

The future of the ICN in its second decade

Final Report

Presented at the ICN Steering Group Meeting

15 June 2016

Paris

Table of contents

| | |
|--|----|
| Introduction | 3 |
| 1 Second Decade Goals and Progress..... | 4 |
| 1.1 What the ICN does | 4 |
| 1.2 How the ICN does it | 6 |
| 2 Survey of ICN Members | 9 |
| 2.1 The survey | 9 |
| 2.2 Agency characteristics | 9 |
| 2.3 Agency participation | 12 |
| 2.4 ICN work products..... | 15 |
| 2.5 Implementation..... | 18 |
| 2.6 Looking at the future..... | 21 |
| 2.7 Summary..... | 24 |
| 3 Survey of NGAs..... | 26 |
| 3.1 The survey | 26 |
| 3.2 NGAs characteristics..... | 27 |
| 3.3 NGAs participation | 29 |
| 3.4 ICN work products..... | 34 |
| 3.5 Implementation..... | 36 |
| 3.6 Looking toward the future | 39 |
| 3.7 Summary..... | 40 |
| 4 Summary of the suggestions from ICN members and NGAs | 42 |
| 4.1 Suggestions on goals and process..... | 42 |
| 4.2 Suggestion on topics and type of work products..... | 46 |
| 4.3 Existing work | 46 |
| 5 Response to feedback..... | 48 |
| 5.1 Discussions in Washington and Singapore..... | 48 |
| 5.2 Response to feedback of ICN working groups..... | 56 |
| Conclusions..... | 64 |
| Annex 1: List of respondents – ICN members survey | 67 |
| Annex 2: List of topics suggested by ICN members..... | 69 |
| Annex 3: List of respondents – NGAs survey | 71 |
| Annex 4: List of topics suggested by NGAs | 74 |
| Annex 5: Suggested improvements in the ICN’s processes – Examples of existing products and initiatives | 76 |
| Annex 6: Suggested topics – Examples of existing products and initiatives..... | 83 |

Introduction

The International Competition Network (ICN) was founded in October 2001 as a consensus-based, informal network of antitrust agencies that addresses enforcement and policy issues of common interest and formulates proposals for procedural and substantive convergence. The ICN's membership has since grown to 132 competition agencies from 120 jurisdictions.

In 2010, ICN Chair John Fingleton called upon members and non-governmental advisers (NGAs) to take stock of ICN's accomplishments and identify goals for its future. The Steering Group launched a network-wide consultation to examine the ICN's strengths and improvements needed. In May 2011, the ICN presented its Vision for its Second Decade (Second Decade Report), addressing both what the ICN does (high level goals and future work) and how it does it (participation, working procedures, and governance). In 2015, ICN Chair Andreas Mundt introduced an initiative to renew the network's Second Decade goals, track progress, and offer suggestions for further improvements to ICN's work and operations in line with the Second Decade recommendations. ICN member agencies and NGAs were invited to complete surveys addressing their participation, views on work product and implementation, and ideas for the ICN's future. The Second Decade review was also the topic of a roundtable discussion on April 5, 2016 in Washington D.C. and of a plenary and a breakout session at the ICN Annual conference 2016 in Singapore.

The purpose of this document is to report the results of those consultations and inform subsequent network discussions and decisions on achieving the ICN's Second Decade agenda over the next five years. The first section of this report will examine the progress that the ICN has made since the Second Decade Report. The second and third sections present the results of the 2015-2016 member and NGA surveys, respectively. The fourth section presents a summary of the suggestions advanced by agencies and NGAs and sets the basis for the discussion on how to build on the results of the survey to identify scope for future work. The fifth section of the report includes the summary of the discussions on the Second Decade review that took place in Washington D.C. and at the 2016 ICN Annual Conference as well as the response of each working group to the feedback of the survey.

1 Second Decade Goals and Progress

1.1 What the ICN does

The Second Decade Report identified four high-level goals for the ICN's work during its second decade:

- i. encourage the dissemination of competition experience and best practices;
- ii. formulate proposals for procedural and substantive convergence through a results-oriented agenda and structure;
- iii. support competition advocacy; and
- iv. facilitate effective international cooperation.

The ICN has made significant progress towards each of its second decade goals, as described below.

i. Dissemination of competition experience and best practices

The ICN provides a forum for competition agencies to work together, exchange experiences, and develop a deeper understanding of each other's policies, procedures, and analytical approaches. This experience-sharing is a step on the path to convergence.

- Each working group organizes workshops that include experiencing sharing components.
- Each working group organizes experience-sharing teleseminars.
- The Agency Effectiveness Working Group (AEWG), the Cartel Working Group (CWG), the Merger Working Group (MWG), and the Unilateral Conduct Working Group (UCWG) each have a "workbook" or "manual" aimed at identifying and sharing common agency practices. Additions to this type of work since 2011 include:

AEWG

- Knowledge Management
- Human Resources Management
- Competition Agency Ethics
- Competition Agency Evaluation

CWG

- Cartel Awareness, Outreach & Compliance
- Relationships between Competition Agencies & Public Procurement Bodies

MWG

- Role of Economists and Economic Evidence in Merger Analysis
- Objectives of Unilateral Conduct Laws

UCWG

- Predatory Pricing Analysis
 - Exclusive Dealing/Single Branding
 - Tying and Bundling
- The ICN's Training on Demand project has developed over 20 online training videos from competition experts on a range of competition law, policy and enforcement techniques, including highlighting ICN work product.

ii. Proposals for procedural and substantive convergence

In 2011, and again in 2016, the feedback from members and NGAs showed strong support for ICN's mission to promote convergence, particularly through the development of Recommended Practices (RPs) and other guidance. ICN's RPs are the most often cited answer by members when asked to name the ICN's main achievements.

Since 2011, the ICN has developed:

- Recommended Practices on Competition Assessment
- Recommended Practices for Predatory Pricing Analysis Pursuant to Unilateral Conduct Laws
- ICN Guidance on Investigative Process

iii. Supporting competition advocacy

Competition advocacy is an important means to support enforcement efforts to tackle private anti-competitive behavior, address public restrictions to competition and explain how policy goals can be improved by broader use of competition principles. The ICN's Advocacy Working Group work aims to improve the effectiveness of ICN

members' domestic efforts to increase awareness of competition principles and promote the development of a competition culture.

Since 2011, the Advocacy Working Group has:

- launched the Benefits Platform, a web-based toolbox providing knowledge, strategies and arguments for explaining the benefits of competition to various stakeholders;
- produced a report on Competition Culture;
- complemented the Recommended Practices on Competition Assessment, with an overview of Framework of Competition Assessment Regimes;
- updated and expanded its online Market Studies Information Store.

iv. Facilitating effective international cooperation

The ICN's mission statement includes a commitment to "seek to facilitate effective international cooperation." Cooperation helps agencies address restrictions on competition that have cross-border effects. ICN facilitates cooperation in a number of ways, including the agency-to-agency relationships fostered by joint work within the network. Since 2011, the ICN has produced the following work related to enforcement cooperation:

- Practical Guide to International Enforcement Cooperation in Mergers
- International Cooperation and Information Sharing in cartel investigations
- Waivers of Confidentiality in Cartel Investigations
- Charts Summarizing Information Sharing Mechanisms in Cartel investigations
- Framework for Cooperation in merger review
- Framework for Cooperation in cartel enforcement
- ICN Report on OECD/ICN Questionnaire on International Enforcement Cooperation

1.2 How the ICN does it

In his Vision Statement in 2013, ICN Chair Mundt has emphasized the values of focus, implementation, and inclusiveness for the ICN's operations. The ICN's virtual model welcomes and relies upon participation from small and larger agencies, young and mature ones, as well as Non-Governmental Advisors (NGAs). Specific projects

are identified in annual work plans; work is informed by experience sharing, and final products are the result of consensus building. The ICN does not exercise any rule-making function – individual agencies decide for themselves whether to “opt in” to the ICN’s recommendations or follow the approaches outlined in its work.

The 2011 report contains several suggestions for improvements to ICN operations, including communication tools, participation, and coordination with other organizations. Here is how the ICN has addressed these areas in the last five years:

i. Reevaluate communication tools

- In 2015-2016 the ICN Chair initiated a regular newsletter for network updates.
- In 2015-2016 the ICN Chair initiated a “Town Hall” discussion series for all members and NGAs on topics at the intersection of competition and other policies.
- In 2016 the ICN will undertake a review and upgrade of its primary communication and institutional memory tool: its website.

ii. Encourage participation and inclusiveness

- The ICN implemented a working group leadership “rotation” plan that includes clear criteria for more involvement by a broader range of members. A number of members such as Finland, India, Norway, and South Africa have become first-time WG co-chairs since 2011;
- the ICN established a welcome track for new members;
- Working Groups, such as the MWG, have a work stream dedicated to “outreach” to new members as part of their annual planning;
- the Vice Chair for Implementation started an initiative to collect successful implementation stories from across the network to inspire others to consider implementation and to demonstrate the real impact of ICN’s work; and
- more ICN content has been translated into other languages such as Spanish and French.

iii. Coordination with other international networks

- The ICN established a liaison with the OECD to track potential work overlaps and opportunities to cooperate: e.g., in 2012 the ICN and OECD issued a joint survey on enforcement cooperation.
- The AWG has cooperated with the World Bank for a Competition Advocacy contest, highlighting and disseminating examples of effective advocacy from around the world.
- In 2015 and 2016, the ICN partnered with the African Competition Forum for events, such as an AEWG workshop held in Botswana that highlighted ICN work.

2 Survey of ICN Members

2.1 The survey

The survey of ICN members was launched in April 2015. **75 agencies participated in the survey.** A complete list of all participants can be found in [Annex 1](#).

In their responses, the ICN members highlight the value of the ICN as a key international forum. They emphasize the network's strengths and provide valuable input for further improvement. This report presents the results of the survey. The main takeaways of the survey are included in the summary and in the ideas for the ICN future at the end of the section.

