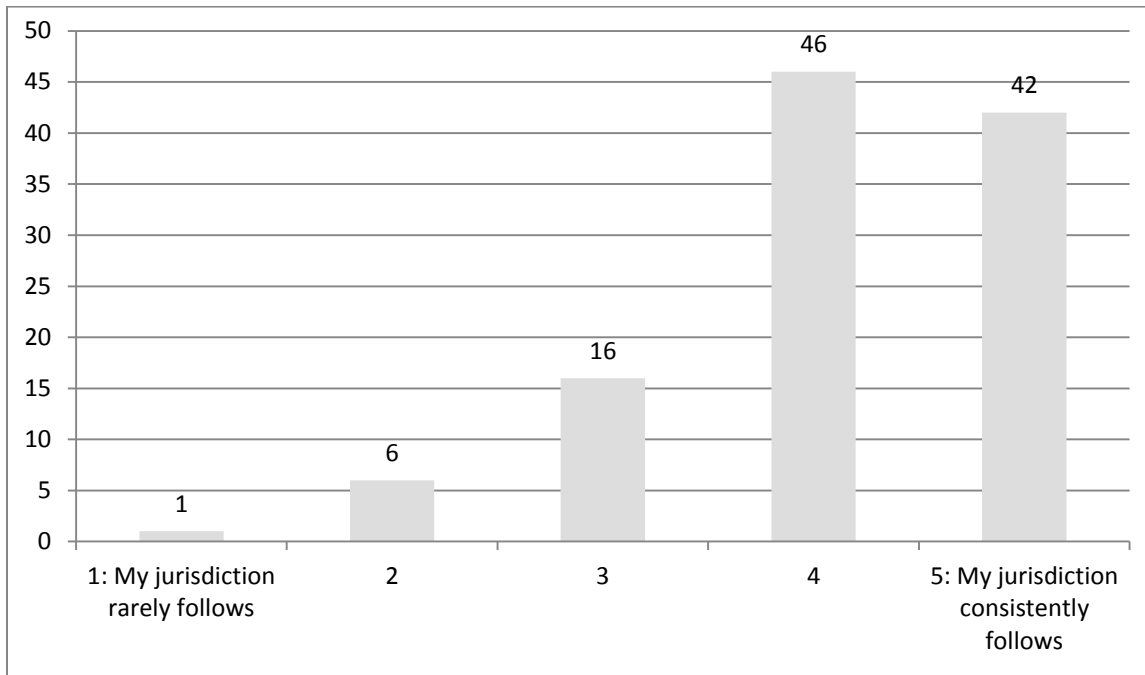
Confidentiality

Q33: Business secrets and other confidential information received from merging parties and third parties in connection with the merger review process should be subject to appropriate confidentiality protections. (113 Responses, 1 No Response)



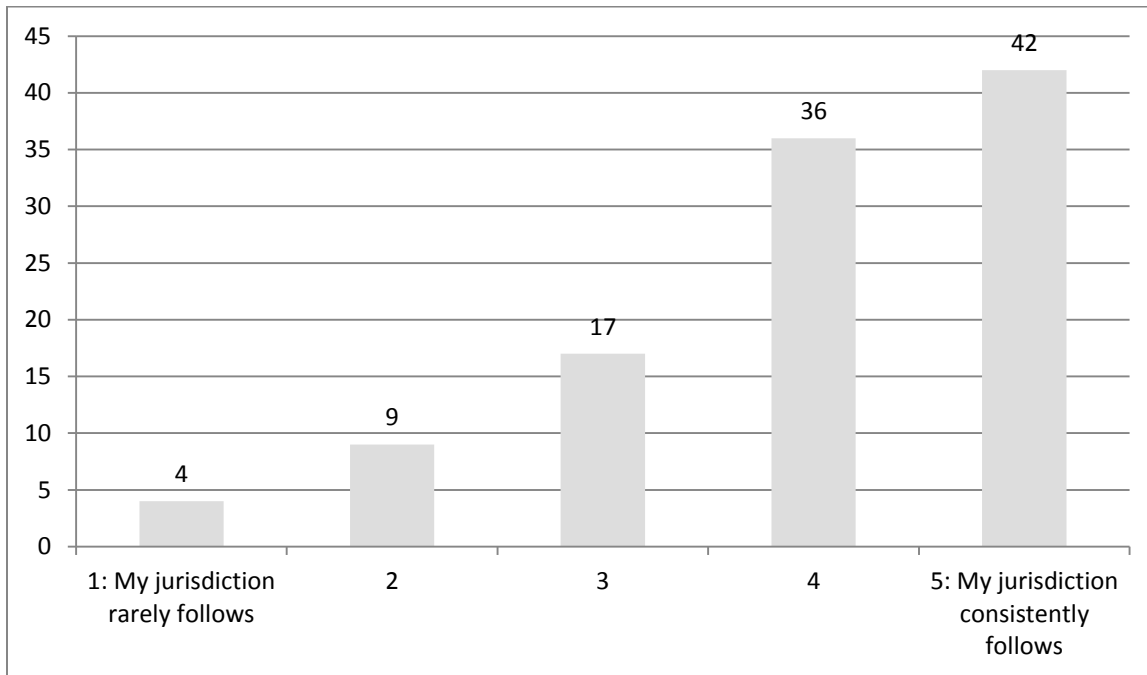
1	2	3	4	5
Australia	Mexico Russia	Argentina Germany Indonesia Mexico Portugal South Africa Spain	Argentina Australia Belgium Brazil Canada Colombia EU France Germany Japan Mexico Poland Russia Slovak Republic South Africa	Australia Austria Brazil Canada Chile Czech Republic Estonia EU France Germany Hungary India Italy Japan Mexico Netherlands Poland Portugal Romania South Africa Spain Turkey UK Ukraine United States Zambia

Q34: Competition agencies should promote transparency of the confidentiality laws, policies, and practices applicable to their merger control procedures. (111 Responses, 3 No Response)



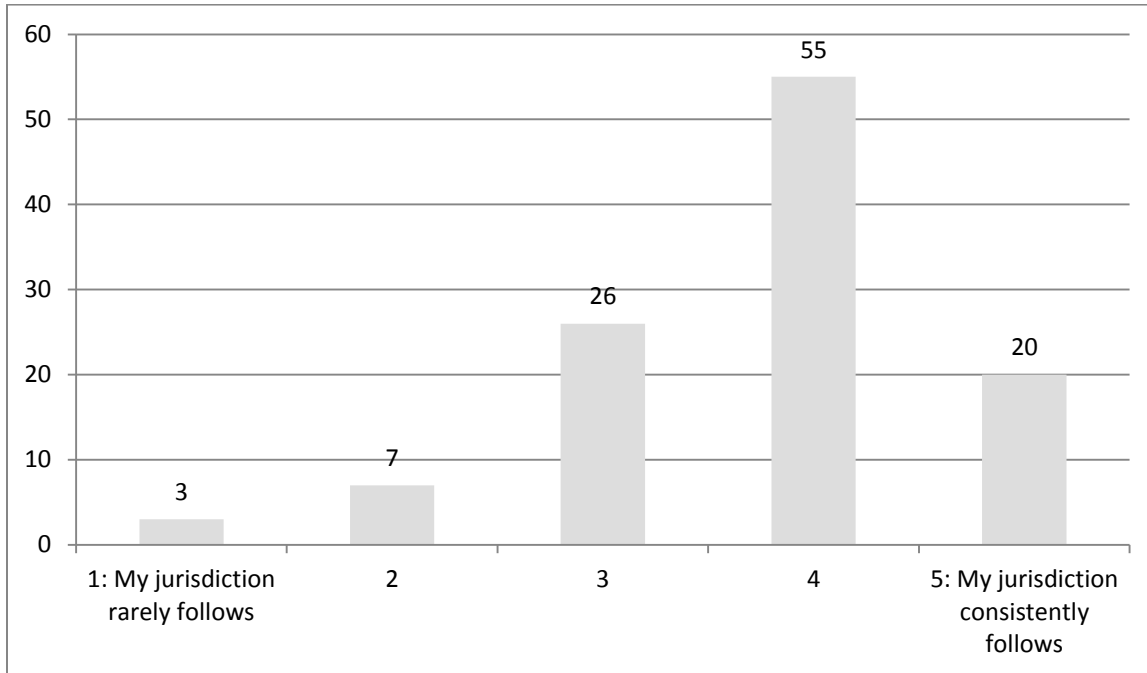
1	2	3	4	5
Australia	Argentina	Argentina	Australia	Argentina
	Russia	Australia	Belgium	Australia
	South Africa	Brazil	Brazil	Austria
	Ukraine	Canada	Canada	Brazil
		Chile	Czech Republic	Canada
		Germany	EU	Estonia
		Mexico	France	EU
		Poland	Germany	France
		Portugal	Indonesia	Germany
		South Africa	Japan	Hungary
		Spain	Mexico	India
		Ukraine	Netherlands	Italy
			South Africa	Japan
			Spain	Mexico
			United States	Poland
			Zambia	Portugal
				Romania
				Slovak Republic
				Turkey
				UK
				United States

