

2024 | Summary Report

ICN Annual Conference

ICN

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Prepared by



Fostering Global Dialogue in Antitrust



Wednesday, May 15

INTRODUCTION



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Competition Policy International (CPI) was honored to attend the 2024 International Competition Network (ICN) Annual Conference in Costa do Sauipe, Brazil. As a longstanding partner in the global antitrust community, CPI remains committed to advance competition policy worldwide.

The ICN meetings, held from May 14-17, 2024, brought together competition authorities, practitioners, and experts from around the world to discuss pressing issues and emerging trends in competition law and policy. CPI was delighted to witness the vibrant exchanges and collaborative spirit that have become hallmarks of ICN events.

In line with our mission to promote informed discourse on competition policy, we are pleased to present this comprehensive summary of the key discussions and insights from the conference. This report reflects our dedication to disseminating valuable knowledge and highlighting the progress made by the ICN and competition authorities globally.

As we continue to support the ICN's important work, CPI looks forward to future opportunities to engage with the international competition community and contribute to the advancement of antitrust practice worldwide.

KEYNOTE



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For the 2024 International Competition Network (“ICN”) Conference in Costa do Sauipe, Brazil, Mr. Douglas Alencar Rodrigues, Minister of the Brazilian Superior Labor Tribunal, delivered the keynote address. He discussed the intricate relationship between labor law and competition law from a Brazilian perspective, acknowledging the distinct, but occasionally intersecting, paths these legal frameworks follow.

Rodrigues traced the historical evolution of Brazil’s labor justice system, starting with the establishment of the National Labor Council in 1923. This system underwent significant transformations, notably through the 1934 and 1946 Constitutions, which expanded the labor courts’ jurisdiction and integrated them into the judiciary. By 1988, the system’s jurisdiction extended to include disputes involving public administration, further solidified by subsequent constitutional amendments.

On the antitrust front, Rodrigues highlighted the origins of Brazilian antitrust law with Decree Law 7666 in 1945, later shaped by Law 4137 of 1962 and significantly modernized by Law 8884 of 1994 and Law 12529 of 2011. The Administrative Council for Economic Defense (“CADE”) emerged as a central authority in regulating market competition and preventing anti-competitive practices.

Rodrigues emphasized that while labor law focuses on protecting workers’ rights and resolving disputes related to labor relations, competition law aims to maintain fair market competition by addressing issues like cartels and market dominance. Despite their distinct purposes, these fields intersect in areas such as mergers and acquisitions, where the impact on labor markets can raise antitrust concerns.

Discussing the concept of monopsony, Rodrigues explained how market power in purchasing labor can lead to reduced input purchases, creating product scarcity and inefficiencies. He noted the

complexities in defining relevant labor markets, as seen in a 2022 U.S. case involving McDonald’s, where the court found it implausible to define a distinct labor market solely for McDonald’s employees due to the availability of alternative employment opportunities.

Rodrigues addressed the role of collective labor agreements in Brazil, highlighting Article 611 of the consolidation of Brazilian labor law (“CLT”), which allows unions to negotiate working conditions. However, he warned that large companies could exploit these agreements to standardize wages, potentially violating competition laws. He cited a 2020 CADE investigation into the gyms’ trade union in Rio de Janeiro for creating barriers against low-cost business models as an example of such concerns.

While CADE has yet to issue specific guidelines on no-poaching and wage-fixing agreements, Rodrigues indicated that these practices could still be scrutinized under the anti-cartel framework. He referenced several CADE investigations into alleged cartel behavior and no-poaching agreements, illustrating the ongoing efforts to address anti-competitive practices in labor markets.

Rodrigues concluded by discussing the growing interest in using antitrust law to address labor monopsony, cautioning against hasty acceptance of the “hipster antitrust” movement, which calls for broad changes to the current antitrust regime. He emphasized the need for empirical evidence to support such efforts and advocated for balanced economic policies that protect both competition and the rights of employees and consumers.

In his closing remarks, Rodrigues underscored the importance of continuing to refine approaches in both labor and antitrust laws to pave the way for a more equitable society, ensuring that economic policies foster competition while enhancing stakeholder well-being.

Host Showcase: The Structuring of Competition Agencies in Latin America: Past, Present, and Future

The first panel of the conference, the Host Showcase, featured CADE president, Alexandre Cordeiro, Andrea Marvan, president of COFECE, Viviana Blanco Barboza, Commissioner of the Ministry of the Economy, Industry, and Commerce for Costa Rica, and Eduardo Neri González Martínez, president of Paraguay's National Competition Commission.