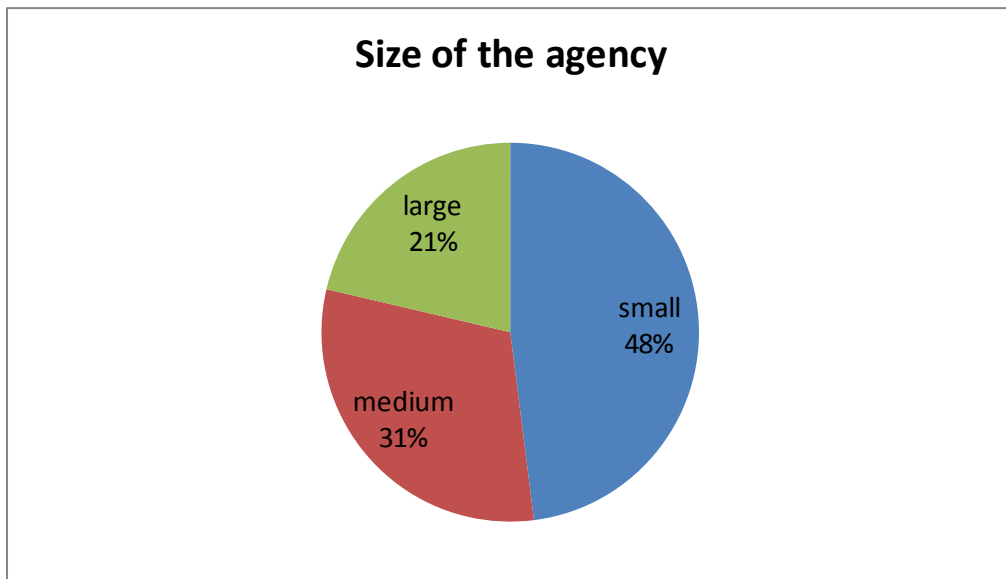
The questionnaire was structured as follows. The first part collected descriptive information about the responding agencies: geographic region, dimension, competencies, year founded and year of joining the ICN (section II). The second part explored the participation of the agencies in the ICN, more specifically the activities of the ICN in which the agencies engage, as well as the barriers to participation (section III). In the third part, agencies were asked to indicate which of the ICN work products they found more useful and for any suggestions for specific types of work products or topics that they would like the ICN to address (section VI). The fourth part investigated implementation at the national and agency levels, in particular, changes made based on ICN work products and RPs (section V). Finally, agencies were invited to share ideas on how to better promote awareness, use, and implementation of ICN work products and express their desires for the ICN's future goals (section VI).

2.2 Agency characteristics

Size

About half of the responding agencies (36 agencies, 48% of the respondents) identified themselves as "small" authorities, defined as having less than 50 employees; one-third (23 agencies, 31% of the respondents) are medium ones, i.e. between 50 and 200 employees; and 16 agencies (21% of the respondents) are large agencies, i.e. more than 200 employees.

Figure 1: Size of the agencies

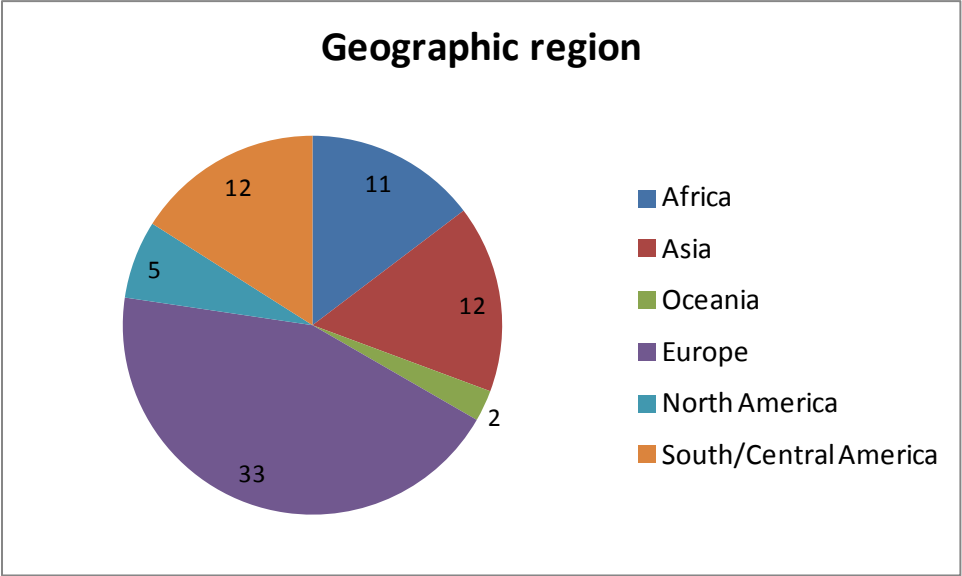


Geographic region

The majority of the respondents are European agencies. This is not surprising given that in Europe there are many more agencies compared to the other continents. North America, with five answers, is fully represented.¹ For details of the responding jurisdictions, see [Annex 1](#).

¹¹ For the purposes of this report, Central America was combined with South America.

Figure 2: Geographic region of the agencies



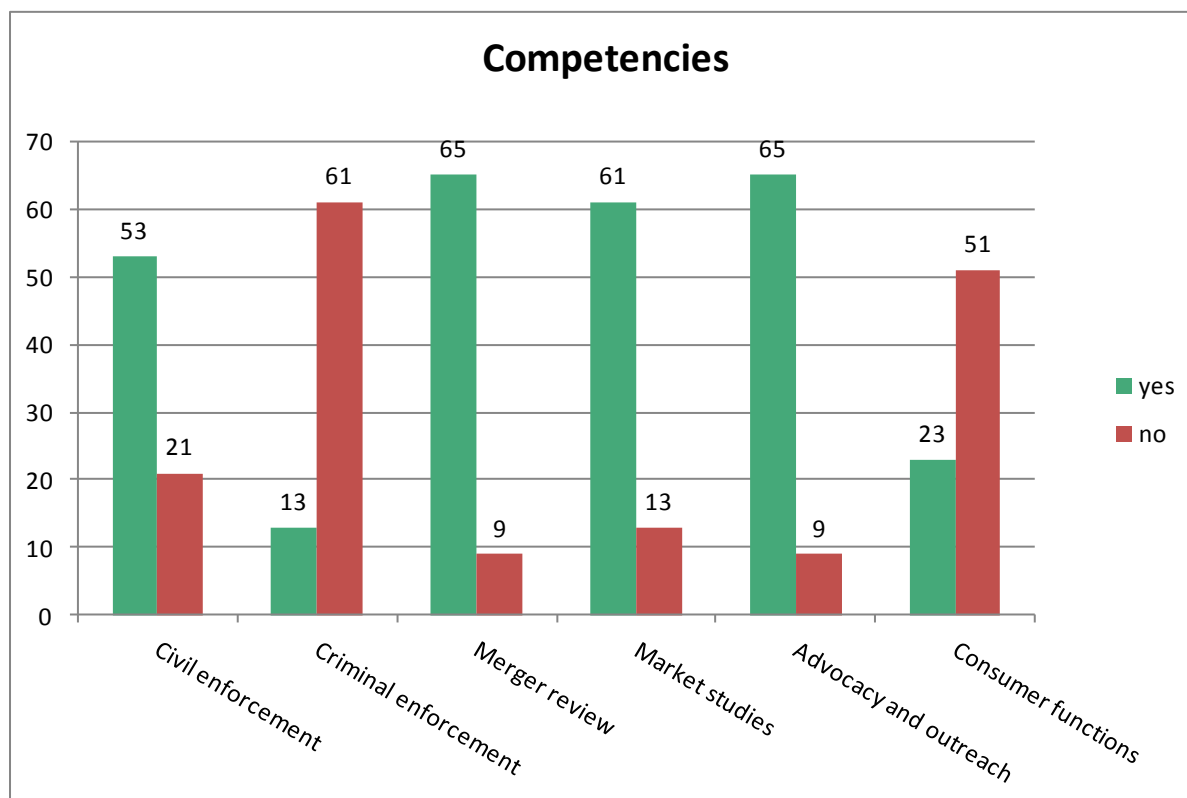
Mature and younger agencies

Respondents to the survey included agencies from jurisdictions with a long tradition in competition law enforcement and founding members of the ICN (e.g., Australia, Canada, European Union, France, Germany, Israel, Italy, Japan, Korea, Mexico, South Africa, United Kingdom, United States) as well as agencies that joined the ICN in the last 3 years (e.g., Dominican Republic, Ecuador, Georgia, Kuwait, Malawi, Kenya, Hong Kong, Saudi Arabia).

Competencies

Most responding agencies are in charge of merger review and engage in advocacy. A large number of these agencies can conduct market studies. Approximately one third of the respondents are also consumer bodies. Only a few agencies can impose criminal sanctions.

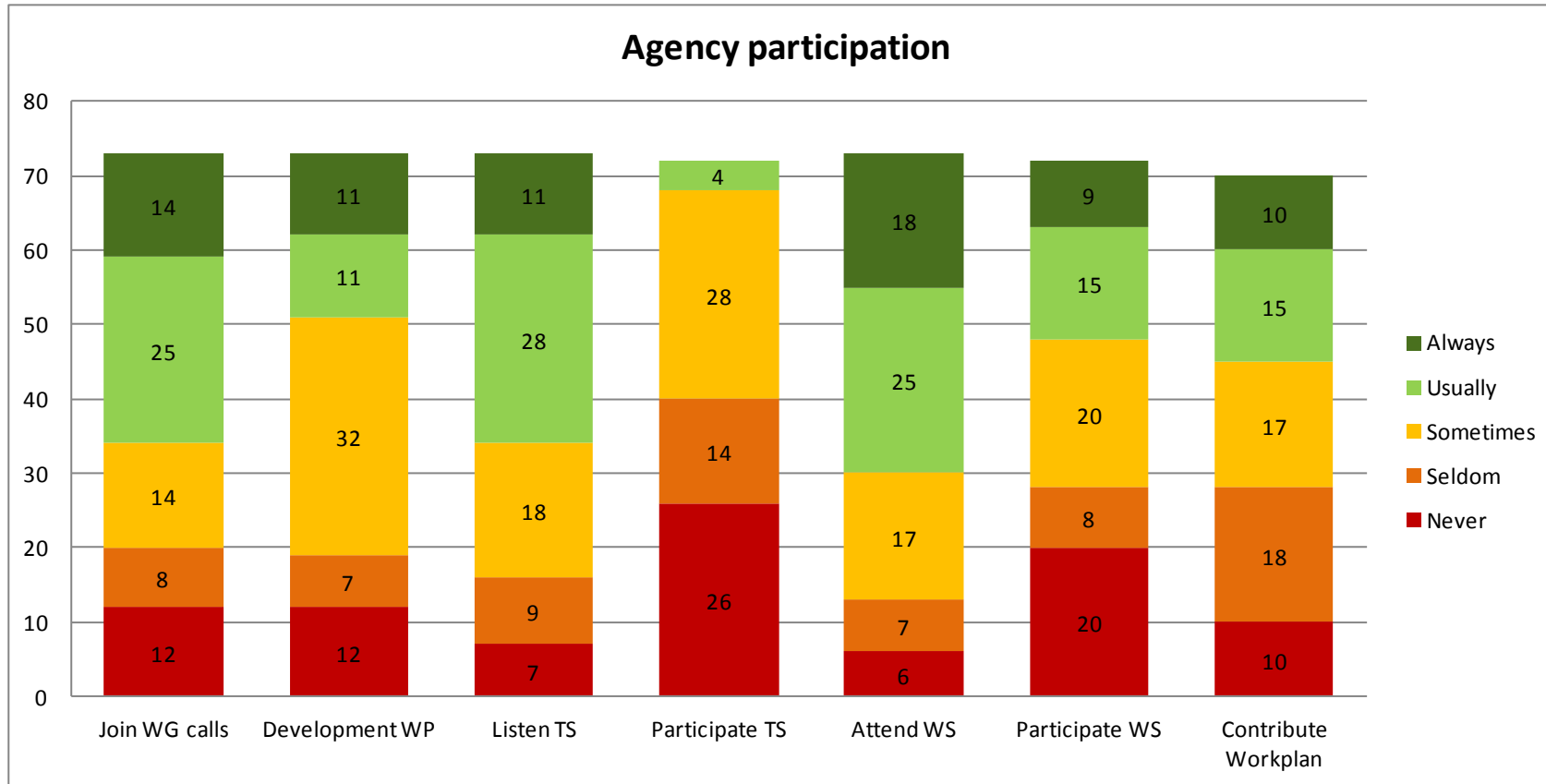
Figure 3: Competencies of the agencies



2.3 Agency participation

Many members regularly join working group calls, listen to teleseminars and attend workshops. Active participation in teleseminars and workshops is, on the contrary, less frequent.