Q35: Competition agencies should seek to defer contacts with third parties until the proposed transaction becomes public where such deferral would not adversely affect the reviewing agency’s ability to conduct its investigation effectively or complete its review within applicable deadlines. (108 Responses, 6 No Response)



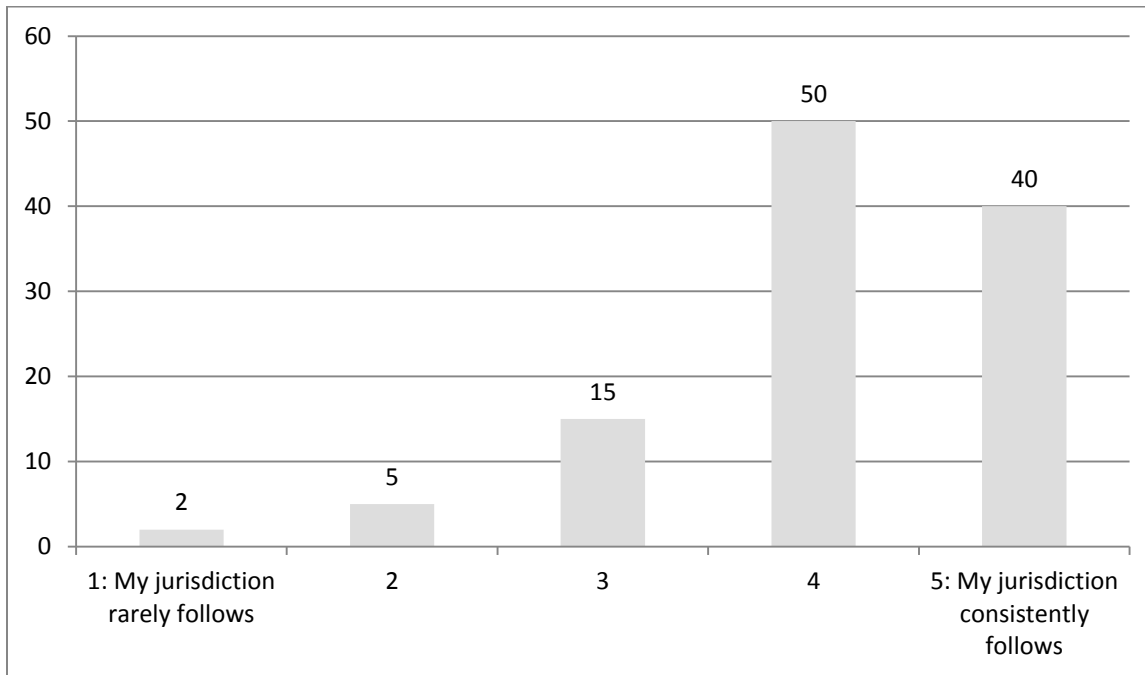
<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Australia	Australia	Argentina	Austria	Australia
Brazil	Canada	Australia	Belgium	Brazil
Germany	Mexico	Brazil	Brazil	Canada
Poland	Russia	Canada	Canada	Czech Republic
	South Africa	EU	Chile	Estonia
	Spain	France	Colombia	EU
		Mexico	EU	France
		Portugal	Germany	Germany
		South Africa	Japan	Hungary
		Turkey	Mexico	India
			Netherlands	Italy
			Poland	Japan
			Portugal	Mexico
			South Africa	Romania
			Spain	Russia
			Ukraine	Slovak Republic
			United States	South Africa
			Zambia	UK
				Ukraine
				United States

Q36: Confidentiality rules should strike an appropriate balance between protecting the confidentiality of third-party submissions and procedural fairness considerations. (111 Responses, 3 No Response)



1	2	3	4	5
Australia	Argentina	Argentina	Argentina	Australia
Canada	Australia	Australia	Australia	Brazil
United States	Brazil	Brazil	Austria	Canada
	Canada	Canada	Belgium	Estonia
	Mexico	EU	Brazil	EU
	South Africa	France	Canada	Germany
	Ukraine	Germany	Chile	Hungary
		Mexico	Colombia	India
		Poland	Czech Republic	Italy
		Romania	EU	Japan
		Russia	France	Mexico
		South Africa	Germany	Slovak Republic
		Spain	Japan	UK
		Turkey	Mexico	Ukraine
			Netherlands	United States
			Poland	
			Portugal	
			South Africa	
			Spain	
			UK	
			United States	
			Zambia	

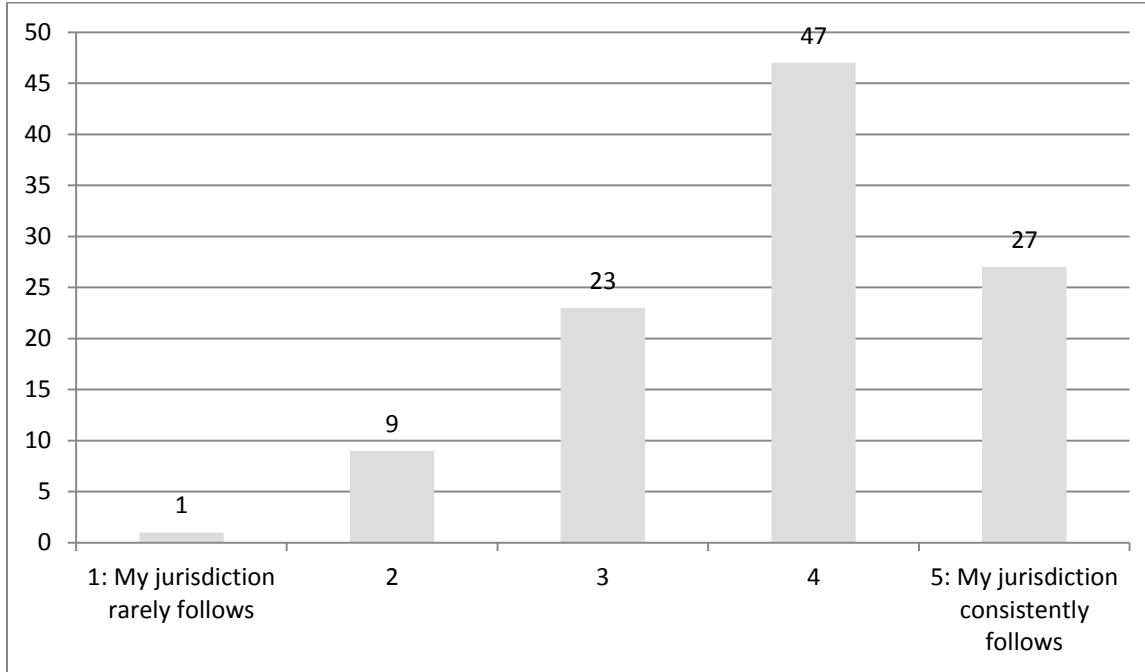
Q37: Competition agencies should avoid unnecessary public disclosure of confidential information in public announcements, court or administrative proceedings, decisions, and other communications respecting a pending transaction. (112 Responses, 2 No Response)



<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>
Australia	Brazil.	Argentina	Argentina	Australia
Brazil	Germany	Australia	Australia	Brazil
	South Africa	Brazil	Austria	Canada
	Spain	Mexico	Belgium	Colombia
		Portugal	Brazil	Czech Republic
		Russia	Canada	Estonia
		South Africa	Chile	EU
			EU	Germany
			France	Hungary
			Germany	India
			Japan	Italy
			Mexico	Japan
			Netherlands	Mexico
			Poland	Romania
			Portugal	Slovak Republic
			Russia	Turkey
			South Africa	UK
			Spain	Ukraine
			Ukraine	United States
			United States	
			Zambia	