The panel discussion highlighted the transformative impact of digital markets and the necessity to balance these with traditional markets. Currently, around 20-25 percent of activities in the field of competition law and policy relate to digital markets. Efforts are being directed towards fostering collaboration between public, academic, and private institutions in Mexico. Agreements have been established with Mexican states to identify and address local competition issues, while partnerships with public universities aim to advocate for and enhance a greater understanding of competition law. A notable example is the collaboration with the University of Alcalá to establish a competition clinic for analyzing and reporting potential competition issues.

The discussion underscored the significance of international cooperation in competition policy, with key figures in the field emphasizing the benefits of collaborative efforts. This international perspective was further enriched by insights into the evolution and current focus of Costa Rica's competition authority. Established in 1996, the authority underwent significant reforms in 2019 to align with OECD standards, ensuring its financial and administrative independence. The authority comprises a Board of Commissioners with technical expertise, although it faces

staffing challenges that hinder its ability to fully manage its responsibilities. Budget constraints have also impacted its operations, but advocacy efforts have played a crucial role in eliminating entry barriers and increasing productivity.

Paraguay's competition authority, Conacom, established in 2013 and operational since 2016, serves as another example of a young but rapidly evolving agency. Built on international best practices, Conacom's legal framework includes a pre-merger control model and mechanisms to address abuse of dominance and cartels. The authority operates independently, with board members and the chief prosecutor selected through an open process. Conacom's current focus includes merger control, anti-competitive practices, and promoting a culture of competition. Notable achievements include significant fines in the credit card market and numerous regulatory opinions. Future plans involve leveraging technology for competition analysis and enhancing operational efficiency, supported by collaborations with international bodies like the World Bank and the Inter-American Development Bank.

The panel concluded with acknowledgments of the critical role international support has played in advancing competition policies in Latin America. Regional collaboration was emphasized as essential for addressing common challenges and enhancing the effectiveness of competition authorities. The discussion highlighted ongoing efforts to strengthen competition policies, with a continued focus on promoting fair competition and leveraging international best practices for future growth and development.



Photos courtesy of CADE and the 2024 ICN Conference

A new era of cartel enforcement - Cartels Working Group



Photos courtesy of CADE and the 2024 ICN Conference

International cooperation has become essential in combating sophisticated and cross-border cartels. The Cartel Working Group Plenary explored the evolving landscape of global collaboration among competition authorities, drawing from insights shared in a recent panel discussion.

The participants included Jorge Grunberg, President, Fiscalía Nacional Económica, Chile; Nuno Cunha Rodrigues, President, AdC Portugal; Andrea Marván, Chair, Mexican Federal Economic Competition Commission (Cofece); Chris Prevett, General Counsel, Competition and Markets Authority, UK; Kaori Yamada, Partner, Japan Fair Trade Commission; and was moderated by Brian McHugh, Chair, Competition and Consumer Protection Commission (CCPC), Ireland.

The panel emphasized the importance of understanding cultural differences when designing cartel enforcement strategies. For instance, in Japan and Ireland, perceptions of informants can significantly influence the effectiveness of leniency programs. Acknowledging these cultural nuances is crucial for crafting strategies that work across different jurisdictions.

Chris from the Competition and Markets Authority (CMA) discussed the impact of Brexit on the UK's international cooperation efforts. Previously part of the European Competition Network (ECN), the UK had seamless information sharing with EU authorities. After Brexit, the CMA has worked to maintain its international collaboration through increased engagement and new legislative measures. This includes handling international cases effectively and pursuing legislative changes to

facilitate formal investigative assistance with foreign agencies.

Nuno from Portugal outlined the European Union's approach to international cooperation. Within the EU, the European Competition Network (ECN) provides a robust framework for exchanging evidence and coordinating investigations. Beyond the EU, cooperation involves multilateral forums such as the International Competition Network (ICN), OECD, and UNCTAD, which foster mutual trust among agencies. Bilateral agreements and regional networks, like the Lusophone network, also play a crucial role in enhancing enforcement capabilities across borders.

Andrea Marvan from Mexico highlighted an innovative collaboration related to the World Cup, where Mexico, the US, and Canada are jointly working to monitor and promote fair competition in light of the event's economic impact. This initiative includes joint advocacy campaigns and workshops aimed at preventing anti-competitive conduct related to the World Cup.