Figure 4: Participation of agencies in ICN activities

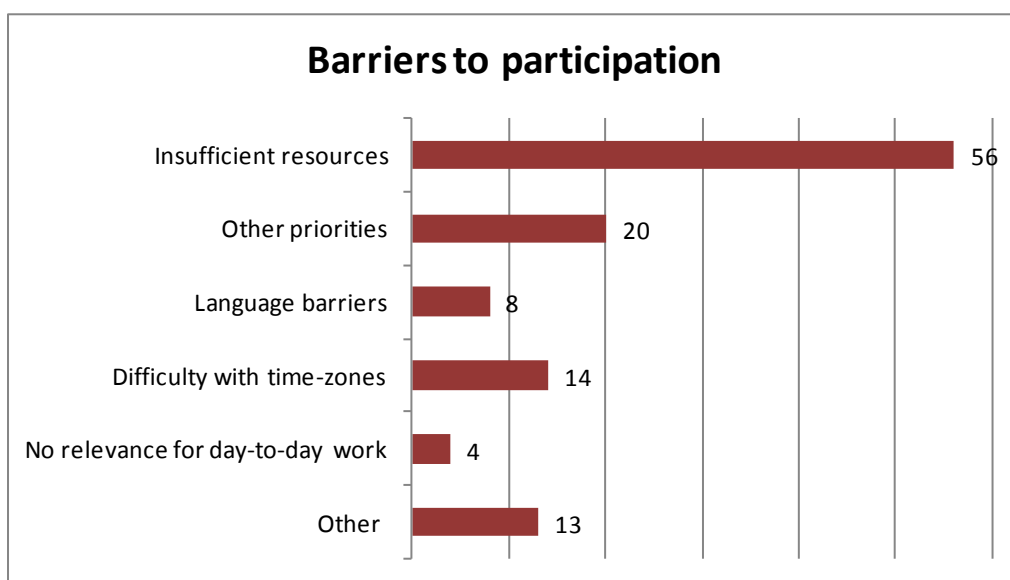


WG= Working Groups
 WP= Work Products
 WS= Workshops
 TS= Teleseminars

Barriers to agency participation

The lack of sufficient resources that members are able to devote to the ICN and the demands of other (unidentified) priorities were the top identified barriers to participation in the ICN. Approximately one-fifth of respondents also indicated that time-zones make it difficult to take part in calls and seminars. The agencies that selected the option “other reasons” specified that lack of resources in terms of money, staff and time is a barrier to participation, but also the difficulty of engaging case handlers in the ICN activities and of finding expert speakers for the teleseminars.

Figure 5: Barriers to participation



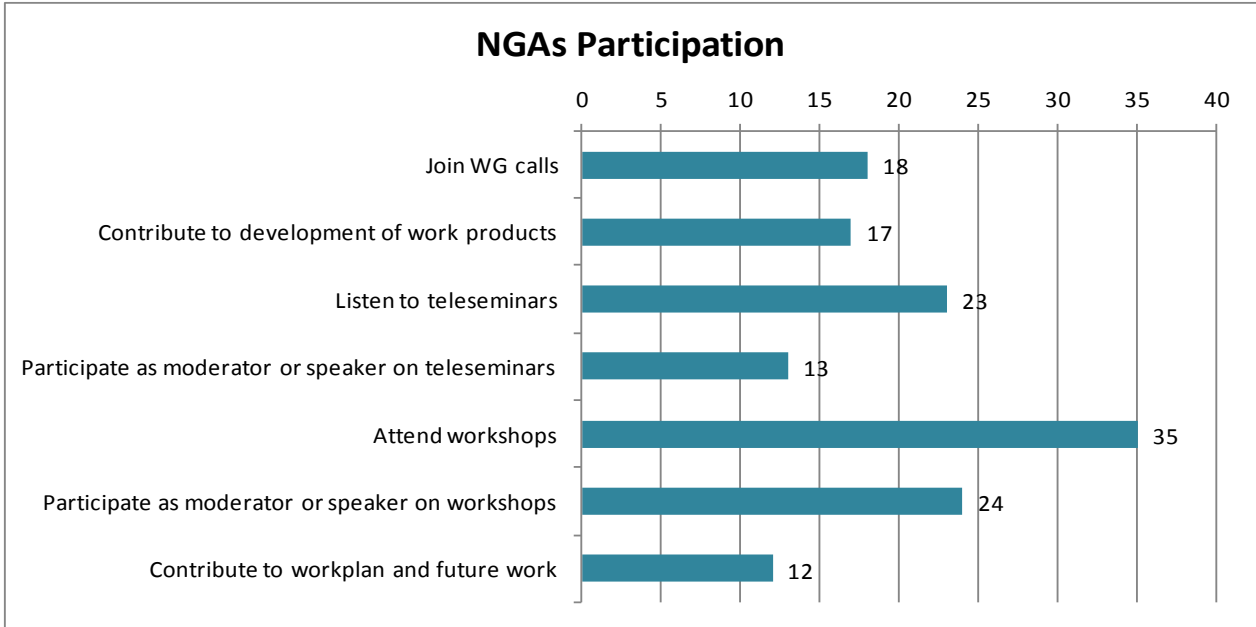
NGAs participation

A unique feature of the ICN is that agencies work closely with Non-Governmental Advisors (**NGAs**) in the field of competition, including private sector lawyers and economists, members of the business community, academics, representatives of international organizations, and industry and consumer groups. This structure promotes the interplay between the public and private sectors and helps to ensure that work products benefit from the input of a wide spectrum of stakeholders. In several jurisdictions, a number of NGAs actively participate in the various working group projects (approximately 60 in the USA, 30 in Brazil, 15 in Canada and 10-15 in Australia). Also in France, Germany, Italy, Netherlands, New Zealand, EU, UK and

Sweden, NGAs regularly participate in the activities of the ICN. However, the survey results illustrate that there is still room for improvement. According to several agencies, their NGAs participate only occasionally in the activities of the ICN, mostly by attending the ICN annual conference and sometimes the WG workshops.²

Attendance at the working groups’ workshops is the primary form of NGA participation, followed by active contribution to workshops and attendance on teleseminars. In a number of jurisdictions NGAs also join working group calls and are involved in the development of specific work products. Sometimes NGAs take active part in teleseminars or contribute to the development of ICN work-plans or future topics.

Figure 6: Participation of Non-Governmental Agencies



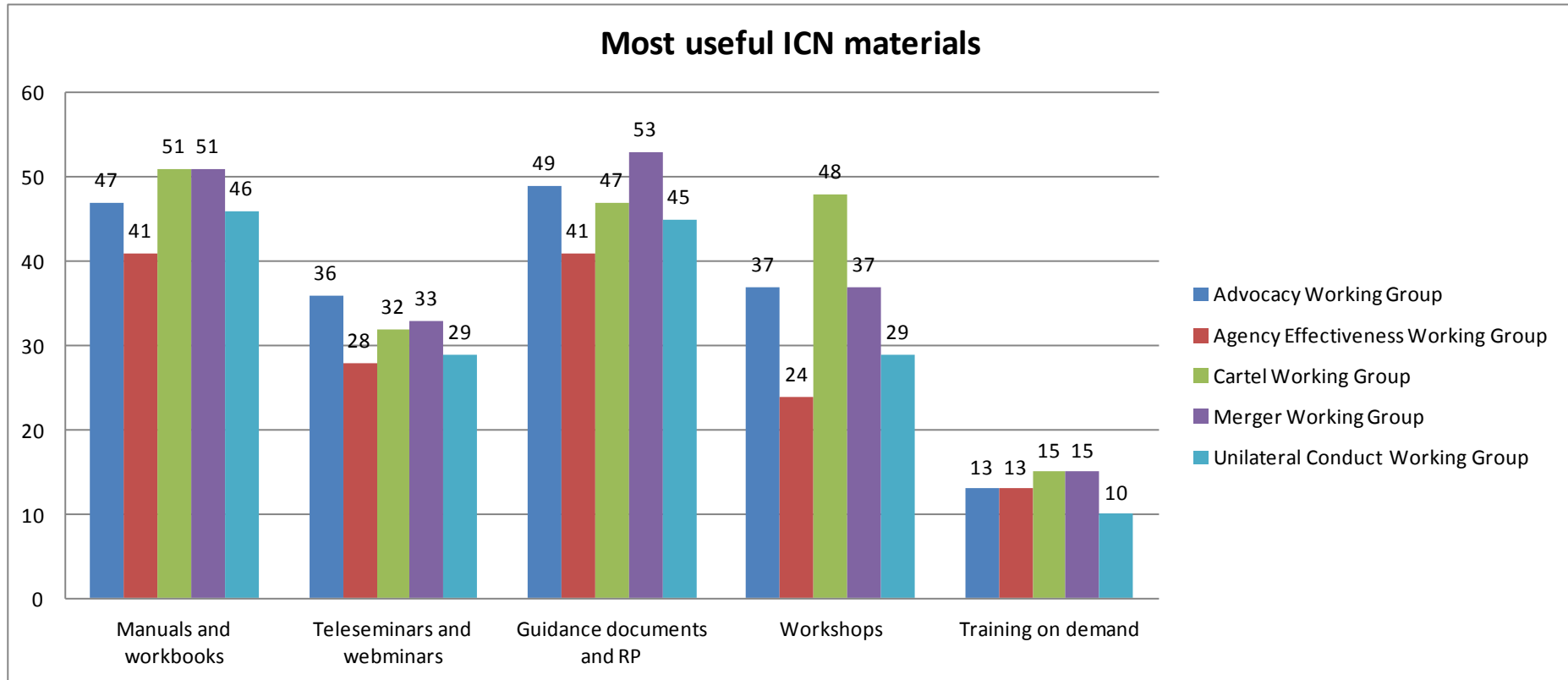
2.4 ICN work products

ICN materials that have been most useful to the agencies vary depending on the working group. In general, however, written work products (guidance documents, manual and workbooks) prove to be particularly useful across working groups. Also workshops and interactive products like teleseminars have been praised by several authorities. A number of agencies mentioned the usefulness of the modules

² Approximately one third of the respondents expressly said that they do not have NGAs. Suggestions on how to increase NGAs participation will be provided by the NGAs survey results.

produced by the ICN Training on Demand project and some would like this work to be further developed.

