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Competition and Agentic AI – Note by BIAC

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BIAC

1. Introduction

1. *Business at OECD* (BIAC) welcomes the OECD Competition Committee's hearing on competition and agentic artificial intelligence. The hearing is timely. Agentic systems can pursue goals, perform multi-step tasks, interact with users, businesses and other AI systems, and make or implement commercial decisions with varying degrees of human oversight. The OECD's draft agenda identifies significant potential benefits, including lower transaction costs and greater efficiency, while also inviting examination of market power, consumer choice, intermediation and coordination.[1]

2. Agentic AI should be assessed neither as a presumptive threat to competition nor as a technology beyond the reach of existing law. Its competitive effects will depend on the relevant market, the tasks performed, the technical architecture, the information used, the degree of user or business control, and the conduct at issue. The correct starting point is therefore a factual inquiry that takes into account the aforementioned points, not a technology-specific presumption.

3. BIAC submits that competition policy and enforcement should recognize the substantial pro-competitive potential of agentic AI, distinguish competition concerns from other policy concerns, apply existing competition rules to evidenced conduct and effects, preserve rigorous and well-established standards of proof, and use targeted regulation where a genuine regulatory gap exists and foster the conditions for AI agents to obtain open and non-discriminatory access to services, interfaces and devices.

4. The OECD can add particular value by encouraging dialogue on the technical characteristics and competitive significance of agentic AI, exploring potential theories of harm, and promoting international consistency and proportionate enforcement of the competition rules in relation to agentic AI. The objective should be to preserve competitive markets while enabling businesses and consumers to realize the benefits of a transformative general-purpose technology.

5. BIAC welcomes the Secretariat's Background Note[2] and agrees with several of its framing conclusions: that a definitive assessment of competition in agentic AI is premature given the nascent stage of the market;[3] that concentration in the early stages of a market is not synonymous with ineffective competition, and that ease of entry and expansion is more informative than initial shares;[4] that differences between firms in their ability to exploit agentic AI are evidence of the competitive process working;[5] and that use of the same model or service does not itself establish co-ordination.[6]

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1 OECD, Draft Agenda: 150th Meeting of the Competition Committee, Item 4–Hearing on Competition and Agentic AI, DAF/COMP/A(2026)3 (Aug. 7, 2026) (on file with authors).

2 OECD, Competition and Agentic AI – Background Note, DAF/COMP(2026)11 (Nov. 6, 2026), https://one.oecd.org/document/DAF/COMP(2026)11/en/pdf [hereinafter OECD Agentic AI Background Note].

3 *Id.* ¶ 37.

4 *Id.* ¶ 41.

5 *Id.* ¶ 88.

6 *Id.* ¶ 97.

2. Agentic AI and the Competition Policy Debate

2.1. A Functional, Not Legal, Concept

6. The term "agentic AI" does not yet describe a single, settled technical category. The OECD's 2026 conceptual paper identifies recurring features in definitions of AI agents and agentic AI and relates those features to the OECD definition of an AI system.[7] For competition-policy purposes, the most useful approach is functional. Relevant systems may plan and execute a sequence of actions, some of which might be purely internal steps within a company without any direct relevance for competition, while others might use external tools, retrieve information, communicate with other systems or external market participants, compare offers, negotiate terms, or conduct transactions on behalf of a user or business.[8]

7. Accordingly, deployment patterns are directly relevant to the analysis. A substantial share of agentic AI adoption can be expected to consist of internal process automation, in areas such as human resources, software development, logistics, research and legal review, involving no or limited (indirect) market-facing conduct. The subset of deployments with more direct competitive significance, including systems engaged in pricing, bidding or negotiation involving competitors or common suppliers, as well as systems that interact with suppliers, platforms or consumers in ways that may affect procurement, access, visibility, ranking, or choice, is more directly relevant to competition-policy analysis. Competition-policy discussion should be scoped accordingly, so that analysis of risk in such market-facing deployments is not extended by implication to internal uses that do not give rise to the same competitive interactions.

8. Systems will differ materially in their deployment, autonomy, architecture, supervision, and interactions with external parties.[9] Some will act only after detailed user instructions. Others may select among means of achieving a broadly expressed objective.[10] Accordingly, "agentic AI" should not itself become a legal category or be associated with a particular theory of harm. This has a direct implication for the question of how ex ante digital regimes should apply or adapt as agentic AI emerges.[11] Where ex ante regimes operate by designating a service category and attaching obligations to it, designating agentic AI would fix its borders by administrative act at a point of definitional uncertainty. The Background Note itself observes that the boundary between assistants and agentic AI systems is likely to become increasingly blurred.[12] The relevant inquiry is what the agentic AI system at issue does, under whose direction, using what information, in which market context, and with what competitive effects. Delegation to an agentic system does not relieve firms of responsibility: conduct that is unlawful if undertaken directly does not become lawful because a system performs it.[13] The converse also holds: lawful conduct does not become unlawful for the same reason.