Georgia from the IF/any shared practical experiences illustrating the value of international cooperation. During the COVID-19 pandemic, agencies collaborated to adapt raid protocols, demonstrating the importance of building strong relationships through forums like the ICN. These connections proved vital in addressing challenges and sharing best practices in real-time.

The discussion underscored that international cooperation remains a cornerstone of effective cartel enforcement. As cartels become more complex and globalized, the collaborative efforts among competition authorities are increasingly crucial. By adapting to new challenges and strengthening cooperative ties, authorities aim to ensure fair competition and protect consumers worldwide.

Interaction between global markets and local needs in Agriculture and Food Markets:

In an ICN discussion moderated by Prof. Simon Roberts of the University of Johannesburg, Doris Tshepe, Commissioner of the South Africa Competition Commission spoke with Lílian Santos Marques Severino, Chief Economist of CADE about agricultural and food markets.

In today's interconnected world, the interaction between global markets and local needs in agriculture and food markets has become increasingly complex and consequential. This interaction is shaped by various factors, including economic trends, technological advancements, environmental challenges, and societal preferences. Here's a concise summary of the key points discussed in relation to this theme:

1. **Global Market Dynamics:** Globalization has profoundly impacted agriculture and food markets by expanding trade opportunities and increasing market integration. Agricultural commodities are traded globally, influenced by international supply and demand dynamics, geopolitical factors, and trade policies. This interconnectedness allows for efficiency gains but also exposes local markets to external shocks.

2. **Local Agricultural Practices:** Despite global trends, local agricultural practices remain crucial for meeting regional food security, dietary preferences, and cultural norms. Local farmers often face unique challenges such as land availability, climate variability, and access to technology and resources. Balancing local production with global market demands requires tailored strategies that preserve local food sovereignty while leveraging global market opportunities.

3. **Technological Innovations:** Technology plays a pivotal role in bridging global markets with local agricultural needs. Innovations such as precision agriculture, biotechnology, and digital platforms enable farmers to improve productivity, enhance sustainability, and access global markets more efficiently. However, technology adoption must consider local contexts and adaptability to ensure inclusive benefits across diverse farming communities.

4. **Environmental and Sustainability Concerns:** The interaction between global markets and local needs must address environmental sustainability. Issues such as climate change, water scarcity, and biodiversity loss impact both global supply chains and local agricultural systems. Sustainable agricultural practices, certification schemes, and consumer awareness drive the demand for environmentally friendly products, influencing market dynamics and shaping global-local interactions.

5. **Policy and Governance:** Effective governance and policy frameworks are essential for managing the interaction between global markets and local agricultural needs. Governments play a critical role in regulating trade, promoting agricultural innovation, and safeguarding food security. Policy coherence across international, national, and local levels is crucial for balancing market access with local development priorities and ensuring equitable benefits for all stakeholders.

6. **Consumer Trends and Preferences:** Changing consumer preferences, driven by health considerations, ethical concerns, and cultural values, influence market demands globally and locally. The rise of organic food, fair trade practices, and locally sourced products reflects a growing consumer interest in sustainable and ethically produced food. These preferences create opportunities for local producers to differentiate their products in global markets while meeting local consumer needs.

In conclusion, the interaction between global markets and local needs in agriculture and food markets is multifaceted and dynamic. Achieving a balanced approach requires stakeholders to navigate complex challenges, embrace technological innovations, promote sustainable practices, and ensure inclusive growth. By fostering dialogue, collaboration, and adaptive strategies, we can harness the benefits of global markets while safeguarding local agricultural resilience and food security.



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Theories of harm involving innovation, nascent and potential competition - Merger Working Group



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The Merger Working Group plenary session saw a discussion that offered a deep dive into current practices and challenges surrounding merger control across various jurisdictions. The conversation provided a rich perspective on how different countries are handling merger reviews and the innovative approaches they are adopting to address evolving market dynamics.

The session featured Gina Cass-Gottlieb, Chair, ACCC Australia; Olivier Guersent, Director General, European Commission; May Lee, Chairperson, Superintendency for Market Power Control, Taiwan; Andreas Mundt, President/ICN Chair, Bundeskartellamt, Germany; Barbara Rosenberg, Partner, CADE Brazil; Rebecca Slaughter, Commissioner, US Federal Trade Commission; and was moderated by Matthew Boswell, Commissioner, Competition Bureau, Canada.

The panelists began by discussing the complexities of counterfactuals and case selection in merger reviews. One significant concern was the uncertainty created by the absence of a time limit on reviewing mergers under Article 22. This provision, which allows for the review of mergers long after their completion, can create legal ambiguity and unpredictability for companies.