Figure 7: Use of ICN materials



The suggestions on specific **topics that the ICN should address** are very diverse. A full list of all topics that were mentioned by the responding agencies can be found in [Annex 2](#). The top mentioned topic was the interaction of competition and intellectual property rights.³ Among the topics that were mentioned by more than one agency are: vertical restraints, non-hard core horizontal agreements and joint ventures, two-sided and multi-sided markets, remedies in mergers, agreements and abuse of dominance cases, enhanced cooperation techniques in anti-cartel enforcement, ex-post assessment of the effectiveness of advocacy efforts, and how to deal with digital evidence. Several agencies suggested more guidance and practical tools for international cooperation and coordination, in merger and cartel investigations. Some agencies would like more guidance on how to deal with sector regulators and, more specifically, with bodies that have concurrent jurisdiction over competition matters.

About suggestions on **types of work products**, a number of agencies confirm that workbooks, guidance documents and Recommended Practices in particular proved to be very helpful in practical aspects of everyday work and hope that the development of such guidance work continues. Several agencies requested more opportunities for experience sharing. Some agencies suggest putting even more emphasis on workshops, teleseminars and webinars, with accessibility to all regions. Other suggestions include introducing up-to-date databases on the ICN website of merger cases (classified by sector), market studies and case law in general, if possible with links and contact details, as well as successful advocacy stories. Young agencies requested more products and trainings targeted at young agencies and/or new staff, as well as more translations of work products.

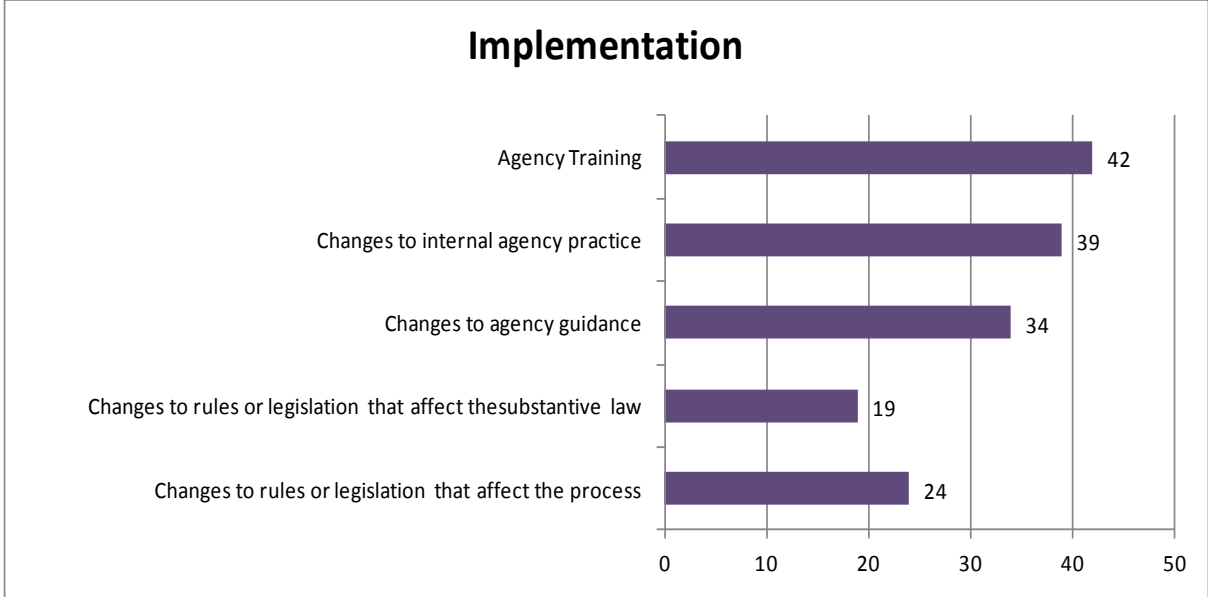
2.5 Implementation

More than half of the responding agencies use **ICN work products** (including teleseminars and webseminars) for training purposes. More than half of the respondents also have used ICN guidance documents to develop or revise internal procedures, guidelines and best practices, and are cited in the internal documents of

³ Six agencies suggested intellectual property rights. The other topics mentioned by more than one agency were proposed 2-3 times.

the agencies accordingly.⁴ ICN workshops and teleseminars are considered a useful opportunity for the staff to gain additional knowledge on specific topics, discuss real cases and exchange experiences. Attendance at the ICN events has been very useful for the agencies' delegates in building relationships with members of other agencies. Agencies frequently refer to ICN work products when engaging in competition advocacy. Some agencies report that ICN products were an important source of information and inspiration to support, advance, or improve proposals to review or amend national competition laws. In the past this was especially the case for merger control rules (e.g. introduction or amendment of the thresholds), but also cartel investigations (e.g. setting of fines) and leniency programs.

Figure 8: Implementation of ICN work products



ICN members have several ideas on how to **better promote awareness, use, and implementation of ICN work products**. Many respondents share the view that a better organised and more user-friendly **ICN website** would improve awareness about and access to ICN work products. This would benefit in particular new agencies seeking to become familiar with the broad range of ICN work products that exist and which are of most use to them. Agencies specify that all ICN work products should be easy to find on the website, that final versions and updates should be

⁴ The Anti-Cartel Enforcement Manual, the Recommended Practices for Merger Analysis and the Merger Guidelines Workbook were mentioned by several respondents as examples of ICN work products that have been used by the agency.

clearly marked and new products should contain cross-references to pre-existing materials. A couple of agencies suggest an updated library of ICN work products.

Some agencies state that it would be useful to **circulate or re-circulate ICN work products on a regular basis** in order to make sure they are not forgotten. Another suggestion is to circulate new ICN work products and updates directly within the relevant divisions of the agencies (i.e. not only sending them to the international divisions).

According to some respondents, member agencies could help **promote ICN products** by placing them on their website, but also by mentioning them at public (non-ICN) events where they intervene as speakers / moderators. It was suggested that implementation also would improve if agencies regularly encouraged staff to participate in ICN discussions, teleseminars and workshops. In order for work products to be useful for more mature agencies, the ICN should encourage case handlers to discuss lessons learned from challenging cases or emerging issues.

A number of agencies stress the importance of **sharing experiences on specific cases and on successful examples of implementation** of ICN work products. This would be of more practical relevance in daily work. Several younger agencies expressed a desire for support by means of visits and trainings by older jurisdictions, but also point of contacts for assistance and inquiries. Some agencies noted the value of promoting regional cooperation, for example by organising regional teleseminars or meetings.

Some agencies mention that it would be useful to set up a comprehensive database of work products as well as country-specific information. Another suggestion is to establish a platform where ICN members could upload (links to) their press releases or decisions.

A few agencies suggest circulating a **newsletter** or bulletin with news and developments in the area of competition law enforcement (including successful implementation stories related to ICN work products), regular updates of published materials, and WG calls and webseminars.

Some authorities submit that having more work products translated in to other **languages** would be helpful.

Having more **financial support** to participate at the ICN events would also facilitate awareness and implementation.

Cooperation with other international organizations could also provide opportunities to promote and reinforce ICN work products within these organizations, fostering implementation. NGAs, business community (the International Chamber of Commerce (ICC) and the Business Industry Advisory Committee to the OECD BIAC), as well as international organisations (UNCTAD and OECD) could also contribute to raising awareness about ICN work products.

2.6 Looking at the future

The responses confirm that the activity of the ICN is of great value to its member agencies. Members perceive the network as an important tool to advocate for competition policy in national governments and promote the competition culture around the world. Members hope that the ICN will maintain and strengthen its role as a key international forum in the field of competition enforcement based on experience exchange and strong cooperation among its members. Compared to other international organisations, the ICN is an open forum, where all members and various stakeholders, NGAs, and representatives of the business and professionals community can meet and share views. The ICN should therefore use this comparative advantage to develop differentiated products with widespread member input and informed by perspectives from its stakeholders.

Desired goals in five year's time

As far as goals to be achieved in the near future, several agencies indicated that **effective cooperation, inclusiveness** and **convergence** should remain the key priorities of the ICN. The development of Recommended Practices is considered to help convergence of competition laws and policies in both procedural and substantive aspects. Where convergence is not likely, the ICN could continue to explore the ways in which 'informed divergence' can be used to minimise problems.

Many agencies also feel that the ICN should encourage more **active participation of younger agencies** in the ICN in order to widen the perspectives informing ICN work and broaden its reach. The ICN should ensure that younger agencies have the opportunity to effectively contribute to the work products, participate in the teleseminars, but also, if possible, take leadership roles within working groups and project teams. More engagement from younger agencies can help ensure that the ICN addresses the needs of all its members, solicit open and candid discussion at seminars and promote convergence. Given that the ICN work is consensus-based, contributions by a larger number of diversified members will only continue to strengthen the network.

Several agencies wish for more informal **cooperation between younger and more experienced agencies**, but also more formalised cooperation via "Twinning Programmes" and/or a greater use of ICN Training On-Demand modules for younger agencies. Suggestions on the methods to improve cooperation range from information exchange to ad-hoc trainings/seminars at the premises of the younger agencies. A number of agencies would like to see more cooperation and interaction in all member regions, for example via teleseminars and meetings in order for agencies to share experiences and discuss common challenges, as well as breakout sessions at the ICN annual conference.

Several agencies agree that the ICN should put more effort in promoting **greater awareness and use by members of ICN work products**. Some agencies suggest that it would be useful to better understand if and how ICN work products are used, for example via self-assessments and/or the collection of successful implementation stories.

A number of agencies suggest that the ICN should **broaden the topics** it deals with to include specific issues which are not currently covered by existing working groups (vertical restraints were mentioned more than once; other suggestions were private enforcement, cooperation with judges, innovative technologies) and/or issues in specific sectors (for example pharmacy, telecom, energy). Another suggestion is to focus the work of each working group on one or two relevant projects per year while spending more time in implementing and updating existing work products.

Some agencies mention that **good interaction between the ICN and international organisations** like OECD, UNCTAD, and the World Bank is important to provide the best value for the agencies that participate in several networks/organisations.

Compared to other international organisations, the **flexibility** of the ICN is considered a very valuable feature. It was pointed out that the ICN should keep working groups as flexible instruments which can be created and/ or replaced to respond to its members' changing needs and enhance the ICN's ability to prioritize different work at different times.