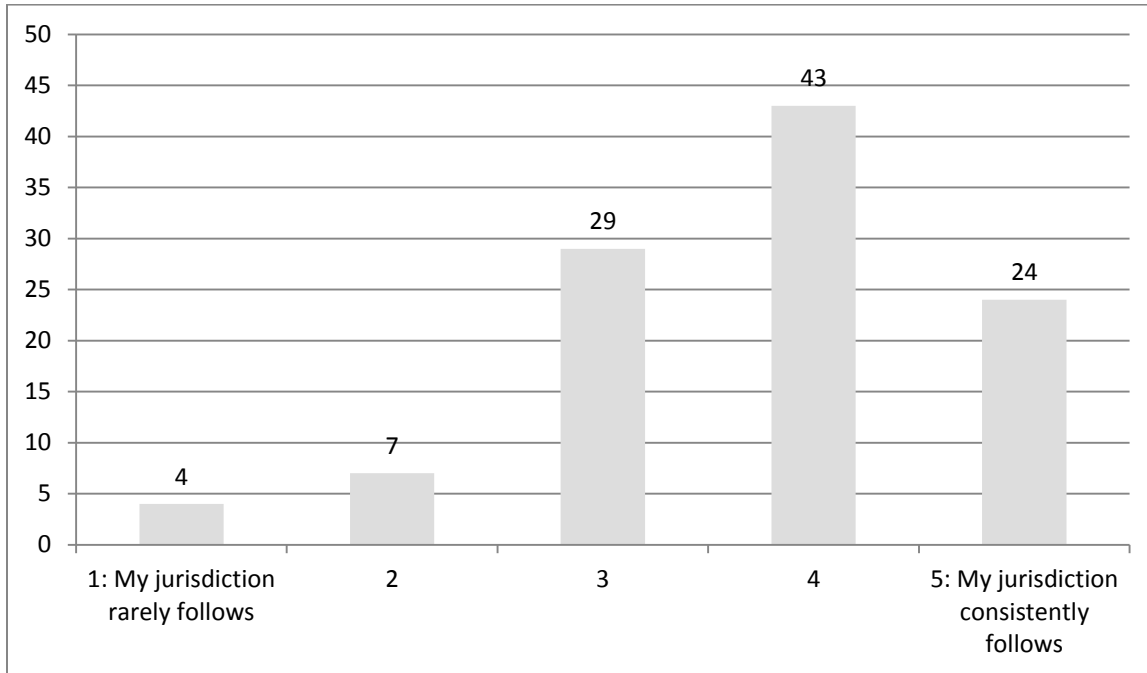
Interagency Coordination

Q38: Competition agencies should seek to coordinate their review of mergers that may raise competitive issues of common concern. (107 Responses, 7 No Response)



1	2	3	4	5
Argentina	Argentina	Argentina	Argentina	Australia
	Australia	Australia	Australia	Austria
	Mexico	Brazil	Belgium	Brazil
	Russia	EU	Brazil	Canada
	South Africa	France	Canada	Chile
	Ukraine	Germany	Czech Republic	Colombia
		Hungary	EU	Estonia
		Mexico	France	EU
		Netherlands	Germany	Germany
		Poland	Japan	India
		Portugal	Mexico	Italy
		South Africa	Poland	Japan
		Spain	Portugal	Mexico
		United States	Romania	Russia
		Zambia	Slovak Republic	UK
			South Africa	
			Spain	
			UK	
			United States	

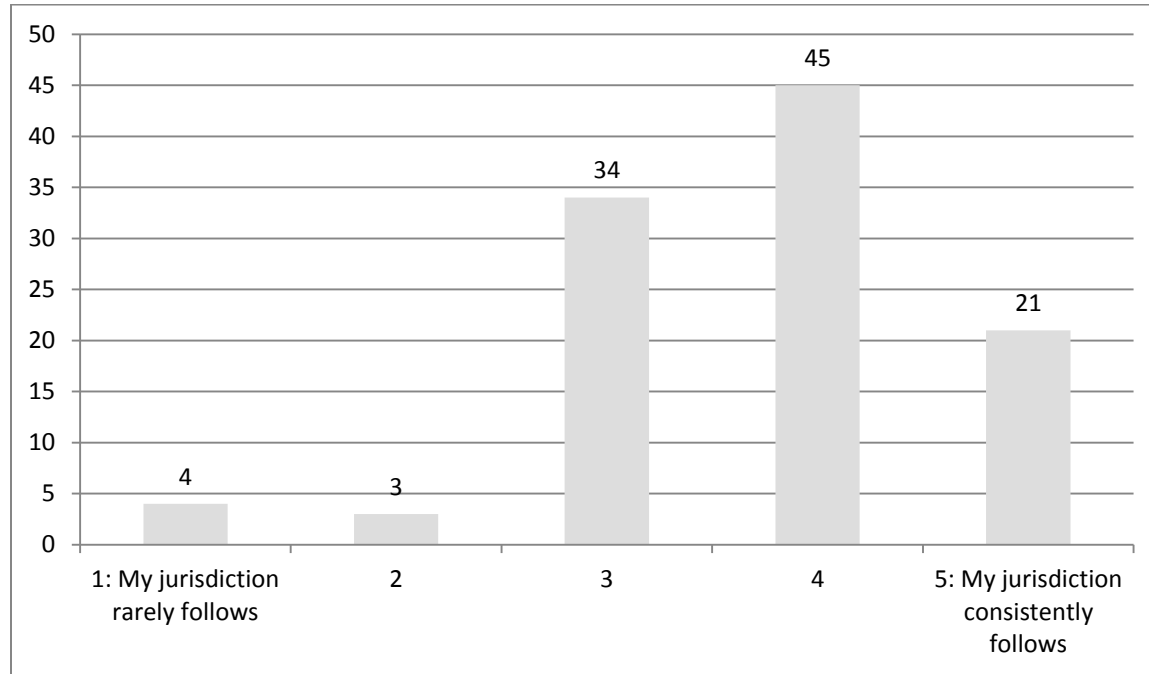
Q39: Reviewing agencies should seek remedies tailored to cure domestic competitive concerns and endeavor to avoid inconsistency with remedies in other reviewing jurisdictions. (107 Responses, 7 No Response)



1	2	3	4	5
Argentina	Argentina	Argentina	Argentina	Australia
Mexico	Australia	Australia	Australia	Brazil
Russia	Brazil	Brazil	Austria	Canada
Ukraine	Mexico	Canada	Belgium	Chile
	South	EU	Brazil	Colombia
	Africa	France	Canada	EU
		Germany	Czech Republic	Germany
		Japan	Estonia	India
		Mexico	EU	Italy
		Netherlands	France	Japan
		Poland	Germany	Mexico
		Portugal	Hungary	Russia
		South Africa	Japan	South Africa
		Ukraine	Mexico	UK
		Zambia	Romania	United States
			Slovak Republic	
			Spain	
			UK	
			United States	

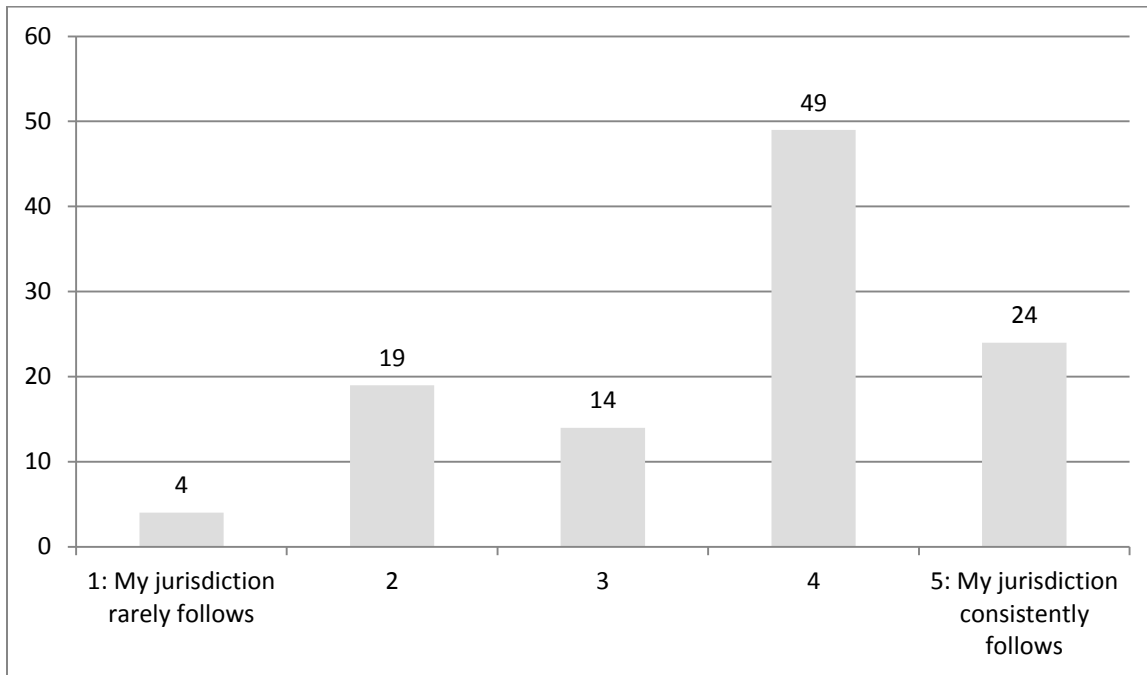
Remedies

Q40: A remedy should address the identified competitive harm arising from the proposed transaction. (107 Responses, 7 No Response)