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7 OECD, *The Agentic AI Landscape and Its Conceptual Foundations*, OECD Artificial Intel. Papers No. 56 (Feb. 13, 2026), https://www.oecd.org/content/dam/oecd/en/publications/reports/2026/02/the-agentic-ai-landscape-and-its-conceptual-foundations_a9d4b451/396cf758-en.pdf.

8 *Id.*

9 It can be expected that many agentic AI systems will be used to streamline and enhance internal processes, e.g., HR processes, R&D software coding, and use in in-house legal departments.

10 OECD Agentic AI Background Note, *supra* note 2, ¶ 12 & fig. 1.

11 *Id.* ¶ 113.

12 *Id.* ¶ 12.

13 *Id.* ¶ 105.

2.2. Building on Earlier OECD and BIAC Work

9. The December 2026 hearing should preferably build cumulatively on the OECD's and BIAC's earlier work concerning generative AI, data, infrastructure, downstream markets, and algorithms. In 2024, BIAC emphasized that meaningful competition analysis requires a thorough understanding of the successive layers of the AI value chain, business models, critical inputs and competitive conditions before intervention is considered.[14] The 2025 AI-infrastructure contribution likewise rejected a single paradigm for chips, hardware, data centres, telecommunications networks, and energy.[15] The 2025 downstream-markets contribution stressed both AI's potentially transformative character and the continuing uncertainty surrounding its competitive effects.[16]

10. Agentic AI raises new factual questions, especially where systems interact autonomously or make commercial decisions.[17] Those questions do not require competition policy to start from zero. Existing and well-established principles concerning agreements, unilateral conduct, market power, information exchange, efficiencies, causation and proof remain the proper analytical foundation.

3. Agentic AI as a Source of Competition and Innovation

11. It is undisputed that, in many respects, agentic AI is a source of competition and innovation. At the same time, BIAC recognizes that agentic AI may give rise to genuine competition concerns requiring effective and timely enforcement. As discussed in Sections 4 and 5 below, where such concerns are supported by proper and sufficient evidence, competition authorities should be prepared to intervene under the applicable legal standards.

12. A balanced competition-policy analysis should begin with the reasons businesses and consumers may adopt agentic systems and with the competitive processes those systems may strengthen. The OECD's 2025 downstream-markets background note identifies mechanisms by which AI may lower barriers to entry, substitute for labour, reduce minimum efficient scale, and support innovation and product differentiation, while emphasizing that outcomes are context-dependent.[18]

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14 OECD, Artificial Intelligence, Data and Competition – Note by BIAC, DAF/COMP/WD(2024)47 (May 31, 2024), https://one.oecd.org/document/DAF/COMP/WD(2024)47/en/pdf. [hereinafter BIAC Note on AI, Data and Competition].

15 OECD, Competition in Artificial Intelligence Infrastructure – Note by BIAC, DAF/COMP/WD(2025)72 (Nov. 12, 2025), https://one.oecd.org/document/DAF/COMP/WD(2025)72/en/pdf [hereinafter BIAC Note on Competition in AI Infrastructure].

16 OECD, Artificial Intelligence and Competitive Dynamics in Downstream Markets – Contribution from BIAC, DAF/COMP/GF/WD(2025)46 (Nov. 19, 2025), https://one.oecd.org/document/DAF/COMP/GF/WD(2025)46/en/pdf.

17 OECD, Artificial Intelligence and Competitive Dynamics in Downstream Markets – Background Note, ¶ 46, DAF/COMP/GF(2025)4 (Nov. 7, 2025), https://one.oecd.org/document/DAF/COMP/GF(2025)4/en/pdf (explaining that AI-enabled search and recommender systems may channel demand toward certain suppliers and that opacity may prevent rivals from securing fair visibility); *id*. ¶ 65 (noting that agentic AI could reshape competition in areas such as search and assistant tasks); *id*. ¶ 102 (noting that agents could create new intermediation layers between firms and consumers); *see also id*. ¶ 67 (noting that agentic systems may also reduce search and transaction costs and support multi-homing and switching).

18 *Id*. ¶¶ 16–19 (labour substitution, smaller teams and lower minimum efficient scale); *id.* ¶¶ 21–24 (product

3.1. Search, Transaction Costs and Matching

13. Agentic systems may help purchasers identify suitable suppliers, run the necessary compliance checks, compare differentiated products, monitor offers, evaluate contractual terms and execute routine transactions. By lowering the cost of considering alternatives, these tools may increase the number of suppliers capable of exerting a competitive constraint and reduce information asymmetries.