Tools to increase agency participation

ICN members list several concrete ideas on **how to facilitate participation in the ICN**. As financial constraints are the main barrier to participation, members suggest a number of ways to **reduce costs**. One suggestion is consideration of geography and timing when deciding the venues for the workshops, taking into account the diversity of members' location, as well as a better distribution of workshops throughout the year. Other suggestions are to limit the number of workshops per year, for example by holding workshops on a biannual basis; organising "shared workshops" (i.e. combining two topics); concentrating several events in one location; and organising joint events with the OECD, other international organizations, or members such as the European Commission. Another suggestion would be to organise teleseminars and meetings in all regions for members to have the opportunity to connect with or attend nearby events. Another way to reduce the burden for agencies in terms of time and staff could be an increased involvement of NGAs in the drafting and commenting of work products. A couple of agencies point out that financial constraints are a problem not only for jurisdictions that are currently eligible for funding, but also for other agencies with limited budgets.

Agencies of the Asian-Pacific region indicate that the **time-unfriendliness of many calls** and seminars is a significant barrier to their participation. A proposal was to make available recorded seminars on the ICN website so that they could be accessible anytime. Again, a more rational organisation of the **ICN website** so that ICN work products are easy to trace, as well as translations, are deemed to facilitate access to ICN activities and work products.

Several younger agencies identified a need for more **training possibilities** for their staff and suggest the possibility of internships/exchanges in/with more experienced agencies.

2.7 Summary

Members acknowledge the positive impact that the ICN had so far in terms of international cooperation and convergence. ICN materials prove to be of great value to all members. They guide agencies in daily work but also inspire changes in laws and procedures. ICN workshops were commonly cited as having merit. The ICN's consensus building approach to producing work based on members' best practices continues to have clear support from the ICN membership.

ICN members advance several useful suggestions on how to improve the workings of the ICN. Proposals are diverse. However, some common points can be identified.

Many respondents agree that **participation of younger agencies** can be further encouraged and improved. Younger agencies should be more involved in the activities of the ICN at all levels. This is not an easy goal to achieve, given the lack of resources and other demands that constrain the participation of these agencies. A more active involvement of smaller and younger agencies, however, would help convergence by reinforcing that ICN work products reflect the needs of all ICN members and making the work more widely known and used. Some younger agencies mentioned the desire for financial support to participate in ICN events, trainings by/from more experienced agencies and databases of case law to which they could source information.

As mentioned above, the ICN's comparative advantage is its broad reach to agencies around the world and all perspectives in the competition community. ICN's accessibility to all can be strengthened through more **interaction at regional level**, for example by cooperating with other international or regional organisations, by organising teleseminars focussing on regional issues or by facilitating cooperation on regional basis, i.e. by giving opportunities for networking and discussions at ICN events. Interaction with regional networks and at regional level may have advantages: it can broaden the reach and awareness of ICN work and promote convergence; can encourage members from the same region, as well as members

from different regions, to share common experiences with ICN work and discuss challenges; it can decrease or spread out costs of participation; and it can inform or inspire the discussion of ICN work and topics in regional initiatives.

The majority of the respondents agree upon the necessity of a better structured and updated **website**. Products should be more quickly and easily accessible, last versions/new documents clearly identifiable, lists of members with contact details updated. A better organised website would foster awareness of and accessibility to ICN work products but also better “advertise” the activity of the ICN.

More effort should be done to ensure **implementation** of ICN work products. Agencies could support implementation by promoting ICN work products at external events, adding links to the ICN materials in their national websites, circulating work products to the relevant divisions. Additional and improved feedback on how and to which extent ICN products are implemented would also be informative.

3 Survey of NGAs

3.1 The survey

The survey of NGAs was launched in July 2015. Several member agencies and working groups encouraged their NGAs to participate in the survey by sending personal emails and forwarding the questionnaire once more to their NGAs.

62 NGAs participated in the survey. In some jurisdictions NGAs were particularly responsive, partly due to the fact that many NGAs are involved in the ICN in those jurisdictions. A list of all participants can be found in [Annex 3](#).

In their responses, the NGAs praise the excellent work of the ICN in promoting competition culture around the world and providing valuable input for further improvement. As it was done for the ICN members' survey report, this draft report presents the results of the NGA-survey without commenting on the content of the replies and proposals. The main takeaways of the survey are included in the summary and in the ideas for the ICN future at the end of the section.

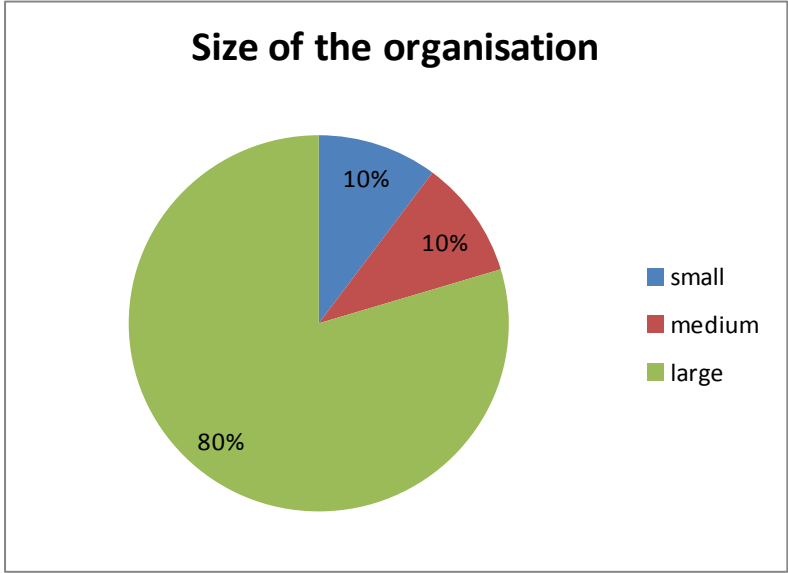
The questionnaire for NGAs was structured as follows: the first part collected descriptive information about the responding NGAs: geographic region, size of the organisation, category (lawyer, economist, in-house attorney etc) and years of involvement in the ICN (section II). The second part sought information about the participation of the NGAs in the ICN, including attendance at the annual conference, as well as the barriers to participation. NGAs were also asked about ideas on how to facilitate participation of NGAs in the ICN activities (section III). In the third part NGAs were asked to indicate which of the ICN work products they found particularly useful and whether they have any suggestions for specific type of work products or topics that they would like the ICN to address (section IV). The fourth part investigated implementation at a national level, both in terms of changes made based on ICN work products that the NGAs were aware of and in terms of use of ICN work products by them. NGAs were also invited to express ideas on how to better promote awareness, use, and implementation of ICN work products within their jurisdiction (section V). Finally, NGAs could suggest ideas for the future of the ICN (section VI).

3.2 NGAs characteristics

Size

Most NGAs that actively participate in the activities of the ICN are members of large organisations. 47 of the NGAs who participated in the survey belong to organisations with more than 200 employees. Twelve participants belong to small and twelve to medium law firms or economic consultancies.⁵ For some big law firms, more than one person took part in the survey. For details about the responding NGAs, see Annex 3.

Figure 1: Size of the NGAs

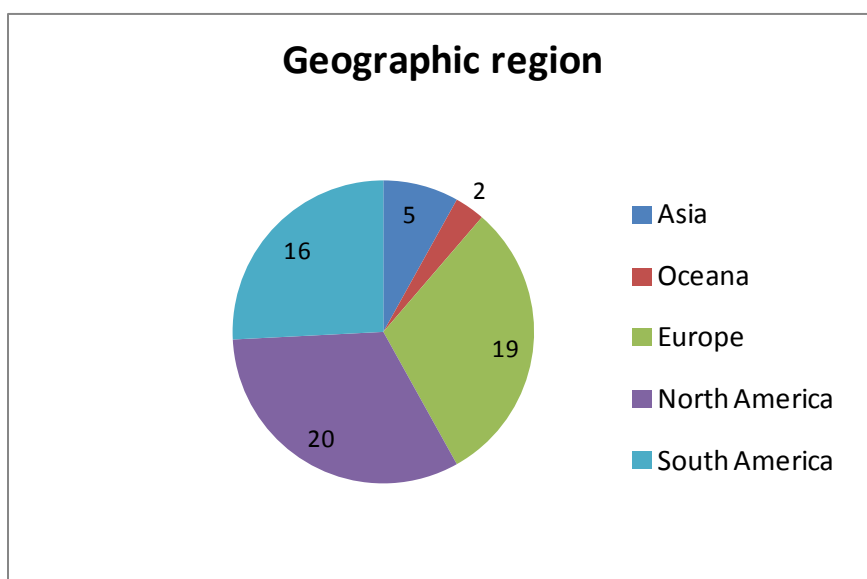


⁵ Four respondents have not indicated the size of their organisation or specified that the question is not applicable.

Geographic region

In some jurisdictions NGAs were particularly responsive, especially in areas where many NGAs take part in the ICN. Participation was as follows: 15 NGAs from Brazil, 12 from the USA, 8 from Canada, 5 from Germany, 4 from the EU, 3 from Japan, 2 from Australia, 2 from Italy, 2 from Singapore, 2 from the UK, 2 from the Netherlands, and 1 each from Barbados, Belgium, France, Russia, and Switzerland.

Figure 2: Geographic region of the NGAs



Duration of the involvement in the ICN

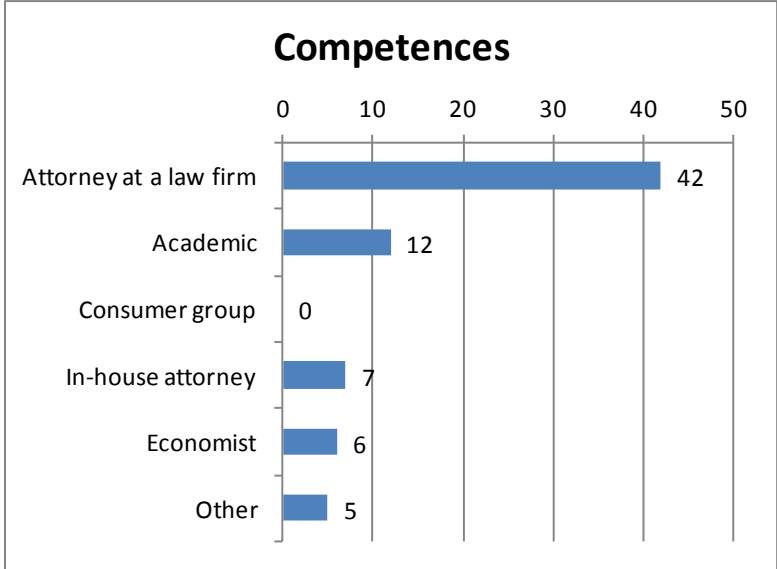
Respondents to the survey included both NGAs that have been involved in the ICN for a long time and NGAs that started to participate only recently. Not all NGAs indicated how long they have been involved in the ICN activities and events. Among those who answered, approximately one-third (21 NGAs) indicated they have been involved in the ICN for 10 or more years and approximately one-fifth (12 NGAs) joined in the last 3 years.