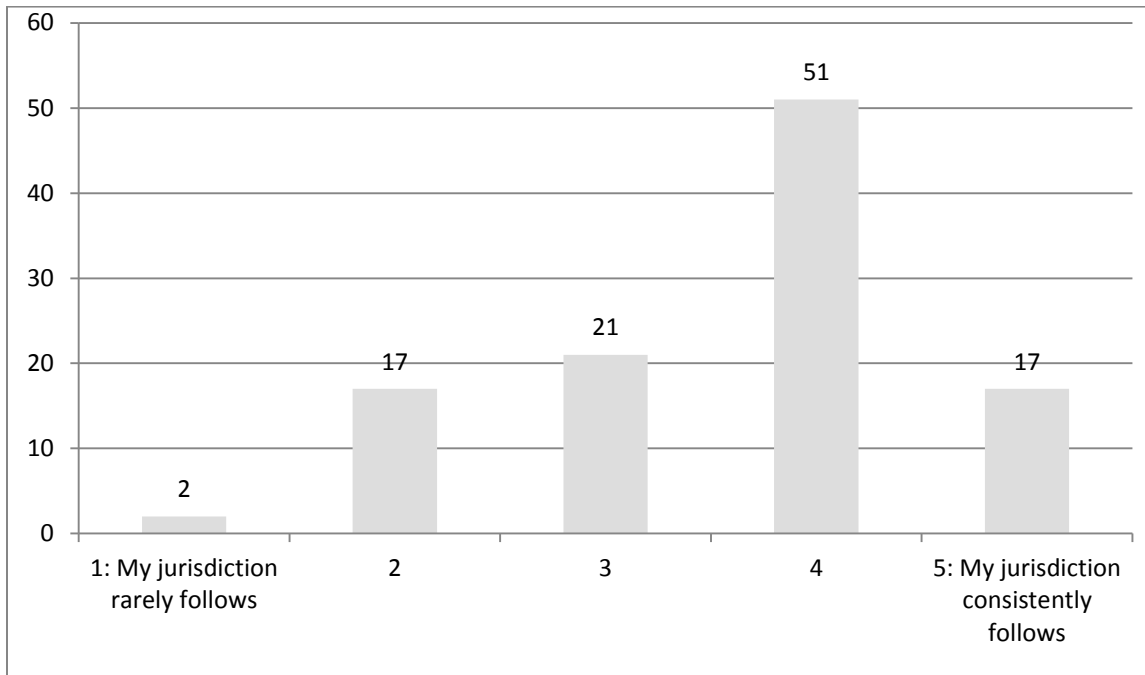
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		Germany	France	México
		Mexico	Germany	Russia
		Portugal	Hungary	Ukraine
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		South Africa	Mexico	
		Spain	Netherlands	
		United States	Russia	
		Zambia	Slovak Republic	
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Q41: The merger review system should provide a transparent framework for the proposal, discussion, and adoption of remedies. (110 Responses, 4 No Response)



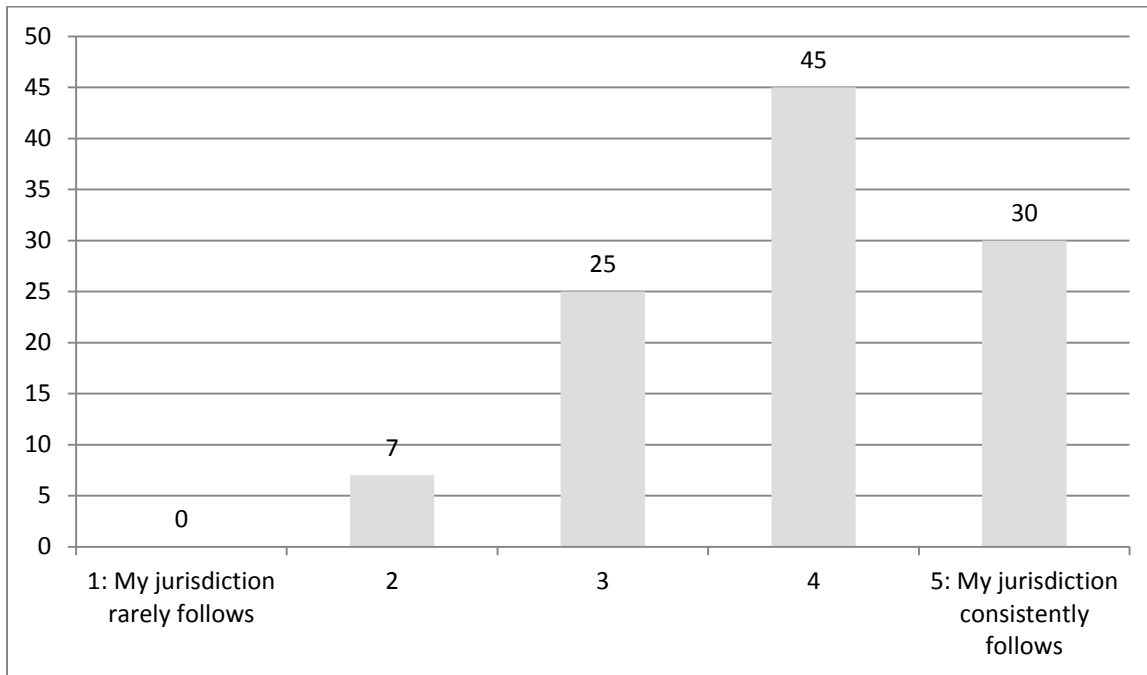
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			Turkey	
			United States	

Q42: Procedures and practices should be established to ensure that remedies are effective and easily administrable. (108 Responses, 6 No Response)



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Australia	Australia	Argentina	Australia	Australia
Mexico	Brazil	Australia	Austria	Brazil
	Germany	Brazil	Belgium	Canada
	Japan	Canada	Brazil	Estonia
	Mexico	Colombia	Canada	EU
	Portugal	EU	Chile	Germany
	South Africa	Mexico	Czech Republic	India
	Spain	Russia	EU	Italy
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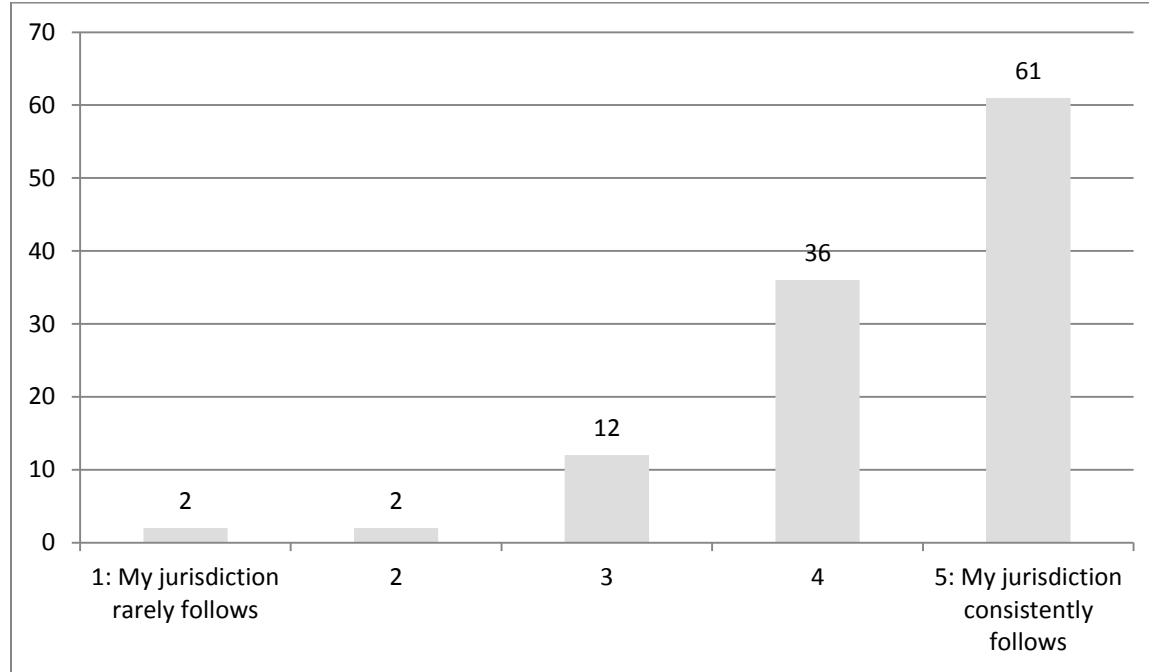
Q43: Appropriate means should be provided to ensure implementation, monitoring of compliance, and enforcement of the remedy. (107 Responses, 7 No Response)