3.2. Buyer Capabilities, Entry, and Expansion

14. Procurement agents may make sophisticated purchasing capabilities available to SMEs and other organizations that could not previously develop them internally. More broadly, agentic tools can help businesses enter or expand markets by taking on administrative work like customer support, procurement, sales administration, logistics, compliance checks, contract review, and market intelligence. By way of example: agentic systems may also strengthen compliance relative to human-mediated processes, while well-designed deployments of agentic AI models may involve the generation of complete and reviewable records of instructions, information flows and actions, may embed constraints against the transmission or receipt of competitively sensitive information and enable levels of monitoring and oversight that are simply unavailable in informal commercial interactions. Agentic AI may itself assist in putting such controls in place and making them effective, for example through tested safeguards, human approval and intervention mechanisms, and auditable records of system actions. Such safeguards may provide relevant evidence of compliance efforts, without becoming universal technical requirements.

15. Deployed with appropriate governance, agentic AI technology may therefore be a compliance asset as well as a source of efficiency. All this may help to reduce the necessary scale and set-up cost to enter or expand. Competition policy should not assume that the technology will invariably reinforce incumbent market positions. It should also credit robust monitoring, logging and audit infrastructures as evidence of companies' compliance efforts and as important tools for distinguishing intentional coordination from autonomous system failure.

3.3. Dynamic Assessment

16. Early market positions should be assessed with caution. Agentic AI is developing rapidly, with frequent model improvements, declining inference costs, and a continuing expansion of both proprietary and open-source offerings. Switching costs for business users may vary depending on the application and the degree of personalization and integration, while the availability of multiple proprietary and open-source offerings may facilitate switching and multi-homing is increasingly common. Open-source models can reduce catch-up times, while technical differentiation can emerge quickly through fine-tuning, agent orchestration, and domain-specific tools. More generally, competitive conditions at several layers of the value chain, technological capabilities, and patterns of adoption remain in flux.

17. In this regard, the sources of switching cost can differ between layers. At the model layer, switching costs for business users can be comparatively low and appear to be falling where prompts, workflows, data, and integrations remain increasingly portable across models, cloud environments and agent frameworks. Open-weight development also

differentiation and innovation); *id.* ¶¶ 36, 69 (stressing that effects are heterogeneous and context-dependent).

compresses catch-up times, and successive model generations have repeatedly displaced apparent leaders. For regulated business users, switching may also entail re-validation, testing, and contractual and supervisory steps, so that the practical ability to switch depends materially on interoperability and portability being preserved.

18. The Background Note's observation that widely available open-source tools are "potentially lowering certain barriers to entry and reducing foreclosure risks" is consistent with this.[19] At the agent layer, the Background Note identifies accumulated context as a potential source of lock-in.[20] The policy implication is one of sequence rather than of new substantive rules: the focus should be on the ability of users to transfer context and to change providers without significant loss of information or functionality. This is a more proportionate response to concerns about entrenchment at the agent layer than intervention in agent design, ranking, or output.

19. Concerns about market tipping and allegedly late or ineffective competition law intervention should therefore be assessed against observable market features. Intervention aimed at forestalling hypothetical tipping risks fixing market structure before the determinants of competitive advantage are understood. This caution is particularly warranted because the costs of premature intervention are real but largely unobservable: entry that does not occur, investment redirected, products not launched. They are also difficult to reverse, and they fall disproportionately on smaller firms, for which legal and regulatory uncertainty is already among the most frequently cited barriers to adopting AI tools.[21]

20. Continued expansion of agentic AI will also require substantial investment in the infrastructure supporting its development and deployment. Competition policy should therefore safeguard competitive markets while preserving incentives to invest in additional capacity and innovation, supported by an appropriately predictable regulatory environment. In this regard, while BIAC's AI-infrastructure paper points to high levels of investment, R&D, innovation, and partnership, it cautions against premature or disproportionate intervention where specific harm has not been established.[22]

3.4. Model-Layer Plurality

21. Competitive conditions at the agent layer depend on conditions at the model layer. Where model weights are published and may be adapted and deployed by any party, there are positive implications for competition. First, this promotes contestability. Where capable models are available on open terms, developers of agentic systems are not dependent on a small number of proprietary interface suppliers for the core capability on which their product rests. Second, diversity at the model layer may be an effective structural safeguard against co-ordination concerns because differences in objectives, information, and

19 OECD Agentic AI Background Note, *supra* note 2, ¶ 53.

20 *Id* ¶¶ 28, 59, 63.