Different countries are approaching these challenges in varied ways. In Canada, the establishment of a mergers intelligence unit helps monitor business activities and identify potentially problematic transactions. This system strikes a balance between thorough review and practical enforcement, providing a useful model for other jurisdictions.

Brazil's approach involves the authority, Kadjar, having the power to review mergers up to one year after their closure. This extended review period, coupled with outdated thresholds, captures a broader range of transactions, which can lead to increased scrutiny on deals that might otherwise be overlooked.

Australia is undergoing a significant shift from a voluntary to a mandatory notification regime for mergers. This change aims to enhance the Australian Competition and Consumer Commission's (ACCC) ability to detect and prevent anti-competitive mergers more effectively. By capturing a wider array of transactions and improving the analysis of serial acquisitions, Australia hopes to better address competition concerns.

In the United States, recent updates to merger guidelines reflect modern market realities. The revised guidelines consolidate horizontal and non-horizontal merger analyses into a single framework, aiming for greater transparency in how competition is assessed. The Department of Justice (DOJ) has also emphasized the importance of leadership and accountability in mergers, as demonstrated by their recent scrutiny of executive appointments following mergers.

The panel also explored emerging trends and tools in competition law. There is growing debate about the need for specific regulations for tech markets, with Brazil recently proposing new guidelines to address this sector's unique challenges. The discussion highlighted the necessity of adapting regulatory frameworks to keep pace with technological advancements and new market realities.

In conclusion, the panel underscored the importance of continuous adaptation and the exchange of best practices among competition agencies worldwide. While existing tools and guidelines are evolving, there remains a need for greater predictability and certainty in merger review processes. The conversation emphasized the value of ongoing dialogue and international cooperation in effectively addressing competition challenges in today's dynamic market environment.

Thursday, May 16

Unilateral conduct enforcement: current trends and challenges ahead - Unilateral Conduct Working Group



Photos courtesy of CADE and the 2024 ICN Conference

During the Unilateral Conduct Working Group's plenary session, experts discussed the current trends and challenges ahead. The conversation highlighted the complexities and strategies associated with enforcing competition rules, particularly in digital and technology-driven markets.

The panel included Benoit Coeuré, President, Autorité de la Concurrence, France; Melanie Aiken, Managing Principal, NGA, Competition Bureau, Canada; Rikard Jermsten, Director General, Swedish Competition Authority (KKV), Sweden; Andreas Schwab, Member of the European Parliament, European Parliament, EU; Marisa Tierno Centella, Director General, Comisión Nacional de los Mercados y la Competencia, Spain; and was moderated by Camila Alves, Commissioner, CADE Brazil.

The dialogue began with a detailed case study involving Google, where competition authorities employed a framework based on competition law to ensure fair negotiations between publishers and the tech giant. Despite the implementation of commitments aimed at addressing Google's dominance, the process revealed significant challenges. Google was found to have violated several commitments, resulting in substantial sanctions totaling €760 million. This case underscored the importance of crafting realistic and implementable commitments and the role of competent trustees in monitoring compliance. However, the enforcement of these commitments proved resource-intensive and distracting, affecting the authority's capacity to handle other cases.

The conversation then turned to the broader challenges faced by competition authorities in rapidly evolving markets. One expert from the Spanish Competition Authority emphasized the necessity of continuous monitoring and adaptation of remedies. Their approach includes appointing dedicated staff to oversee compliance with decisions and remedies, ensuring that fines are paid and conditions are met. This approach helps in designing proportionate remedies and considers both the burden on the authority and the affected companies.

Innovative remedies were also discussed, with examples highlighting how traditional regulatory approaches can still be effective in digital markets. A notable example was the Toronto Real Estate Board case, where the authority addressed anti-competitive behavior by prohibiting rules that prevented members from sharing property information online. This remedy balanced the need to protect innovation while addressing anti-competitive conduct effectively. Another example involved Turo, a car-sharing platform, which was required to change its terms to allow cars to be listed on multiple platforms, demonstrating that simple remedies can often be highly effective.

The discussion further delved into the strategic approaches needed to address unilateral conduct in digital platforms, where traditional notions of dominance may not apply. Experts noted that digital platforms can exert significant intermedia-

tion power even without substantial market share. They cited examples such as the Nasdaq case and issues related to price parity clauses used by booking platforms like Expedia and Booking.com. These cases illustrated how market definition and the nature of intermediation power are crucial in assessing competitive dynamics.