Competences

The large majority of respondents are private sector lawyers (42 respondents, 68%). Half of the respondents that identified themselves as academics (12 respondents) perform the academic activity in parallel to their job as lawyers or economists. Six

representatives of the business community took part in the survey: Microsoft, Shell, Walmart, Barclays Bank, Intesa Sanpaolo and the U.S. Chamber of Commerce.⁶

Figure 3: Competences of the NGAs

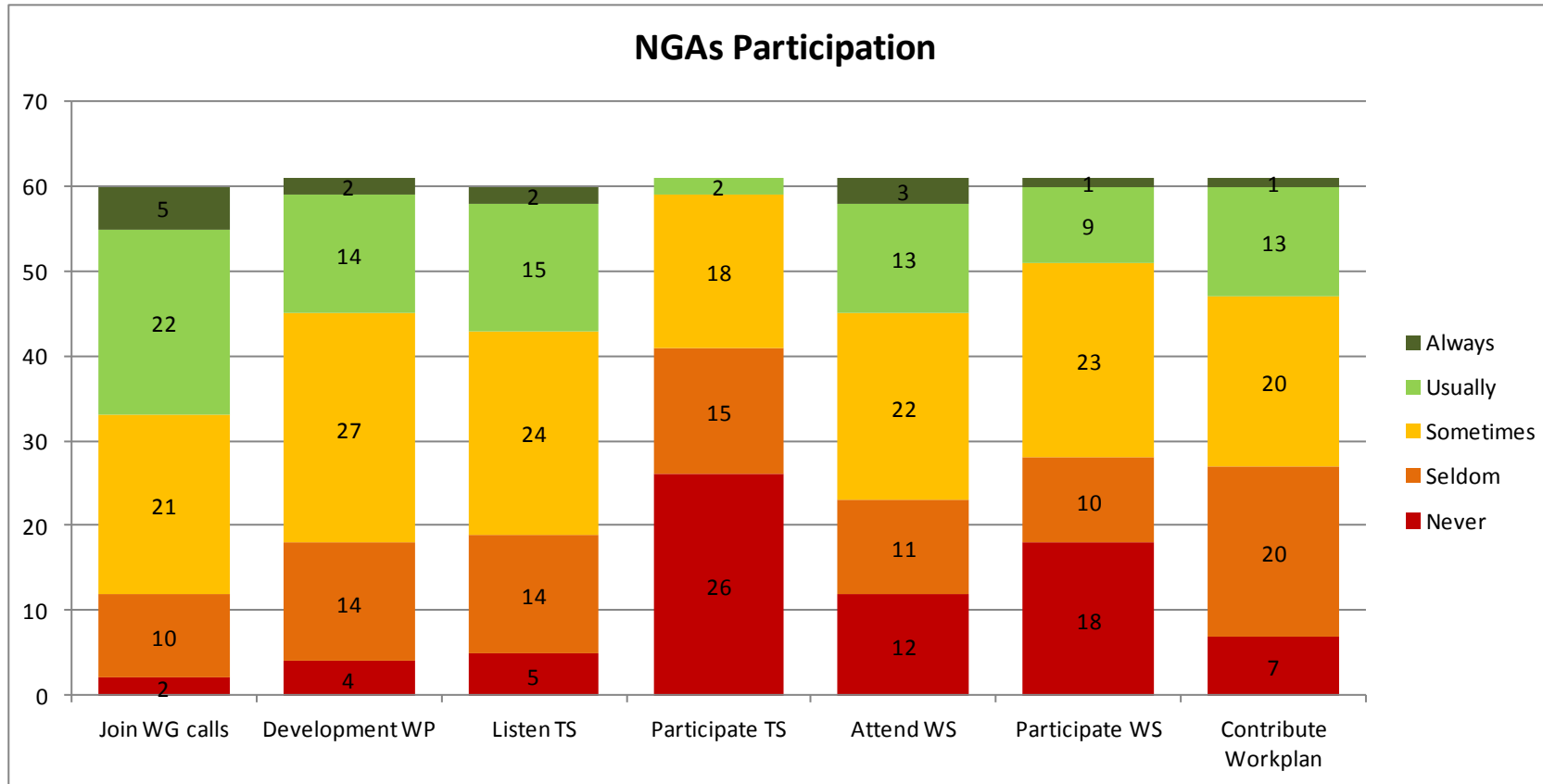


3.3 NGAs participation

The main form of participation of NGAs in the ICN consists of joining WG calls. Several NGAs usually contribute to the development of work products, listen to teleseminars, attend workshops and contribute to the workplan or suggest topics for future work. Some NGAs also participate actively as speakers in teleseminars and at workshops when the opportunity arises.

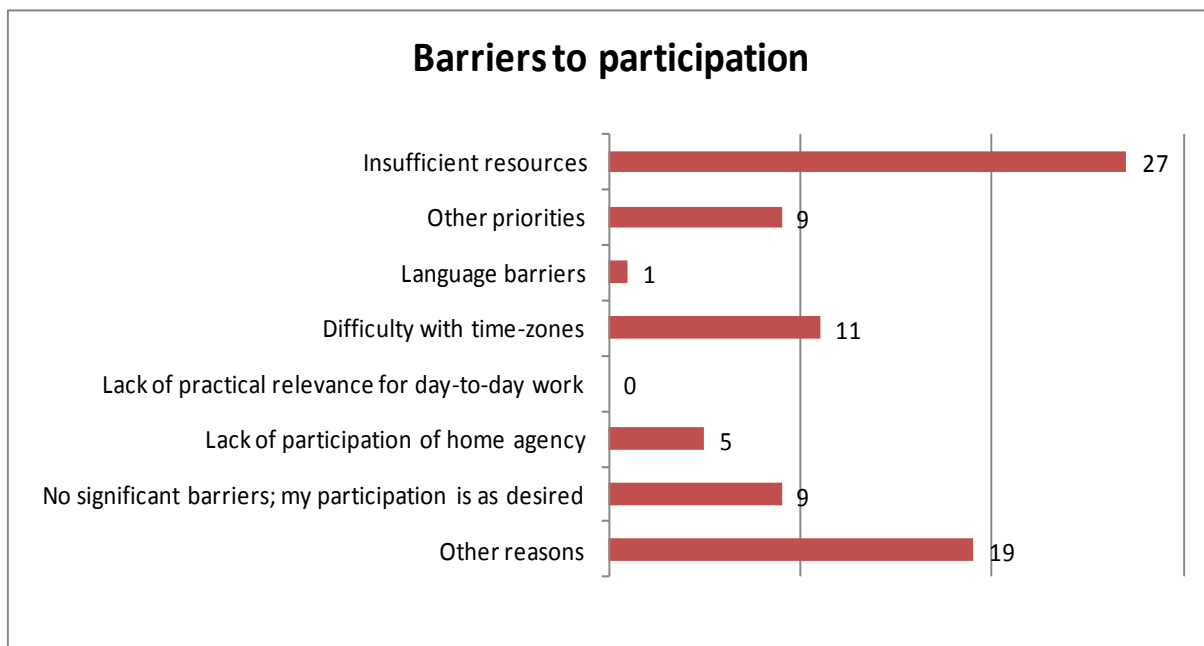
⁶ The respondents who selected the option „other“ are: the Heritage Foundation, the American Antitrust Institute, the Chamber of Commerce, the Brazilian Ministry of Development, Industry and Trade and the in-house attorney of Shell International Limited (also Vice Chair of the International Chamber of Commerce).

Figure 4: Participation of NGAs in ICN activities



WG= Working Groups
 WP= Work Products
 WS= Workshops
 TS= Teleseminars

Figure 5: Barriers to participation



Similar to the ICN member agencies, the lack of sufficient resources and a focus on other priorities hinder greater participation of NGAs in the ICN, followed by scheduling difficulties due to time zone differences. Only a small number found language and lack of participation by their home agency to be barriers. None of the NGAs said that the work of ICN lacked practical relevance for their day-to-day work. Nearly one-third of responding NGAs (19 NGAs) selected the option “other reasons.” Other barriers to participation that were mentioned include: not being aware of the timing of working groups’ events, the short notice for calls, travel costs, and the lack of revenues created by the international activities that make it difficult to justify expenses; one response mentioned the perceived limited progress of the ICN in endorsing and advancing best practices.

Some NGAs also mentioned that they are unaware of what working groups in their special area of interest do or plan to do and unsure about opportunities to best contribute to ICN work. Many NGAs declared that they would like to be more involved in the activities of the ICN, but feel that invitations to participate in the project of the working groups and to join the conferences/workshops are limited and sporadic. They point out that their incentive to contribute actively in ICN initiatives decidedly depends on the possibility for them to participate in working groups sessions, workshops and ICN annual conferences.

When asked about **ideas on how to increase NGA participation**, many NGAs agree that the ICN should give NGAs more opportunities to contribute to ICN activities, for example by inviting more NGAs to attend ICN events. NGAs encourage the ICN to actively invite them to participate in specific projects and give them advice about opportunities to contribute beyond calls and attendance at ICN events. The ICN could ask NGAs to provide position papers on specific issues to understand the needs of the business community. Finally, the ICN could allow NGAs from one jurisdiction to assist other jurisdictions that have difficulties recruiting NGAs.

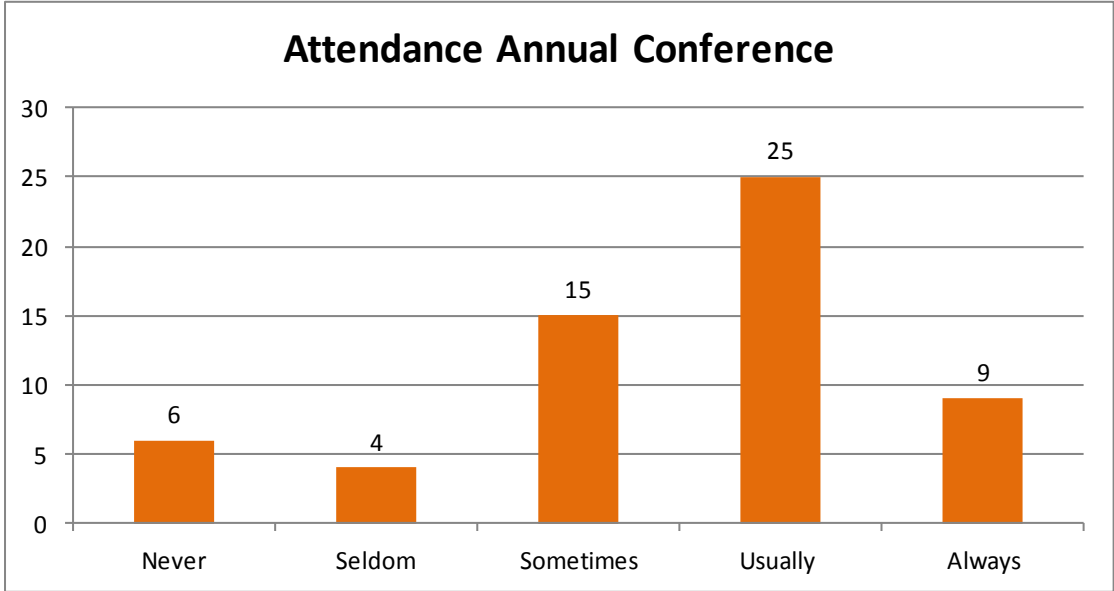
NGAs recognise that the ICN is an open forum and that it offers possibilities for them to contribute. Several NGAs agree that there is room for further improvement. They feel that NGAs are still perceived as outsiders and that their willingness to contribute is viewed with scepticism by some agencies. NGAs encourage national agencies to enhance the dialogue between ICN member agencies and NGAs. NGAs would like a regular contact/exchange with agencies. They would like to be informed about future work plans and about how NGAs can contribute in a meaningful way, i.e. if and to what extent agencies are interested in NGAs' contributions and in which areas. Several NGAs agree that a broader range of NGAs should be given the possibility to participate, for example judiciary or government representatives (with a tailored NGA status to avoid conflicts); this would increase the effectiveness of advocacy initiatives vis-a-vis these constituencies.