21 OECD, Generative AI and the SME Workforce 42-48 (2025), https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/11/generative-ai-and-the-sme-workforce_83bafdfb/2d08b99d-en.pdf (concern about copyright, legal or regulatory issues was cited by 54% of SMEs not using generative AI, second only to the technology not suiting their work, and only around a third of SMEs using it had researched those issues).

22 BIAC Note on Competition in AI Infrastructure, *supra* note 15, ¶ 4 (describing high levels of investment, R&D, innovation and partnership); *id.* ¶ 6 (cautioning that premature or disproportionate enforcement without specific evidence of harm may deter innovation, delay entry and create legal uncertainty).

underlying algorithms can weaken co-ordination.[23] Third, open availability lowers the cost at which firms, public bodies and researchers can build and deploy agentic capability, expanding market participation.

4. Not Every Agentic AI Problem Is a Competition Problem

22. Agentic systems may raise important questions relating to privacy, cybersecurity, unauthorized access, consumer deception, intellectual property, contractual authority, operational safety, transparency and liability. BIAC does not suggest that these concerns are unimportant or that regulation can never be justified. The essential point is one of institutional design: the existence of a concern does not determine or necessarily imply that competition law is the appropriate instrument to address that problem.

23. BIAC made this distinction directly in its 2024 AI contribution, which acknowledged that there may be a potentially significant role for policy makers in addressing safety, security, privacy, intellectual-property and copyright concerns, while arguing that competition law is not the appropriate instrument for wider societal or ethical concerns unrelated to market competition.[24] BIAC's contribution on competition and democracy similarly urged policymakers to determine whether a perceived challenge is a competition issue or a non-competition problem requiring another form of resolution.[25]

4.1. A Disciplined Institutional Test

24. Before invoking competition law, policymakers should ask whether the alleged harm is a reduction in competition; whether the theory falls within the authority's statutory mandate; whether the responsible undertaking and relevant conduct can be identified; whether competitive harm can be demonstrated under the applicable standard; and whether another body of law or specialist regulator is better placed to respond. Where the central concern is privacy, safety, cybersecurity, consumer deception, copyright or contractual responsibility, regulation tailored to that specific harm may be more effective and more legitimate than stretching antitrust doctrine. This does not preclude the application of competition law where the same conduct also gives rise to a distinct competition concern.

25. BIAC welcomes the Background Note's recognition that advocacy has a role where regulation poses unmerited risks to competition, including where sectoral licensing or information restrictions impede agents acting on users' behalf:[26] competition authorities can play an important role through advocacy, bringing their expertise to the design and review of AI, consumer, privacy and sector-specific rules and identifying requirements that may unnecessarily raise barriers to entry, entrench incumbents or inhibit innovation. In this way, competition advocacy can help ensure that regulation pursuing legitimate non-competition objectives does so in a manner that minimizes unnecessary restrictions on competition. Advocacy should not, however, be a basis for converting those non-competition concerns into competition-law infringements.

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23 OECD Agentic AI Background Note, *supra* note 2, ¶¶ 98-100.

24 BIAC Note on AI, Data and Competition, *supra* note 14, ¶ 4 & nn.2-3; *see also id.* ¶ 6 & n.10 (expressing scepticism about expanding competition authorities' mandates to policy goals unrelated to market competition).

25 OECD, The Interaction Between Competition and Democracy – Note by BIAC, ¶ 2, DAF/COMP/WD(2024)94 (Nov. 13, 2024), https://one.oecd.org/document/DAF/COMP/WD(2024)94/en/pdf.

26 OECD Agentic AI Background Note, *supra* note 2, ¶ 114; *id.* ¶ 115 n.45.

4.2. Targeted Regulation Where a Genuine Gap Exists

26. BIAC does not reject regulation in principle but insists on disciplined sequencing: identify the specific harm; assess existing law; demonstrate a genuine gap; select the institution with the relevant expertise and democratic mandate; and only then adopt a targeted, proportionate and reviewable measure. Antitrust should not function as residual, or "catch-all" AI regulation.

27. Obligations should first and foremost attach to conduct that has been shown to cause harm, not to a class of technology. Where an infringement is established, remedies should be as wide as the harm established and no wider, addressing the conduct and the systems through which it occurred and avoiding the imposition of generalised duties on all users of a technology because harm has been identified in some deployments. Overarching obligations for agentic systems, blanket human-approval or logging mandates, and inconsistent obligations across jurisdictions would each erode the benefits described above without a corresponding gain in competition and should be adopted only where the sequencing set out above justifies them.