Looking ahead, there is a recognized need for new tools and regulations to address competition issues in digital markets more comprehensively. The Swedish government's inquiry into introducing new competition tools reflects this need. The experts suggested that these tools should address structural problems across various markets, including those beyond the traditionally observed ones, such as building materials.

In conclusion, the panel of experts emphasized the necessity for competition authorities to adapt continuously to the fast-paced changes in technology and market dynamics. By employing a mix of traditional and innovative remedies, along with a vigilant approach to monitoring and enforcement, regulators aim to maintain fair competition and safeguard market integrity in the digital age.



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Conducting market studies to understand competition in emerging markets - Advocacy Working Group



Photo courtesy of CADE and the 2024 ICN Conference

The ICN's Advocacy Working Group's Plenary Session on conducting market studies to understand competition in emerging markets saw experts exploring the intricacies of conducting market studies, with a focus on emerging markets. The conversation highlighted how these studies play a pivotal role in understanding market dynamics and informing regulatory practices.

The discussion involved Saverio Valentino, Commissioner, AGCM Italy; Raveet Kaur, Chairperson, Competition Commission of India (CCI); Sungsam Kim, Commissioner, Korea Fair Trade Commission, South Korea; Lucía Ojeda, NGA, Mexican Federal Economic Competition Commission (Cofece), Mexico; and was moderated by Kenneth Tanate, Executive Director, Philippine Competition Commission (PCC).

The discussion underscored the importance of engaging the private sector throughout the market study process. Effective engagement involves clearly communicating the study's purpose and scope from the outset, which fosters genuine participation and avoids any perceived bias. By involving stakeholders early on and soliciting their feedback, market studies can be designed to target specific information needs, thus avoiding the pitfalls of excessive data collection and ensuring that businesses are not overwhelmed.

In terms of practical applications, the panelists provided insights into how market study results are utilized in different jurisdictions. For instance, the Italian Antitrust Authority has leveraged market studies to advocate for legislative changes and to initiate investigations. Recent enhancements to their regulatory powers now allow them to impose behavioral and structural remedies based on the findings of these studies. This approach represents a significant shift, enabling more direct intervention in cases of market distortion.

Similarly, the Competition Commission of India has used market studies to influence policy reforms and advise market players. By conducting studies on sectors like e-commerce and pharmaceuticals, the Commission has been able to address issues such as market imbalances and transparency. The findings from these

studies have led to recommendations for regulatory changes and have guided businesses in improving self-regulation.

In South Korea, the FTC has applied market study findings to advocate for changes in regulations that previously restricted competition. A notable example is the study on the IoT market, which revealed that existing regulations were hindering competition. This led to discussions with the Ministry of Science and subsequent adjustments to regulatory frameworks.

The panel also touched on the dissemination of study findings and the importance of feedback from the business community. Engaging businesses in reviewing preliminary findings before wider publication can enhance the relevance of the results and increase adherence to the recommendations. This approach not only improves the robustness of the findings but also fosters a collaborative environment between regulators and businesses.

Managing controversial findings was another critical topic. Market studies can sometimes reveal anti-competitive practices that necessitate enforcement actions. For instance, studies on sectors like cement and medical equipment have led to investigations and potential regulatory actions based on the identified issues.

Finally, the panelists emphasized that market studies are not just about enforcement but also about capacity building and advocacy. They are instrumental in developing a deeper understanding of emerging market dynamics and in crafting smarter regulations. By continuously adapting their approaches and tools, competition authorities can better address the evolving challenges in today's markets.

Overall, the discussion highlighted that market studies are a crucial tool for enhancing competition and regulatory effectiveness. They provide valuable insights into market operations, inform policy reforms, and help manage stakeholder relationships, ultimately contributing to more effective and responsive regulatory practices.

Friday, May 17

Monitoring and Evaluating the Effectiveness of Agency Actions - Agency Effectiveness Working Group

During the final ICN Working Group Plenary Session, the Agency Effectiveness Working Group gathered experts to assess the effectiveness of competition agencies and their judicial track records, highlighting notable cases and agency practices from various jurisdictions.

