

ICN Cartels Working Group 2009 – 2010 Work Plan

Subgroup 1: Legal Framework

Aim Of Subgroup

The Legal Framework Subgroup addresses the legal and conceptual challenges of anti-cartel enforcement. The focus of the Subgroup is examining policy-level issues of the institutional and investigative framework for the detection and punishment of hard-core cartel conduct.

Review Of Work During 2008 – 2009

The Legal Framework Subgroup held a series of substantive, experience sharing anti-cartel enforcer calls addressing effective inter-agency cooperation, both at the international and domestic levels. The teleconference series devoted significant discussion to issues that arise with the introduction of criminal sanctions for cartel conduct. These discussions included the benefits of criminal sanctions beyond deterrence, such as the availability of enhanced investigative tools; key issues to consider during the legislative process; building relationships with public prosecutors for enforcement cooperation; interaction with other stakeholders; and ensuring that the possibility of criminal sanctions acts as additional incentive to apply for leniency.

Proposed Work Plan for 2009 – 2010

The subgroup plans to continue the enforcer roundtable discussions, with approximately one call every month or two. The previous calls raised several topics for possible further discussion.

Proposed discussion topics for 2009-2010 may include:

- Considerations in drafting criminal cartel legislation, including distinguishing between anticompetitive conduct that will be subject to either criminal or administrative sanctions and extending criminal liability to corporations as well as individuals
- Leniency for individuals
- Ensuring that the incentives to apply for corporate leniency increase, rather than decrease, after the introduction of criminal enforcement by public prosecutors
- Building relationships with criminal prosecutors to ensure a commitment to effective enforcement
- Explaining the importance of criminal sanctions as a deterrent to the judiciary in the context of criminal antitrust prosecutions
- Additional due process considerations that are inherent to the introduction of criminal sanctions and any related issues that may arise when criminal and administrative regimes seek to cooperate in parallel investigations
- Jurisdictional and fine calculation issues that arise when one or more jurisdictions seek to sanction cartel activity that involves a cartelized product sold in one jurisdiction that is a significant input to a finished product sold in a second jurisdiction.

Subgroup 2 –Enforcement Techniques

Aim Of Subgroup

The Enforcement Techniques Subgroup 2 aims to improve the effectiveness of anti-cartel enforcement by identifying and sharing specific investigative techniques and advancing the educative and information sharing agenda of the International Cartel Workshops.

Review of Work During 2008 - 2009

Subgroup 2 undertook the following projects:

- Cartel Workshop hosted by the Autoridade de Concorrência in Lisbon, Portugal, October 28-30, 2008.
- Updating the Anti-Cartel Enforcement Templates
- Updating the Anti-Cartel Enforcement Manual Chapter on Searches, Raids and Inspections Chapter
- Updating the Anti-Cartel Enforcement Manual Chapter on Leniency

Proposed Work plan for 2009-2010

2009 Cartel Workshop (Cairo, Egypt):

- Finalize Agenda;
- Coordinate preparations with Host;
- Provide oversight and feedback to the Host;
- Identify host of 2010 Cartel Workshop; and
- Planning for 2010 Cartel Workshop.

Updating of Anti-Cartel Enforcement Manual:

The ICN Anti-Cartel Enforcement Manual is a “living” document that may evolve as new technologies and approaches are developed and implemented. The year 2009-2010 is the year that the Enforcement Techniques Subgroup 2 will continue to revisit the current Chapters to update them to reflect today’s realities. The subgroup will update the following chapters:

- Chapter 3: Digital Evidence Gathering
- Chapter 4: Case Initiation

Anti-Cartel Enforcement Templates:

- Coordinate completion of the Anti-Cartel Enforcement Templates by additional ICN Members

2009-2010 WORKPLAN: APPENDIX

The 2009 ICN Cartel Workshop

The Egyptian Competition Authority (ECA) invites you to reflect on the past, learn from the present and prepare for the future during the 2009 ICN Cartel Workshop. The Workshop will take place in Cairo from October 27th to 29th, 2009.

This year marks the tenth anniversary of International Cartel Workshops since the first Workshop was held in 1999, and it will be the sixth annual workshop hosted under the auspices of the ICN. Over the course of three days, Workshop participants will reflect on what can be learned from the last decade of anti-cartel enforcement, address current challenges and tackle emerging issues in cartel enforcement.

Beginning on Day 1 of the Workshop, participants will examine lessons learned from past cartel investigations and will analyze a case study of successful investigative strategies and techniques. There will also be discussion of cartel detection both with and without the use of leniency programs. On Day 2, participants will be treated to a hypothetical case involving the use of formal powers such as searches, raids and inspections. Further case studies will be devoted to different types of cartels. On Day 3, participants will explore emerging issues in cartel enforcement including, digital evidence gathering, outreach activities and private actions.

As in previous years, selected topics will mirror the Cartel Working Group 2008-2009 Work Plan and products developed by Subgroups 1 and 2, including the updated Anti-cartel Enforcement Manual Chapters on leniency and searches, raids and inspections.

There is a general view that the contributions of (NGAs) in previous workshops were interesting and insightful and that NGAs may continue to play a role in selected sessions of the 2009 ICN Cartel Workshop.

The ECA invites all ICN members to take part in the workshop and share their enforcement experiences. We look forward to welcoming you to Cairo in October 2009.