Other suggestions are as follows: creating an informal network of NGAs, a formal NGA committee, a dedicated NGA liaison and forums dedicated to NGA discussions. More opportunities to encourage NGA-to-NGA interaction outside of ICN events would keep NGAs more active in thinking about contributing to ICN activities during the year.

A couple of NGAs mentioned that they would like the ICN to formally recognise their status and publish online a list or database of "approved" NGAs to increase their visibility and credibility, which, in turn, would improve their incentive to participate and their efficacy in delivering their views to the benefit of ICN. Also, a couple of NGAs mentioned that the guidelines on NGA involvement should be updated and made more transparent.

NGAs also ask to receive invitations to joint calls and annual conference somewhat earlier. To overcome the problem of time differences, some NGAs suggest regional calls and to be given the possibility of submitting off-line comments if they are not able to join the webinars.

Figure 6: Attendance of ICN Annual Conference



Several NGAs agree that the format and content of the annual conference are fine. When asked for **suggestions on how to facilitate NGAs participation in the annual conference**, NGAs largely agree on some key points. First, NGAs could be more involved in the planning and could be given more possibilities to participate. Some NGAs suggest dedicated breakout sessions, where NGAs could share experiences and common challenges faced when dealing with agencies, but also to discuss how to best assist the ICN and suggest new areas of work. Secondly, plenary sessions are considered to be a bit sterile, while breakout sessions and smaller group sessions, which provide the possibility to discuss hypotheticals, actual cases or recent issues, are considered to be highly useful. The opportunity for NGAs to discuss cases or topics they have been working on provides a greater incentive to participate in the annual conference. Another suggestion is to include sessions on cases that were not successful and sessions on best practices from a practitioner’s perspective. Third, their limited participation coupled with the short notice of the invitations to participate at ICN events are mentioned as barriers to participation. Some NGAs suggest digital formats to allow more NGAs to participate, i.e.

webcasting of the conference online and the distribution of the annual conference materials. Some respondents would welcome more clarity concerning the goals and purpose of the conference.

3.4 ICN work products

Written work products (guidance documents, manual and workbooks) prove to be particularly useful across working groups. NGAs praise in particular the enormous value of the ICN's Recommended Practices and other guidance.

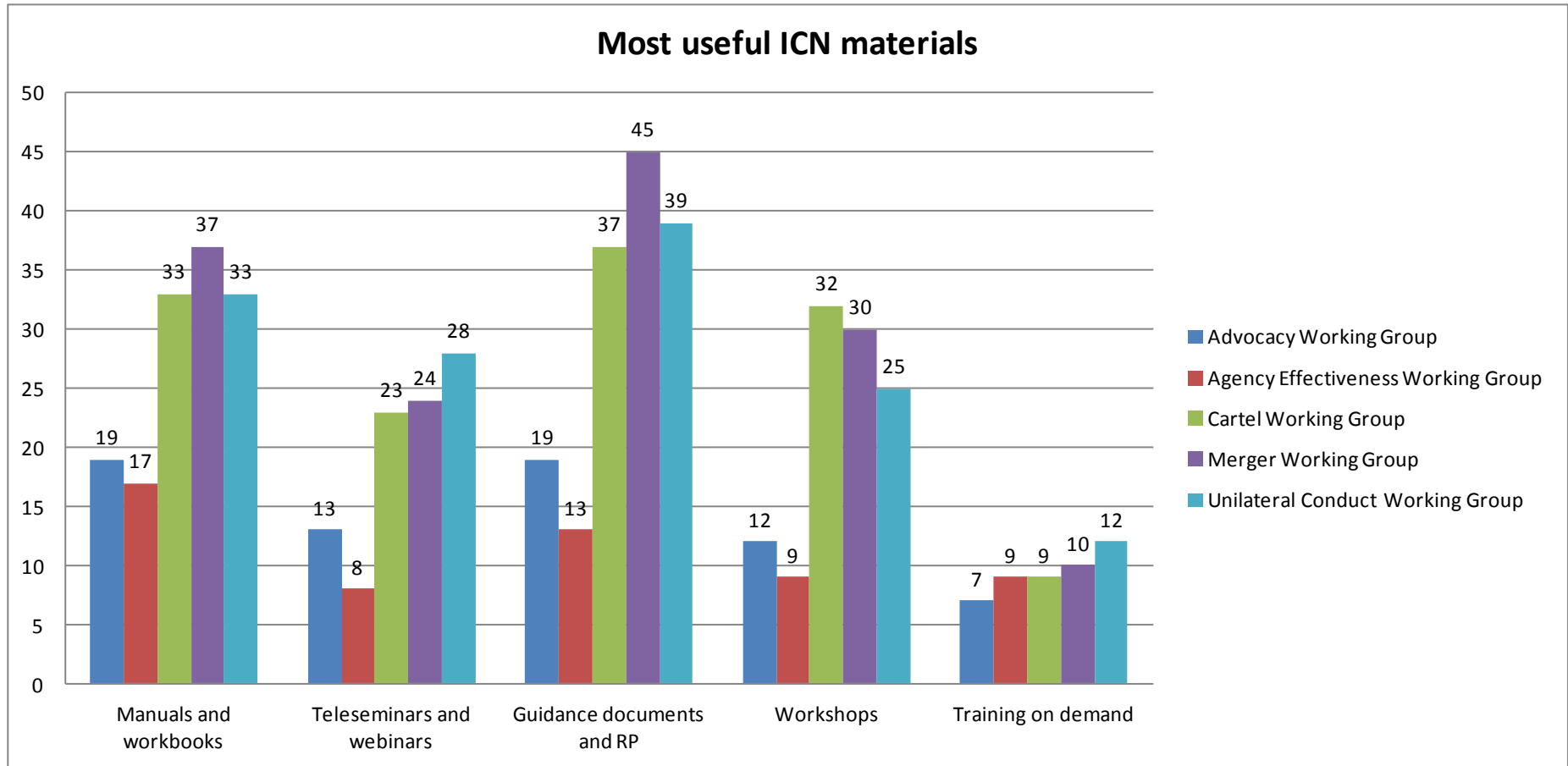
NGAs highly value the possibility to exchange experience and discuss cases in which they were involved at ICN events. NGAs observe that ICN workshops give NCAs, academics and NGAs the possibility to interact and provide views from their own experiences and professional background to help reach a consensus on best practices and useful guidance.

ICN work products assist NGAs better in understanding practices and priorities of agencies in different jurisdictions, learning about agencies' experiences in specific cases, and identifying trends in competition law and practice worldwide. A number of respondents use ICN work products in daily practice, for example to draft legal opinions about the cases they deal with, but also using confidentiality waivers and merger templates. ICN work products are particularly useful to find solutions to new legal issues.

NGAs refer to ICN Recommended Practices and guidance documents to advocate for changes to agency procedures and practices, as well as when commenting on new legislative proposals.

Academics use ICN work products as lecture materials as well as a source for articles and books. Economists use the ICN Investigative Techniques for Merger Control, in particular. Law firm attorneys look at ICN products to advise clients about agency practice and how national authorities are likely to view a particular kind of conduct. In-house attorneys use ICN work products to disseminate the competition culture within their company and as guidance in the area of compliance.

Figure 7: Use of ICN materials



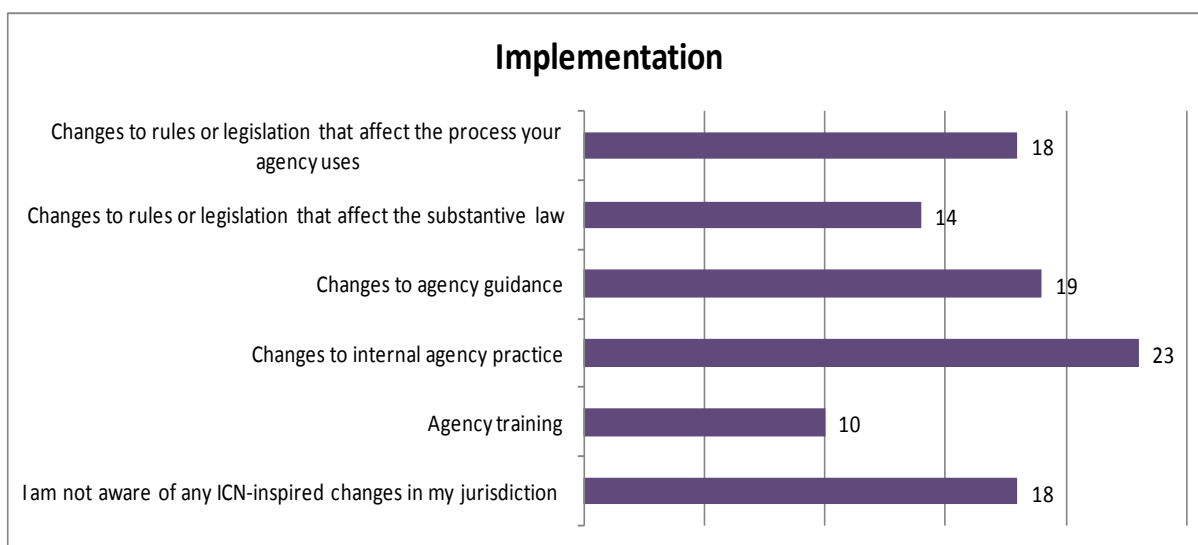
NGA suggestions on specific **topics that the ICN should address** are numerous. Several NGAs ask for more guidance on issues related to leniency: articulation of leniency applications in multiple jurisdictions, principles for inter-agency cooperation, information on similarities and differences among jurisdictions, waivers and protection of leniency materials, fine calculation, standards for assessing cooperation between companies and agencies. Six respondents would like the ICN to address the topic of the interface between competition law and intellectual property rights. Among other topics that were mentioned more than once are: investigative process and/or due process; the interfaces between public and private enforcement, competition law and public interest considerations, antitrust merger control and foreign investment reviews, competition law and anti-bribery law, trade and competition; vertical restraints; state restraints including the treatment of state-owned enterprises under competition law; information exchange/price signalling; guidance on compliance programs/issues. A complete list of all topics suggested by NGAs can be found in [Annex 4](#).