The panel was moderated by Martijn Snoep, Chairman, Authority for Consumers and Markets (ACM), Netherlands, and included Csaba Balázs Rigó, President, Hungarian Competition Authority; Alvin Koh, Chief Executive/Commissioner, Competition and Consumer Commission of Singapore; Charikleia (Hara) Nikolopoulou, Vice President, Hellenic Competition Commission, Greece; Mariana Tavares de Araújo, NGA, CADE Brazil; Alejandra Giuffra, President, Comisión de Promoción y Defensa de la Competencia de la República Oriental del Uruguay; and Maria Elena Vasquez, President, National Commission For The Defense of Competition (Pro-Competencia), Dominican Republic.

One prominent case discussed was the Uber appeal in Singapore, where the Competition Appeal Court upheld the financial penalty and orders imposed on Uber following its merger with Grab. This decision underscored the importance of maintaining market competition and preventing monopolistic practices. Similarly, the "Stick" case, which involved ticketing services, demonstrated the complexities of penalty assessments. Initially set at \$1 million, the fine was reduced by 20% on appeal, reflecting ongoing debates about fair penalties for anti-competitive behavior.

Another significant case was the Fresh Chicken Cartel, where price-fixing among distributors was penalized. On appeal, the penalties were reduced, but the case highlighted the critical issue of food inflation and the broader implications for consumer prices. This case exemplified the challenges competition agencies face in balancing penalties with market outcomes.

The panel also explored the approaches taken by competition agencies in evaluating their interventions and measuring effective-

ness. In Singapore, the emphasis is on using Key Performance Indicators (KPIs) to assess the impact of competition interventions. This includes conducting post-action studies and market impact assessments to determine whether regulatory decisions have achieved their intended outcomes.

The Hungarian competition authorities' approach was also discussed. They focus on the quantitative assessment of market studies and the effects of their advocacy. For instance, a market inquiry into car parts and another study on the supply of formula milk for infants led to regulatory changes and the entry of more affordable products, illustrating how market studies can influence policy and market dynamics.

A key takeaway from the discussion was the importance of transparency in reporting the effectiveness of competition agencies' actions. Agencies are encouraged to openly share both successful and unsuccessful outcomes to foster a culture of learning and continuous improvement. This includes clearly communicating the impact of their decisions to the public and within the competition community.

The panelists emphasized that while judicial success rates are important, they should be interpreted with caution. The focus should be on the substantive outcomes of cases rather than procedural fines or reversals. The panel noted that agencies must strive for a balance between being risk-averse and ensuring that their decisions do not lead to adverse market effects.

The session concluded with a call for ongoing dialogue and the sharing of best practices among competition agencies. By evaluating their effectiveness, being transparent about their results, and learning from each other's experiences, agencies can enhance their impact on market competition and consumer welfare. The discussion underscored the need for continuous reflection and adaptation to ensure that competition policies remain effective and relevant in a rapidly evolving market landscape.

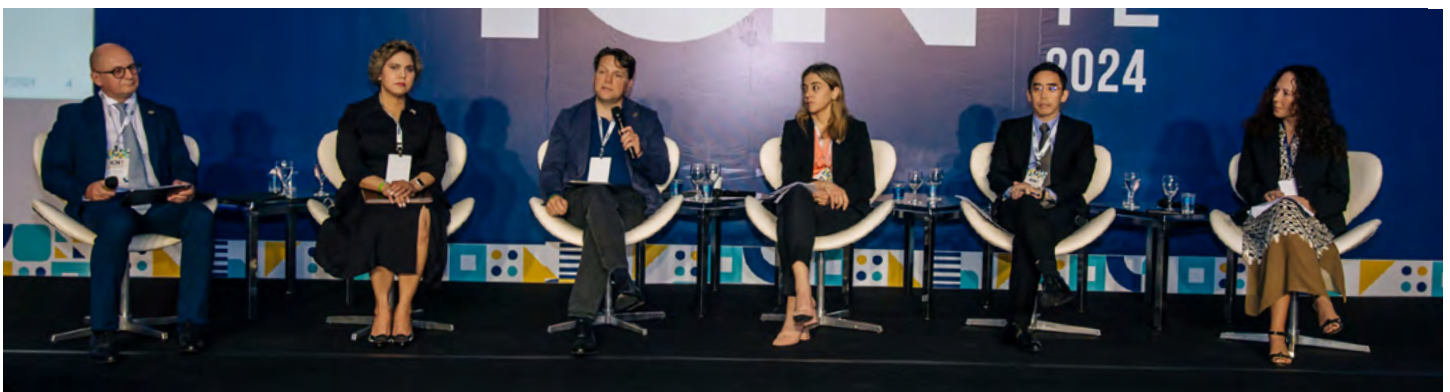


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