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	Japan	Canada	Belgium	Colombia
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	Portugal	Germany	Canada	Estonia
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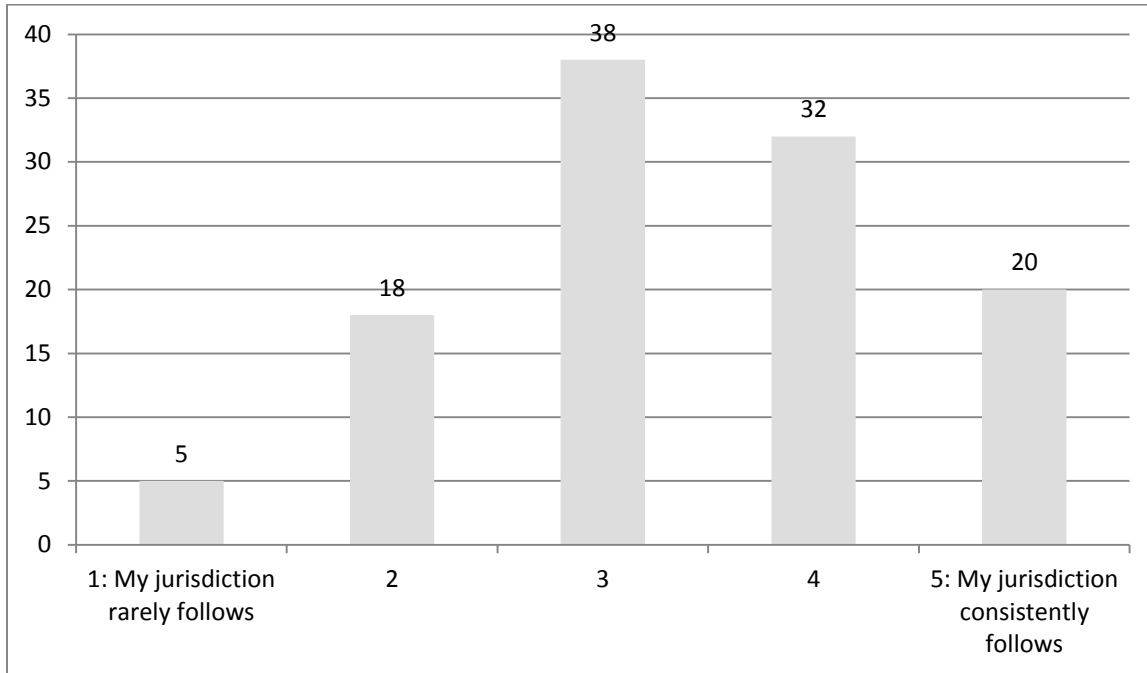
Competition Agency Powers

Q44: Competition agencies should have the authority and tools necessary for effective enforcement of applicable merger review laws. (113 Responses, 1 No Response)



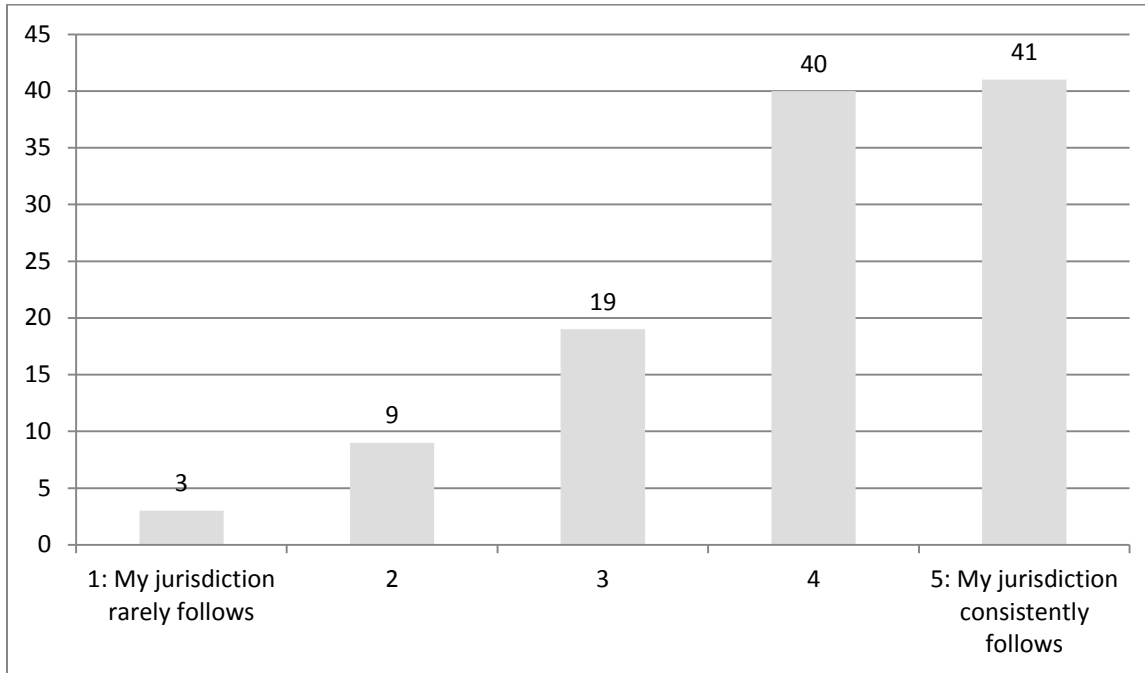
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			Netherlands	India
			Poland	Italy
			Portugal	Mexico
			Russia	Portugal
			Slovak Republic	Russia
			South Africa	South Africa
			Spain	Turkey
			United States	UK
			Zambia	Ukraine
				United States

Q45: Competition agencies should have sufficient staffing and expertise to discharge their enforcement responsibilities effectively. (113 Responses, 1 No Response)



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	Germany	Canada	EU	Germany
	Mexico	Estonia	France	Hungary
	Slovak Republic	EU	Germany	United States
	South Africa	Germany	India	
	Spain	Japan	Indonesia	
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		Poland	Japan	
		Portugal	Mexico	
		Romania	Netherlands	
		Russia	Poland	
		South Africa	Portugal	
		Spain	Russia	
		Ukraine	South Africa	
		United States	Turkey	
		Zambia	UK	
			United States	

Q46: Competition agencies should have sufficient independence to ensure the objective application and enforcement of merger review laws. (112 Responses, 2 No Response)

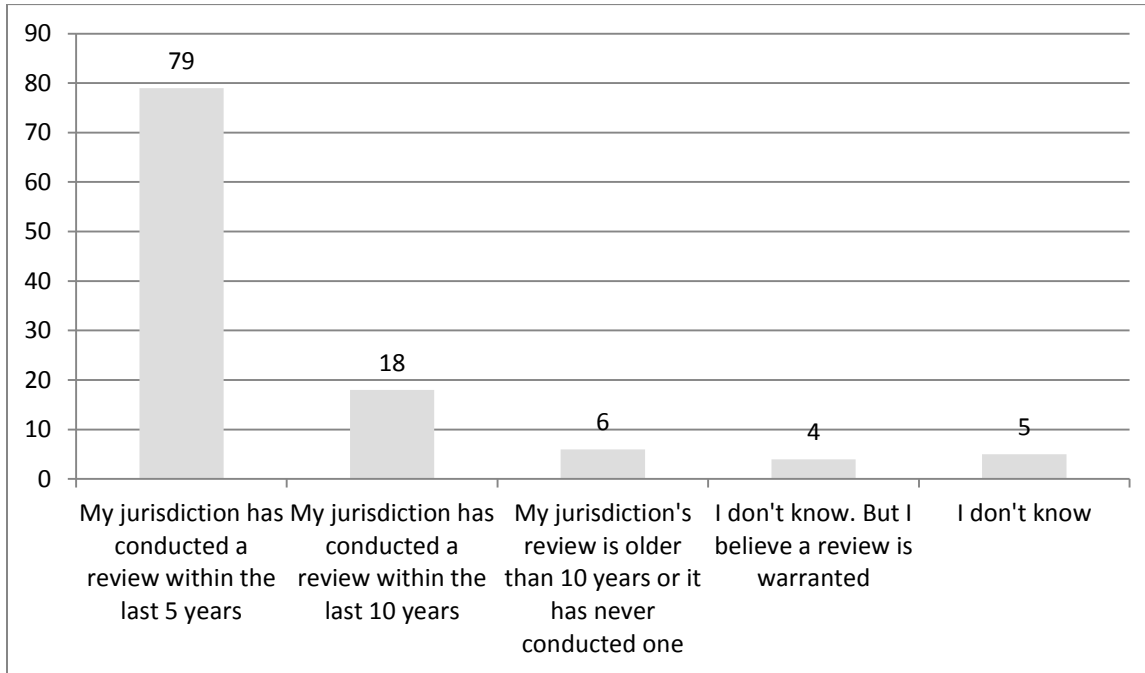


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	Mexico	Hungary	Canada	Canada
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	South Africa	Mexico	Czech Republic	Estonia
	Africa	Poland	EU	EU
	Spain	Russia	France	France
		South Africa	Germany	Germany
		Spain	Japan	India
		Ukraine	Mexico	Italy
			Netherlands	Mexico
			Portugal	South Africa
			Romania	UK
			Russia	United States
			Slovak Republic	
			South Africa	
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			Turkey	
			Ukraine	
			United States	
			Zambia	

Review of Merger Control Provisions

Jurisdictions should periodically review their merger control provisions to seek continual improvement in the merger review process.