5. Competition Issues That May Merit Examination

5.1. Coordination and Agent-to-Agent Interaction

28. Systems used by competing firms may interact repeatedly, respond to each other's conduct, exchange information or implement commercial strategies. These facts may warrant scrutiny, but they do not erase the distinction between agreement or concerted practice, lawful conscious parallelism and independent unilateral conduct. BIAC's 2023 Algorithmic Competition paper recalled the OECD's earlier call to weigh the benefits of tackling collusion against the risks of over-enforcement and noted the limited number of actual cases involving algorithmic collusion.[27]Authorities should examine whether the agent was designed or instructed to implement coordination; whether firms communicated directly or indirectly; whether competitively sensitive information was transmitted; whether a common provider facilitated an exchange; and whether observed outcomes can be explained by independent optimization or common market conditions. Similar outputs generated by competing systems should not themselves establish coordination.

29. In assessing the likelihood of coordinated outcomes, authorities should also recognize the degree of commonality in the underlying models, instructions, and training material on which competing systems are built. The Background Note reports that differences in objectives, information, and decision-making methods can weaken co-ordination.[28]

5.2. Common Agents, Providers, and Information Exchange

30. The use of a common agent or third-party provider may create information-governance questions, particularly where the provider receives sensitive inputs from multiple customers. A fact-specific inquiry should consider data segregation,

[27] OECD, Algorithmic Competition – Note by BIAC, ¶¶ 2-3, DAF/COMP/WD(2023)60 (June 2, 2023), https://one.oecd.org/document/DAF/COMP/WD(2023)60/en/pdf. S*ee also generally Algorithms and Collusion*, OECD, https://www.oecd.org/en/events/2017/06/algorithms-and-collusion.html (materials for the June 2017 Competition Committee roundtable).

[28] OECD Agentic AI Background Note, *supra* note 2, ¶ 99.

confidentiality arrangements, the contractual and technical safeguards required by deployers, and the extent to which they could reasonably verify them, the information actually received and transmitted, the provider's role, user instructions, and any efficiencies. Moreover, it should be considered whether particular information flows are required or encouraged by sector-specific regulation (for example, in fraud prevention or financial-crime compliance). Mere adoption of the same tool should not establish a hub-and-spoke arrangement or justify a presumption of collusion.

31. BIAC agrees with the Background Note's conclusion that use of the same model or service does not itself establish co-ordination.[29] BIAC further submits that a distinction should be made between the supply of a general-purpose model or development framework and the supply of a pricing, bidding or decision service. A provider that makes a general-purpose model available (including on open terms, where it has no visibility of or control over downstream deployment) neither receives competitor data nor co-ordinates behaviour, and supply of such a model should not establish participation in a concerted practice.[30]

5.3. Market Power, Access, and Foreclosure

32. Agentic services may depend on models, compute, cloud services, data, software interfaces, and distribution.[31] Established competition rules may apply where an undertaking with the requisite market power engages in exclusionary conduct. Yet such practices cannot be classified in the abstract. Authorities must establish market power, postulate a recognized theory of harm and demonstrate causation and actual or sufficiently likely effects, while considering security, integrity, privacy, efficiencies and objective justifications.

33. Where conduct occurs in an emerging market, market power should be established in that market. Theories that import a position from an adjacent market and infer effects at the agent layer should be required to prove each link — the position, the mechanism of leverage, and the effect — rather than treating adjacency as a substitute for proof.

34. Accordingly, potential theories of "agent steering" or self-preferencing should also be subject to the same analytical rigor. A claim that an agent favours affiliated services requires proof of market power, a recognized theory of harm and demonstrated effects. Where a proper competition-law analysis shows that switching or multi-homing is materially constrained, appropriate measures should address the source and competitive effects of those constraints, which may include impediments relating to interoperability, data portability, defaults or bundled services. In contrast, where switching between AI agents is easy and multi-homing is preserved, competition among agents itself is likely to constrain bias; in such circumstances the sounder enforcement priority is to protect

29 *Id.* ¶ 97; *id*. at Box 5.

30 This bears on the question of whether firms should be expected to mitigate co-ordination risks at the stage of model training and system design. *Id*. ¶¶ 106, 112. Obligations capable of being discharged only through control over downstream use would in practice be incompatible with open-weight release and would reduce the model-layer diversity that the Background Note identifies as weakening co-ordination. *Id*. ¶ 99; *id*. ¶ 98 n.39. Where users do delegate pricing or bidding decisions, guidance on instruction design and information segregation is likely to be more effective, and considerably better targeted, than obligations addressed to the developers of general-purpose models.

31 Relevant inputs may also include telecommunications networks and connectivity, as well as edge infrastructure, particularly for deployments requiring low-latency processing, resilience or support for critical-service applications. The relevance of these inputs, and any associated barriers to entry or expansion, will depend on the particular use case and market context.

switching and multi-homing instead of regulating agent outputs.[32] Concerns about steering should therefore be assessed according to their nature and effects. Where steering harms the competitive process, competition-law remedies may be appropriate; where the concern is principally one of consumer deception or transparency, consumer-protection rules may provide the more appropriate response.

35. Agentic systems can enable consumers to transact directly with suppliers, reducing the need for existing intermediaries. BIAC agrees with the Background Note that such disintermediation is, on its face, an instance of competition on the merits and a source of efficiency.[33] The displacement of an existing intermediation position should not be equated with harm to competition. The relevant question is whether the conduct harms the competitive process under the applicable legal test, rather than whether it disrupts an existing business model.

36. Where agentic AI may alter existing patterns of intermediation by reducing reliance on existing intermediaries, agentic systems may increase efficiency, lower transaction costs, and facilitate access to competing offers. At the same time, agents may themselves become important routes to customers where they play a significant role in discovery, ranking, access, or transaction execution. In such market circumstances, competition concerns may arise if suppliers become dependent on agentic systems or face discriminatory or restrictive conditions of access. Whether such concerns arise, and their competitive significance, will depend on the particular market circumstances and should be assessed under established competition-law principles.

37. Competition analysis should also consider restrictions that prevent responsible, substantiated, user-directed agents from serving consumers, including restrictions that may favour an operator's own agent or affiliated services. Any assessment should distinguish exclusionary restrictions from proportionate measures addressing genuine security, privacy, fraud, authentication and capacity concerns, and consider practical alternatives such as connectors, APIs and agreed workflows. This does not imply a general obligation to provide unrestricted access to services or data.[34] Moreover, given the still-emerging nature of agentic AI, other mechanisms of competitive harm may arise that cannot yet readily be anticipated. If such harms materialise, effective remedies may therefore need to be tailored to the particular mechanism of foreclosure rather than imported from earlier technology cases.

38. Where agentic AI may alter existing patterns of intermediation by reducing reliance on existing intermediaries, agentic systems may increase efficiency, lower transaction costs and facilitate access to competing offers. At the same time, agents may themselves become important routes to customers where they play a dominant role in discovery, ranking, access or transaction execution. In such market dominance circumstances, competition concerns may arise if suppliers become dependent on agentic systems or face discriminatory or restrictive conditions of access. Whether such concerns arise, and their competitive

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32 For business users, this calls for attention, under existing rules, to the conditions on which switching and multi-homing depend in practice, such as interoperability with widely used agent interfaces and protocols, the portability of data, configurations and records, and contractual or technical terms that may materially raise switching costs.

33 OECD Agentic AI Background Note, *supra* note 2, ¶¶ 85-86.

34 Part of current friction over automated access may be technical rather than strategic. Services may not be able to easily distinguish an agent acting within the scope of a user's delegation from abuse, credential misuse or load events, with the result that agentic traffic is caught by safeguards not designed with it in mind. Restrictions adopted for that reason are not evidence of exclusionary intent.

significance, will depend on the particular market circumstances and should be assessed under established competition-law principles.

39. Partnerships and vertical relationships may enable access to capital, compute, expertise and distribution, allocate risk and accelerate entry. BIAC's prior AI papers therefore caution against treating investments, partnerships or vertical integration as inherently anticompetitive. Competition concerns, if they arise, should be established from the terms and effects of the particular arrangement.[35] The same discipline should apply where such arrangements are reviewed as concentrations; BIAC's prior work on theories of harm for digital mergers cautions against importing ecosystem-based or potential-competition presumptions into agent-related transactions.[36]

5.4. Attribution and Responsibility

40. Agentic systems may complicate attribution, but "autonomy" should neither immunize an undertaking nor create automatic liability. Relevant factors may include who selected and deployed the agent, the objectives and constraints specified, the degree of user direction, the provider's role, architecture and information flows, and monitoring or control.

41. Recent litigation in the United States provides a useful non-antitrust illustration. On the preliminary-injunction record, the court treated the user as the party accessing the service where the user directed an agent to act on the user's behalf, vacated the injunction and remanded. The ruling was fact-specific, addressed computer-access statutes rather than competition law, did not create broad immunity, and left other claims and different technical architectures open. It should therefore not be understood as establishing a general rule for attribution under competition law.[37]

6. Existing Competition Law Remains the Appropriate Starting Point

42. Existing rules already address agreements, information exchange, cartel facilitation, exclusionary conduct, vertical restraints and anticompetitive mergers. Agentic AI may require technical expertise, access to evidence and careful reconstruction of system

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35 BIAC Note on AI, Data and Competition, *supra* note 14, ¶¶ 25, 40, 44–45, 49 (describing investments and partnerships as generally driving innovation and efficiencies, and calling for case-by-case, effects-based assessment of their terms); BIAC Note on Competition in AI Infrastructure, *supra* note 15, ¶¶ 27, 29–30, 33, 36, 46–47 (stating that size, partnerships and vertical integration should not in themselves prompt heightened scrutiny, and that concerns should be established through evidence of ability, incentive and effects).