Q47: Merger control laws and procedures should be reviewed periodically in an effort to seek continual improvement in the merger review process. (108 Responses, 5 No Response)



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Slovak Republic
South Africa
Spain
Turkey
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United States
Zambia

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Belgium
Argentina
Poland
Japan
Spain
Canada
Netherlands
South Africa
EU
Germany

Argentina
Australia
South Africa
Ukraine
United States

South Africa
Japan

South Africa
United States
Canada
Germany

Closing Section

NOTE: The answers to the following questions have been left in the practitioner's own voice. The only editing done has been to address spelling or a very limited number of glaring grammatical errors. Based on the sample size from any given jurisdiction the responses should be viewed as personal opinions. Further, it is worthy to note that some jurisdictions do not have a mandatory filing requirement making adherence to several ICN recommended practices complicated and more open to practitioner interpretation.

Q48: Having taken the survey, do you have recommendations for needed changes in law for your jurisdiction? If so please share.

Argentina:

Section 8 of Argentine Antitrust Law sets forth the trigger amount for transactions review. Considering the inflation affecting the economy such amount should be updated in order to avoid small transactions to fall into approval requirements.

A complete overhaul of Argentina's merger control regulations and of the agency's staffing and work is needed. Hopefully, the government taking over by the end of 2015 will undertake such task. Otherwise, the whole merger control procedure will continue to be the complete waste of time and money, both public and private, it currently is.

The main problem with the Argentine merger control system is not so much on the language of the law but on its sometimes arbitrary application by the current authorities, especially as regards timing. Lack of independence of the agencies (there are two agencies, one which conducts investigations, the Comisión Nacional de Defensa de la Competencia or "CNDC", and another which adjudicates decisions, the Secretariat of Trade. The CNDC operates under the auspices of the Secretariat and thus is totally dependent on the Secretariat's political agenda). The 1999 Competition Law provided for the creation of an independent tribunal which was never formed, and the tribunal was abolished in a 2014 amendment to the law. The original language of the law should then be reinstated to provide for an independent agency in the future.

Australia:

Having worked in the European Union in this space, Australia is light years behind in its regulatory approach. It needs defined notification triggers which are objectively verifiable such as turnover thresholds rather than a finger in the air approach based on self-assessment.

Please note that some of the earlier questions in this survey were difficult to answer for Australia where there is no compulsory notification requirement, and the merger clearance process used (almost universally) is an informal one.

Australia does not have pre-merger notification requirements. Notification is expected, but not compulsory, except whether the merger required Treasurer's consent under the Foreign Acquisitions and Takeovers Act. Consequently Australia has no quantitative merger notification thresholds. It would be administratively efficient if it did.

Australia operates a voluntary, informal merger filing system which usually works well. However, there are two problems:

1. even very small deals can be reviewed and opposed - there is no materiality threshold in terms of the value of the transaction.
2. we had a recent experience where the regulator refused to review a transaction (in relation to which it had expressed concerns) and there was little the parties could do as the clearance alternatives were not practical given the value of the deal.

Austria:

Austria needs a more direct local nexus (at least two undertakings concerned with relevant national turnover) - currently notifications can even be required if the target only has a very small turnover in Austria.

Brazil:

Competition authority should not be absent completely from regulated sectors and should have powers and be willing to act on regulated sectors whenever a competition concern should arise.

The turnover of the seller and of the target's economic group should not be relevant for purposes of merger notification thresholds. In other words, only the target's turnover should be relevant. Such change could be implemented by changing CADE's regulations with respect to the definition of "economic group".

Changes to improve local nexus would be welcome.

Brazil shall adopt rules that consider the turnover of the target, and not of the buyer and seller; the current rule leads to the notification of transactions with almost no nexus in Brazil in some cases.

Canada:

The Competition Tribunal process for appealing decisions of the Commissioner in a merger case has not been effective. It takes too long and is too costly and parties usually prefer to kill a deal rather than fight the Commissioner at the Tribunal, even if they believe the Commissioner has gotten the wrong end of the stick. A meaningful arbitral process is required - the current model is not meaningful.

While I believe Canada has one of the best merger control rules and systems there should be a better way of clearing the vast majority of mergers that do not raise significant competitive impact issues on a more expeditious and cost effective basis.

Chile:

We need to have mandatory pre-merger control as soon as possible. It is difficult to answer the survey under current legislation. The Antitrust Prosecutor (Fiscalía Nacional Económica) applies this principles and guidelines. Unfortunately, merger cases in Chile are reviewed by the Antitrust Court in an adversarial proceeding where these principles could not be applied (i.e. negotiation of mitigation measures, etc.).

Colombia:

1. Process needs to be more expedite
2. Confidentiality must remain a must
3. Only few transactions should be assessed to phase 2. (shouldn't be a mean to earn time for reviewing)
4. Information requests should be limited"

Estonia:

The Estonian Competition Authority ("ECA") has recently proposed amendment of merger notification thresholds with the aim of introducing additional criteria in addition to the currently applicable turnover and local nexus based criteria. The ECA has suggested that mergers which fall below the currently specified turnover levels should also fall under notification obligation in case such mergers could result in the creation or strengthening of a dominant position which could materially restrict competition. This is a worrying trend as implementation of the referred proposal would bring about unclear and vague notification thresholds.

European Union

The EU needs to exclude JV's outside the EEA area from its scope.

Even lower scope of information required for easy cases: i.e. an even shorter short form CO

EU merger control should provide for an exemption for joint ventures not active in the EU.

The jurisdictional test currently requires filing of joint ventures with no conceivable nexus with the EU. The Commission has proposed legislative amendments that would address this, but it is not clear that they are being prioritized.

Joint Ventures without local nexus should not be notifiable, and the criteria for presence or absence of such local nexus should be clear and simple to assess

Totally exempt JVs that will demonstrably not have an effect in the EU.

More access to truly independent adjudicators during the process to control the occasional maverick or unduly demanding case team. We urgently need faster judicial review of decisions.

Germany:

Abandon "competitively significant influence" as a reportable type of concentration

Hungary:

Judicial review should be quicker, for example, by setting a firm deadline for courts

India:

Combination guidelines regarding threshold calculation; trigger events for notification and legal standards for substantive assessment of unilateral and coordinated effects must be brought out for information of all concerned parties.

Indonesia:

Clearer guidance for reporting mergers, acquisitions of offshore companies (foreign transactions) that are caught by the regulations.

Japan:

Update the merger guidelines; update notification form in particular introducing simplified form
Filing form should be changed to EU style.

Mexico:

1. Prohibition of closing pending review should be eliminated. Instead, a waiting period scheme should be adopted.
2. "Official" translations requirement should be eliminated.
3. Initial notification requirements should be limited according to the corresponding recommended practices.

Need to return to the "waiting period" model; if no stand-still order is promptly issued by the competition agency, the parties shall be allowed to close the merger at their own risk.
The applicable thresholds are very low; they need to be increased.

Reduce formal requirements that constitute an unnecessary burden for the parties;
Incorporate ability of Cofece to waive not relevant information for non-problematic transactions;

Need to implement an attorney-client privilege.

Communication between the parties and the commissioners should be permitted. Currently, you can see them in such a manner that it does not work for anyone.

They have to be less rigorous. They have to be more open to input from practitioners and more pragmatic.

Mexico has an expansive definition of concentrations, including the concept of "accumulation of assets" or "control in fact" that makes difficult the assessment related to notification requirement. This test is difficult to administer and very fact specific resulting in less certainty to the parties. This is important for some contractual arrangements which do not qualify as an acquisition of participation in a company or collaboration agreements between parties.

The current law does not provide for certain matters that were extremely helpful in the past (e.g., waiting period, freeze orders). The law should simplify the pre-merger process as it appears that the Regulator is looking for several information not necessarily related to the transaction but more in the sense of protecting the staff in charge of a pre-merger filing.

Mexico does not govern the publication of "statement of issues" by the antitrust agency. It would be advisable to incorporate this into the legal merger review process.