36 OECD, Theories of Harm for Digital Mergers – Note by BIAC, ¶¶ 30–31, 40, 46–47, DAF/COMP/WD(2023)73 (June 5, 2023), https://one.oecd.org/document/DAF/COMP/WD(2023)73/en/pdf [hereinafter BIAC Note on Theories of Harm for Digital Mergers] (cautioning against ecosystem-based theories absent a clearly defined enforcement gap and against presumptions, reversed burdens or lowered standards in digital mergers); *see also id.* ¶¶ 22, 24 (requiring rigorous, probabilistic, counterfactual-based analysis where a nascent competitor's prospective competitiveness is the basis for concern).

37 Amazon.com Servs., LLC v. Perplexity AI, Inc., 184 F.4th 1083 (9th Cir. 2026), *discussed in* Shumaker, Loop & Kendrick LLP, *When an AI Agent Visits a Website, Who Is Really Doing the Accessing?* (Aug. 27, 2026), https://www.shumaker.com/insight/when-an-ai-agent-visits-a-website-who-is-really-doing-the-accessing-the-ninth-circuit-draws-an-early-line-under-the-cfaa/; Cooley LLP, Ninth Circuit Rules on AI Agent "Access" to Third-Party Websites Under CFAA (Aug. 6, 2026), https://www.cooley.com/news/insight/2026/2026-08-06-ninth-circuit-rules-on-ai-agent-access-to-third-party-websites-under-cfaa.

behaviour. However, those investigative demands are not proof of a substantive enforcement gap.

6.1. Technology Neutrality and Effects-Based Analysis

43. Competition law should focus on conduct and competitive effects, not labels. Use of an agent, common model, shared provider, large dataset, partnership or vertically integrated supply structure may be relevant evidence, but none should replace proof of the legal elements and necessary conditions of an infringement. New terminology must not become a shortcut around established doctrine.

6.2. Evidentiary Discipline

44. Novelty and opacity do not justify speculation. Where technology, business models and market trajectories are uncertain, error costs may be especially high. The greater the uncertainty, the greater the need for disciplined evidence, a coherent counterfactual, a plausible causal mechanism, and attention to efficiencies. BIAC's broader work has opposed extending presumptions to novel markets and business models where enforcement experience does not establish predictable harm.[38]

6.3. Interim Measures in Nascent Markets

45. BIAC notes the Secretariat's observation that authorities may wish to consider interim measures given the pace of development in agentic AI.[39] At the same time, the Background Note identifies concerns regarding prematurity that bear directly on that question.[40] BIAC submits that the two propositions require reconciliation.

46. Interim measures warrant particular caution in nascent markets. Where market definition, competitive conditions and the direction of technological development are all unsettled, provisional intervention risks imposing structure on a market before it is understood and settled. The asserted irreversibility of harm also cuts in more than one direction: measures requiring a provider to make infrastructure available on terms it has not agreed are themselves difficult to unwind and may foreclose business models and investment decisions before any infringement has been established. Urgency should not operate to reduce the standard of proof applicable to the underlying theory, nor to substitute for the demonstration of market power, causation and effect that would be required in a final decision.

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38 *See* OECD, The Standard and the Burden of Proof in Competition Law Cases – Note by BIAC, DAF/COMP/WD(2024)90 (Nov. 21, 2024), https://one.oecd.org/document/DAF/COMP/WD(2024)90/en/pdf; OECD, The Use of Structural Presumptions in Antitrust – Note by BIAC, DAF/COMP/WP3/WD(2024)38 (Nov. 21, 2024), https://one.oecd.org/document/DAF/COMP/WP3/WD(2024)38/en/pdf; BIAC Note on Theories of Harm for Digital Mergers, *supra* note 36; OECD, The Concept of Potential Competition – Note by BIAC, DAF/COMP/WD(2021)27 (June 1, 2021), https://one.oecd.org/document/DAF/COMP/WD(2021)27/en/pdf.

39 OECD Agentic AI Background Note, *supra* note 2, ¶ 110.

40 *Id*. ¶¶ 37, 41, 107.