Poland:

Change of definition of the JV (at least to require a joint-control), definitive deadline for issuing decisions.

Portugal:

Decrease merger filling fees.

01. Discontinuation of the market share criterion provided in the Portuguese Competition Act.
02. Reduction of NCA merger notification fees (up to 25000 Euros in a Phase I procedure).

Russia:

A new package of amendments to the Russian competition law is being currently elaborated. I therefore suspect that most of the expected amendments will be there. Yet, what is definitely not in the proposed amendments is the following. A number of transactional, corporate and financial documents that are provided by the parties as part of a merger control filing need to be legalized and translated into Russian. This is often burdensome in terms of timing (particularly for global deals) for the parties. It would be a relief if this practice changes (through relevant changes in the legislation).

South Africa:

Transparency in relation to internal decision making procedures and policy objectives.
Formal fast track of certain matters (eg insolvency or where circumstances warrant this).
Publication of guidelines.

The merger control regime works effectively and for the most part consistently applied. A materiality threshold in terms of the impact on competition or public interest would be helpful to avoid the resources expended by merging parties on unproblematic transactions.

Spain:

We have a market share threshold. Should be done away with. EU-NCA referral procedures are overly slow and complicated.

The CNMC devotes too much of its time analyzing non-problematic transactions and does not have the resources necessary to investigate problematic transactions independently of complainants. In order to avoid catching non-problematic transactions: (a) there should be an explicit no effects exception, (b) the de minimis exception should be expanded and should also apply if acquirer has de minimis sales in Spain, and (c) short form should be available based on overlap in Spain, not EU or worldwide.

Ukraine:

The efficiency of the merger control regime could be significantly improved with introduction of expedited review of non-problematic transactions and availability of pre-notification consultations with the Antimonopoly Committee of Ukraine regarding the scope and type of the information to be filed, establishment of definitive deadlines for Phase II investigations, and enhancing the transparency of the Antimonopoly Committee of Ukraine, in particular, via obligation of the AMC to publish its merger decisions. Also it would be highly recommendable to implement the official guidelines on the assessment of horizontal and vertical mergers.

The following changes are required in the antitrust laws in Ukraine:

- increase of financial thresholds;
- publication of the decisions of the agency;
- transparency of the activity of the agency;
- acceleration of review process;
- simplification of the list of documents and timeframe for the review of non-issue transactions;
- carve-out for foreign-to-foreign transactions; and
- e-submission and on-line tracking of the status of review.

United Kingdom

The UK agency now imposes hold separate obligations on any completed merger for the duration of the review process. This imposes an excessive and in many cases unnecessary burden. Also, information requirements during Phase 1 and pre-notification have become disproportionate. However, the UK agency is still adapting its processes to the recent legislative reforms, so these concerns may be addressed in the future.

United States:

FTC should not have authority to litigate mergers in its administrative setting

Passage of the SMARTER Act.

The law should be changed to ensure that the FTC is subject to the standard as DOJ with respect to the issuance of preliminary injunctions. The FTC should be required to litigate all merger cases in federal court and not through administrative litigation.

Zambia:

- 1) The Competition and Consumer Protection Commission's Board only meets quarterly, which slows down the merger review process. Accordingly, we recommend that the Commission's Board meet more frequently.
- 2) There should be an expedited review process for straight-forward mergers.
- 3) The Competition and Consumer Protection Commission should issue more guidelines (e.g. on mergers etc.).

Q49: Having taken the survey, do you have recommendations for needed changes in practice for your jurisdiction that do not require a change in law? If so please share.

Argentina:

Even with the current regime, a new Federal Administration could decide to abide to the rule of law and not misuse the merger control system as is currently done, i.e. as a "reward and punishment system", as a means to apply pressure to companies, etc.

Make the Commission comply with its own rules regarding the conduct of the review.

Australia:

Australia needs a statutory underpinning for a Phase I and Phase II approach to its investigations. The current merger control process is extra-statutory which may suit the incumbent competition bar but which makes life difficult for investors, particularly from overseas. The opaque nature of the Australian process seems designed to protect lawyers' interests rather than clients. The same goes for the ACCC's lack of uniform publication of merger notifications and of its decisions with reasons for clearance, remedies or veto.

ACCC should publish much fuller reasons for important decisions. it should also make submissions available on its website.

Brazil:

CADE should consider issuing guidelines on the protection of privileged documents.

Yes, publishing guidelines.

A statement with the theories of harm and competitive concerns in connection with a merger should be mandatory before any opinions/decisions are issued. Parties are often left with no guidance as to the reasons why the authority understands a merger can potentially have anticompetitives up until the Superintendence-General presents an opposition before CADE's Tribunal.

With respect to notification thresholds, further guidance on the need for a local effect is necessary. There is no clear criteria on the circumstances that can trigger the "effects in Brazil" threshold.

CADE should review the law regarding the filing of the so called associative agreements. Even though a regulation was adopted, it is still too broad and hard to apply; CADE should take better and clearer rules.

Review of the regulations concerning notification of 'associative agreements' as merger cases.

- Review of the procedure regarding discussion of remedies.
- More and better staffing for the agency.

Canada:

I believe that more could be done to promote transparency with respect to merger reviews, in two ways:

(a) significantly greater detail could and should (and used to be) given to merging parties about the nature of the evidence against them when the Commissioner has concerns about a merger. Being told that the concerns are "vertical" or "horizontal" in nature is not meaningful disclosure! There would seem to be no downside for the Commissioner in being more open about the investigative methods (what kind of econometrics? have complaints been received? alleging what?). Either the merging parties will have a chance to correct misimpressions, or the merging parties may learn that the Commissioner has a strong case. Either way, the Commissioner wins by participating in the dialogue. The current practice is to tell the merging parties virtually nothing meaningful about the evidence against the transaction - this could be done in such a way as to protect the identity of third parties, in the majority of cases.

(b) Backgrounders could be published in most cases, creating a body of precedents that could be useful for practitioners in the area.

Access by merging parties to specific information provided to the agency by complainants, both pro and con

Clearer/consistent commitment by the agency to inform the parties of all substantive concerns on an early and regular basis throughout the review
More principled and consistent application of the SIR process

Estonia:

Although the ECA as a rule takes the practice of the European Commission and of the European Courts into account in its decisions there is still uncertainty in Estonia as to what extent the legal privilege and related confidentiality doctrines would be upheld in Estonia as there have been no disputes on this matter in practice. It would be good to have clear guidance from the ECA confirming its position in relation to the legal privilege and related confidentiality doctrines.

European Union:

More speedy pre-notification contacts. Currently they take too long time and at times it feels as if they are used as a way for DG Comp to manage its case load.

Try to further streamline the pre-notification process, in particular in simple cases. There are still instances where pre-notification can drag on for months and involve numerous responses to questionnaires although it is clear from the beginning that there is no competition issue.

The EU Commission should shorten the pre-notification period for simple cases and reduce the amount of information requested to the merging parties. Indeed, the burden on the merging parties has increased rather than decreased in the last years.

Greater restraint in information demands.

France:

In France, completeness notices are unduly postponed until the end of the first phase period. This is legally and technically not acceptable.

Second, officials tend to impose pre-notifications even in case of cases with very little competition concerns. This seems to be done in order for the agents of the authority to get more time for their review. This is also clearly not acceptable.

Germany:

In Phase II (extended review), parties should be given access to the FCO's files as of initiation of the extended review. Currently, access is given only shortly before the statement of objections is issued and thus the time for reviewing the file is severely constrained by the upcoming statement of objections.

More sophisticated economic staff and analysis are needed

Possibility to hand in notifications via secure e-mail messages (provided by law, not put into practice so far)

Reconsider markets in times of the Internet economy

India:

Yes, bringing out guidelines and how the agency would likely view a combination must be put in public domain for transparency, objectivity and certainty.

Mexico:

The Mexican Competition Commission shall allow the parties to use the expedited review alternative. Today, in practice, the Commission is systematically rejecting all of such application without any proper basis.

The current merger review procedures before the Mexican Competition Commission convey legal uncertainty and have increased transaction costs. They even put the mergers in danger.

The current staff (Commissioners included) of the Mexican Competition Commission is generally incompetent (with some honorable exceptions).

Increase transparency and interaction with the parties when Cofece identifies antitrust concerns

The review period is too long and should be reduced. They have to address practical issues and avoid bureaucracy.

Provide more guidance on the expansive definition of concentrations.

Yes. This is a recently enacted law. The Regulator should devote more time in issuing guidelines to determine specific concepts that are not properly defined under the law, such as the control concept.

Recommendations above may be implemented, to some extent, by amending the CFCE's regulations.

There should be a pre-analysis by all the commissioners to give feedback to the client on the concerns they have. You spend months negotiating with the officers, and suddenly in one day the commissioners take a completely different approach.

More predictability regarding timings. I feel the Commission needs more staff, they are over loaded

Mexico's merger control regime needs urgent guidelines that provide more certainty to notifying parties. This is particularly true for (i) legal and economic standards that the Commission applies when assessing a merger transaction, (ii) uniformity with regards to legal requirements (iii) scope of possible behavioral and structural remedies, (iv) rules to approach the Commission in order to discuss potential competition concerns and remedies.

There have been a series of working drafts on these matters, but still nothing concrete.

Netherlands:

The vast majority of clearance decisions adopted by the ACM do not state the reasons for the clearance. This is sometimes problematic as many ACM precedents are now outdated because only very few substantive decisions have been published by the ACM in recent years. This makes it difficult for companies and their advisors to have visibility on the ACM's thinking on market definition in certain sectors. The ACM should therefore publish more substantive decisions, in particular in industries where recent ACM or Commission precedents are lacking.

Poland:

Vast majority of merger decisions is issued without any justification at all (literally half-pager). A short description of facts, adopted market definitions etc. is an absolute minimum that should be included. Otherwise, the publication of these decisions brings nothing to the development of the law.

Portugal:

Increase the Agency's staff and promote further Agency's staff training in relevant sectors subject to recent review by the Agency.

A more clear and direct approach by the NCA when negotiating proposed remedies with a notifying party.

Russia:

It would be very helpful if the Russian competition authority (FAS) informs the parties to the merger control filing about the intended extension of the initial review period (that is to be taken due to FAS' concerns re possible restriction of competition) some time in advance of the FAS' decision taking (at least 5-7 days). In practice, the parties often find out about the FAS' decision on the last day of the expiration of the review deadline without leaving the parties time to present any

arguments during the initial review period. Again, in practice this is sometimes done by FAS to artificially extend the review period.

South Africa:

Greater transparency in regard to mergers in process; should publish statement of objections or similar before proceeding to full review; consider making use of expiry of initial period where there are no concerns

Requests by the Commission for irrelevant information slow down the review unnecessarily, and frustrate clients.

The South African competition authorities have become very secretive in their merger review process. They frequently refuse to disclose their concerns about a merger. They also refuse to disclose information regarding the status of their investigation. As a result, issues are often raised late in the review process of intermediate mergers and there is insufficient time to deal with the issues. In the case of large mergers, the review periods are getting longer and longer.

The merger control experience is variable depending on the staffing of the investigating team. The Commission needs to work harder at developing a legitimate theory of harm in respect of competition or public interest concerns before burdening the merging parties with extensive information requests or proposing conditions that parties feel obliged to agree to in order to proceed with their deals.

The South African Commission has published draft guidelines on how 'public interest' factors will be applied. These are very vague and burdensome on merging firms which want to cut jobs. They need to be amended to make them much clearer and less burdensome on merging parties.

Spain:

There are serious issues related to fairness and due process. Much work needs to be done in terms of facilitating discussions with parties during merger investigations, including in particular oral hearings, and reducing the CNMC's reliance on third parties.

Enforcement officials are mostly civil servants with no private market experience.

Simple cases should be further simplified. Forms are too long for easy cases.

Lifting the suspension in phase one is nearly impossible.

Ukraine:

We believe that in assessing mergers the Antimonopoly Committee of Ukraine should focus on an effect-based analysis instead of a form-based (dominance) approach, which has been prevailing in the AMC's merger review practice. Such a switch could help avoiding unjustified administrative burden on the mergers that do not raise any competition concerns despite the fact that the parties' combined market share exceeds 35% in which case presumption of dominance applies. Also it is important to ensure that in case of assessment and implementation of the remedies such remedies are tailored to cure the identified competitive concerns without imposing inconsistent obligations on the merging parties.

All recommendations require changes to the law and/or internal regulations of the agency.

United Kingdom:

We consider that the recommended practices should contain a stronger statement that filings should only be required if more than one party to the transaction (which should include the target) has activities (i.e. revenues) in the jurisdiction in question. We understand the theoretical circumstances in which competition concerns could arise despite the purchaser having no activities in the jurisdiction in question, but are not aware of any transaction in the history of merger control in which such concerns have been identified and found to be justified. If implemented in all jurisdictions, this single change would eliminate hundreds if not thousands of unnecessary filings every year.

The length of pre-notification is too long at present - the Authority needs to reduce duration.

United States:

The FTC and DOJ should take additional steps to reduce the burden of second requests.

Reduce the filing fee, especially for those transactions just above the threshold.

See above -- could be temporarily accomplished by administrative fiat

Zambia:

The Competition and Consumer Protection Commission should issue guidelines on the merger process, so that guidance is readily available to legal practitioners and the Commission's position, stance or approach to certain issues is formalized and consistent.

Q50: Having taken the survey, are there specific recommended practices that the ICN should consider updating or new merger related recommended practices that should be added? If so, please identify and explain.

The ICN should issue a caution for clients doing business in Australia that extra care is needed given the lack of transparency in the Australian merger control system.

1. Timing. RFI's should be limited and shouldn't suspend the time that authority has to decide a merger.

Extraterritorial JV's. Further guidance on what types of JV's Authorities should be worried about. Examine the need for minority acquisition rules.

All NCAs should be obliged to make online accessible the most important legal sources concerning, inter alia, their merger related work (statutes, regulations, notices etc.). "Bonus points" for the NCA that makes its material also available in at least one "lingua franca" (i.e. English, French, Spanish) in addition to the domestic language.

Closing statements for mergers that were reviewed closely (2nd request) but were not challenged should be mandatory to serve as a roadmap to detail the considerations the antitrust agencies applied in that transaction

Since combinations are also transnational in nature ICN should make efforts to bring about consistency and uniformity in the assessment criteria of agencies as also procedural convergence.

More communication with foreign authorities.

We need guidelines on collaboration among competitors and info that can be disclosed among the parties on preJV negotiations.

Should look at the approach to public interest issues

Filing fees. Filing fees should ideally be a 'flat rate' commensurate with the average resources employed by the authority to conduct reviews of different categories of merger (as in South Africa - intermediate and large). Filing fees based on the parties' turnover can be disproportionate where big companies enter simple transactions which are quick and easy to review.

Due process related reforms are necessary - together with measures to improve the effectiveness of the CNMC's own investigation.

We consider that the recommended practices should contain a stronger statement that filings should only be required if more than one party to the transaction (which should include the target) has activities (i.e. revenues) in the jurisdiction in question. We understand the theoretical circumstances in which competition concerns could arise despite the purchaser having no activities in the jurisdiction in question, but are not aware of any transaction in the history of merger control in

which such concerns have been identified and found to be justified. If implemented in all jurisdictions, this single change would eliminate hundreds if not thousands of unnecessary filings every year.

Q51: The ICN Merger Working Group is committed to promoting and increasing the level of adherence to the ICN Merger Recommended practices. Do you have any suggestions for crafting future ICN work plans that aid this objective?

The ICN should lobby aggressively for Australia to fall into line with the systems in the established democracies.

Use more examples and experiences from same economic/development level countries/authorities

Expand information and promote conference and guidelines in new jurisdictions like Chile.

More communication between agencies especially regarding cross border transactions that have been already analyzed in other jurisdictions.

The multiplication of merger control regimes is problematic, especially since a number of jurisdictions have no local nexus requirements or so low thresholds that they always trigger filing.

NCA's should be obliged to publish regularly, if and to which extent national laws and/or the practice of the NCA abide by / differs from ICN Merger Recommended Practices. In case that ICN Merger Recommended Practices are not adhered to, the NCA should be obliged to provide a comprehensive reasoning for this deviation. Further, NCA's should regularly evaluate the level of stakeholders' satisfaction with the NCA's practices, including but not limited to stakeholders' opinion whether any deviations from ICN Merger Recommended Practices might be continued or should rather be addressed by a change of policy.

ICN could bring out do's and don't's for agencies to follow, so as to deliver quicker and result oriented outcomes.

Incorporate mostly practical considerations and best practices that does not require legal changes and thus, easier to implement.

The CNMC seem conscious of their international standing, and in particular within the ICN and ECN - open debate of issues in ICN working meetings or publishing of league tables may help.

Antitrust agencies are often ineffective in securing legislative changes that are required in their jurisdictions in order to secure compliance with the recommended practices. Systematic approaches by the ICN to the relevant government ministers may help to increase adherence, particularly if such approaches are made by the ICN in conjunction with – or with the backing of – other governments.

The ICN should regularly conduct surveys, like this one, to measure progress by agencies in conforming to the recommended practices. The ICN should then follow-up on the surveys and make further recommendations on what can be done to improve adherence. This process does not have to single out particular agencies but can focus on the types of concerns that are most prevalent across jurisdictions.