6.4. Ex Ante Designation of Agentic AI May be Premature

47. The Background Note asks how existing ex ante regimes apply or adapt as agentic AI emerges.[41] As to the designation of agentic AI as a regulated category in its own right, BIAC submits this may be premature.

48. Ex ante regimes operate by designating a service category and attaching obligations to it, and they presuppose settled boundaries, identifiable positions, and a body of experience establishing which conduct predictably harms competition. None of those conditions appear to exist: the Background Note recognizes that the boundary between assistants and agentic systems is becoming increasingly blurred,[42] that market definition remains open,[43] and that no settled assessment of competitive conditions is yet possible.[44] Designation under such conditions may therefore not reflect market realities but may instead fix its definition by administrative act.[45]

6.5. Guidance Before New Substantive Rules

49. Practical guidance may assist businesses on the application of information-exchange rules to agent interactions, the treatment of common providers, relevant attribution factors, preservation of evidence and recognition of governance safeguards. Such guidance should be limited to clarifying existing law, be developed through transparent consultation, and avoid creating new liability standards through informal instruments.

50. Guidance on the preservation of evidence should build on, and remain consistent with, record-keeping and logging obligations that already apply under horizontal and sector-specific frameworks, rather than introduce parallel retention expectations. It should also recognize that the records available to a deployer depend in part on what upstream providers make technically available.

51. Businesses would also appreciate a confirmation that requests for system prompts, configurations, logs, model parameters and training or fine-tuning material in the course of an investigation can involve commercially highly sensitive material and that therefore questions of proportionality, confidentiality, and security deserve particular attention. Information requests should be proportionate to the conduct under investigation, trade secrets and technical material should receive robust protection. Inspections should take account of the use of agentic tools within legal functions, where privilege may attach to inputs and outputs. Requests should also take into account of customer-confidentiality, data-protection, and supervisory-confidentiality obligations that may attach to agent records in regulated sectors. Businesses can be expected to maintain the audit trails and governance records contemplated above only if evidence-preservation expectations are matched by safeguards governing how such material is obtained, stored and used.

41 *Id.* ¶ 113.

42 *Id.* ¶ 12.

43 *Id.* ¶¶ 45-49.

44 *Id.* ¶ 41.

45 Obligations specified against current technical arrangements will also apply to successor architectures for which they were not designed, and ex ante rules, unlike case-by-case enforcement, cannot be adjusted to facts as the facts change.

7. Principles and Recommendations

52. BIAC offers the following principles and recommendations to assist the Committee in considering how competition law and policy should approach agentic AI, so that authorities can address genuine harms while preserving the conditions in which agentic systems compete on the merits, and without discouraging investment, partnerships, and innovation.

- Treat agentic AI as a set of factual capabilities, not as a legal category or independent theory of harm.
- Assess benefits and risks together, including effects on search, switching, entry, buyer power, productivity, differentiation and innovation – gains that expand participation, foster entrants, and accrue across users.
- Protect the conditions for switching and multi-homing by business users, including interoperability and portability, as a priority over regulating agent outputs, while taking due account of (initial) investments in infrastructure and the provision of services.
- Distinguish competition harms from privacy, safety, cybersecurity, consumer-protection, intellectual-property and liability concerns.
- Apply established legal elements and effects-based analysis to coordination, information exchange, unilateral conduct and transactions.
- Reject presumptions based solely on use of AI, common providers, similar outcomes, vertical integration, partnerships or data scale.
- Maintain evidentiary rigor, especially where alleged effects depend on uncertain future market developments.
- Account fully for efficiencies, investment incentives and the role of partnerships in enabling entry, access to inputs and risk sharing.
- Prefer technical learning, monitoring, advocacy and interpretive guidance over premature agent-specific substantive rules and tie obligations to a specific harm rather than just use of AI technology.
- Encourage governance, audit trails, data segregation and proportionate oversight without turning compliance measures into rigid safe harbours or de facto mandates.

8. Conclusion

53. Agentic AI may change how firms and consumers participate in markets. It may reduce transaction costs, strengthen buyer capabilities, facilitate entry, and enable new products. Particular methods of deployments may however also raise legitimate competition concerns. The appropriate response is neither immunity nor presumption, but careful application of established law to concrete facts. A disproportionate response would put those significant efficiency and competitive gains at risk across users, firms, markets, and economies.

54. Competition authorities should remain vigilant to demonstrable harm while resisting the temptation to use antitrust as a catch-all instrument for AI governance. Existing competition law is generally capable of addressing genuine anticompetitive conduct, provided that authorities develop technical understanding and preserve

demanding standards of proof. Non-competition concerns should be addressed through the laws and institutions designed for them.