Regarding suggestions on **types of work products**, NGAs encourage comparative studies to identify differences among jurisdictions and evaluate how to bridge the gaps they create. They suggest working groups revise and/or expand the existing materials rather than create new documents covering similar topics and to devote more resources to the implementation of existing work products in order to enhance convergence. In the NGAs' view, the ICN should continue promoting the seminars, workshops, teleseminars and other interactive tools to improve the cooperation between NGAs and ICN member agencies. One NGA suggested developing case studies showing the efficiencies and benefits resulting from the ICN activities (from fostering inter-agency dialogue in individual cases to adopting RPs).

3.5 Implementation

The majority of the respondents find that ICN work products led to changes to the internal practice of national agencies. However, the replies show that NGAs from the same country may have different views on (or are unaware of) changes made within their jurisdiction based on ICN work products.

Figure 8: Implementation of ICN work products



When asked about work products that should be prioritized for implementation efforts, NGAs mention the full range of ICN work products: manuals, workbooks, guidance documents, Recommended Practices. All are considered to be very useful. Several NGAs would like more products in the area of mergers and cartels. Some suggest focusing on materials that can practically be used by younger agencies in the interest of facilitating soft convergence.

NGAs have several suggestions on **how to increase awareness and implementation of ICN work products**. They encourage the ICN to better advertise its products. Several NGAs stress the importance of a well-organised and user-friendly **website**. They also suggest a better use of social media. An idea could be to upload “advocacy videos” on well-known platforms. NGAs encourage member agencies to publish ICN work products (or links to them) on their own websites, as well as information on upcoming ICN seminars. A couple of NGAs suggest that ICN should be more present in publications. One NGA suggests publishing a newspaper with articles by representatives of NCAs and NGAs or partner with relevant publications in the competition field to promote ICN work products. Giving speeches on the main ICN achievements at international fora such as the American Bar Association (ABA) and International Bar Association (IBA) meetings, law firms sponsored antitrust programs or other non-ICN conferences in general, could also be useful to disseminate information on existing ICN work products.

There was support for the ICN to engage in more **advocacy** toward businesses and government decision makers. The ICN should continue to work with international organisations and government officials to explain the benefits of competition and promote a greater use, understanding and acceptance of competition rules. One NGA suggests creating a taskforce that works with those agencies that have difficulties to implement key ICN work products in order to find tools that better work in a local context. This could strengthen those agencies against domestic pressure.

NGAs believe that **greater participation of NGAs** could enhance the implementation of ICN work products in several sectors. NGAs who are members of the IBA, ABA and the national associations of competition lawyers could promote awareness of the ICN work products in the legal community. They could encourage those associations to organize conferences, seminars and workshops focused on informing the legal community about the ICN work products and discussing their implementation. NGAs could then be invited to report on the associations' activities to their relevant working group. The ICN could also promote the public debate and foster stakeholders' engagement by, for example, the launch of public consultations/request for position papers. Also, NGAs encourage the ICN to work with ICN member agencies and NGAs to identify specific practices that need to be reformed and develop a plan to assist member jurisdictions in implementing changes.

A couple of NGAs think that the possibility to participate at the annual conference via the web, the availability of recorded webinars posted on the ICN website, as well as regular meetings between NCAs and their NGAs to discuss the use and/or implementation of the ICN work products could also increase implementation.

Workshops and seminars are considered to be very useful to promote work products. One NGA suggests that some teleseminars could be organised to introduce/promote a new/specific workbook. Some NGAs suggest local seminars in order to increase participation of younger agencies and to overcome time differences.

Academics suggest that more information could be provided to **business schools**, **law schools** and **economic departments** about ICN work products, so that teachers could incorporate them in the course materials.

3.6 Looking toward the future

NGAs praise the achievements of the ICN: the network fosters dialogue among agencies around the world on competition policy and enforcement and produces a considerable amount of practical and useful work products.

Several NGAs hope that the ICN will become the leading **source for information** about the practice of the different competition agencies around the world and that its work products will become undisputed “**gold standards**” for agency practice. They expect the ICN to increasingly influence antitrust laws and their convergence. According to the NGA responses, the ICN should help disseminate competition culture around the world, especially in jurisdictions where the government interferes heavily in the marketplace. Some NGAs would like the ICN to address the issue of “competitive neutrality” of trade and other public policies/measures. Some NGAs suggest a **closer cooperation** between the ICN **and international organisations** like WTO, OECD and UNCTAD that also support the development of competition policy and competition culture around the world.

The ICN should also consider promoting the interaction between its member agencies and the judiciary, other regulatory agencies, and the legislative bodies from their respective jurisdictions that have different roles in the enforcement of competition laws.

Many NGAs would like the ICN to reach greater **convergence** of national competition laws, practices and procedural rules, as well as more inter-agency cooperation in the future. NGAs would like more **uniform implementation** (and by more agencies) of the ICN Recommended Practices and other guidance. At the same time, the ICN should address the harder questions of building bridges in the absence of convergence. The periodic revision and update of workbooks and Recommended Practices to reflect recent developments, in particular in merger control, would be useful.

Several NGAs would like to see **more participation from younger agencies**. They believe that the ICN should in particular address the needs of developing countries and help younger agencies to implement international best practices. Some NGAs suggest training possibilities for younger agencies, the establishment of stronger

partnerships with more experienced agencies, as well as the exchange of information and resources.

A couple of NGAs suggest a closer look at competition law development in Asia, in terms of addressing the needs of agencies in fast growing and emerging countries and potential divergence in approaches/rules.⁷

Academics suggest more involvement of and cooperation with universities and more engagement of the academic community. One suggestion is to establish an exchange platform between academia and authorities in the tradition of the Working Group on Competition law, a yearly meeting with academics at the Bundeskartellamt. Economists would welcome a greater involvement of economists in the activities and work products of the ICN.⁸

3.7 Summary

NGAs welcome the possibility to actively contribute to the activities of the ICN. They encourage member agencies to **engage more with NGAs** and to a larger degree in the ICN. They would appreciate the possibility to participate more often in ICN projects and ICN events. The lack of resources and the time differences are the most important barriers to participation. However, for NGAs also the limits on the number of participants at ICN events prevent more participation.

NGAs also encourage national agencies to engage in a **constructive and more regular dialogue** with the NGAs of their respective jurisdictions. They would like to be better informed on ongoing projects and on how they can best contribute to the activities of the ICN. Frequent dialogue would encourage NGAs' participation and, in turn, strengthen the ICN.

NGAs advanced several suggestions on how to **facilitate NGA participation**. They encourage the ICN to: actively invite NGAs to contribute to specific projects and to submit position papers on specific issues; involve a broader range of NGAs (judiciary or government representatives); send invitations to joint working groups calls and ICN events earlier; organise a dedicated discussion for NGAs at the annual

⁷ This point was raised not exclusively by Asian NGAs.

⁸ A Chief Economist Workshop will be held in Vancouver, B.C., Canada from September 11-13, 2016.

conference; circulate materials presented at teleseminars and at ICN events. Finally, given that in particular geographical areas NGAs are underrepresented, NGAs that are already active could assist agencies that have difficulties recruiting NGAs.

In the future NGAs would like the ICN to achieve greater **convergence** of national competition laws, practices and procedural rules, as well as more inter-agency cooperation. NGAs agree with member agencies that the ICN should foster implementation of ICN work products, in particular of Recommended Practices and Best Practices. Several NGAs also agree that **younger agencies** should be encouraged to participate more in the ICN.

4 Summary of the suggestions from ICN members and NGAs

4.1 Suggestions on goals and process

As explained in detail in section 1, the ICN has made significant progress towards its Second Decade goals. The new input provided by the 2015 survey serves as a basis for the discussion on the way forward in view of determining priorities and future work of the ICN. Member agencies and NGAs agree that the ICN should continue pursuing the goals identified by the Second Decade Report, such as the dissemination of competition experience and best practices, convergence in competition laws and practices, advocacy and cooperation between agencies. ICN members and NGAs highlight that a lot has been accomplished, but also provided suggestions on how the ICN could further advance these goals. They also suggest topics and types of work products that the ICN could/should develop in the future.

There is a broad consensus that the ICN should focus on implementation: Working groups should verify the effectiveness, usefulness and influence of their work, but also better promote existing work and planned events. Also, the ICN should promote more active participation: agencies and NGAs agree that smaller and younger agencies should participate more effectively in the activities of the ICN.

What the ICN does

I. Convergence & Implementation

The ICN provides a forum for members and NGAs to share experiences and develop best practices. The implementation of ICN work helps convergence in both procedural and substantive aspects. Where convergence is not likely, agencies and NGAs encourage the ICN to explore the ways in which 'informed divergence' can be used to minimise problems. Suggestions included:

- continue developing Recommended Practices and periodically update them;
- help younger agencies to implement international best practices;
- focus on relevant topics and practical materials that can facilitate soft convergence;
- develop comparative work to identify differences among jurisdictions and evaluate how to bridge the gaps they create;

- develop case studies showing the efficiencies and benefits resulting from adopting Recommended Practices;
- circulate ICN new products and updates directly within the relevant divisions of the agencies;
- cooperate more closely with international organizations (UNCTAD, OECD, ICC, BIAC) to increase awareness and promote implementation of ICN work products;
- encourage interaction between agencies and NGAs to discuss the use and/or implementation of the ICN work products;
- collect and share successful implementation stories;
- perform self-assessment exercises.

II. Advocacy

ICN members and NGAs encourage the ICN to continue supporting advocacy efforts, by more interaction with governmental bodies and regulators, closer cooperation with international organisations, but also by a better promotion of ICN work. Suggestions included:

- develop successful advocacy stories;
- cooperate more closely with international organisations like OECD and UNCTAD;
- promote the interaction between its member agencies and the judiciary, other regulatory agencies, and the legislative bodies;
- publish ad-hoc articles in relevant publications in the competition field in the name of ICN;
- mention ICN work products and main ICN achievements at public (non-ICN) events where they intervene as speakers/moderators;
- provide information to business schools, law schools and economic departments about ICN work products;
- circulate a newsletter/bulletin with news and developments in the area of competition law enforcement.

III. Cooperation

ICN members and NGAs suggest a number of practical measures with a view to enhancing inter-agency cooperation and information sharing (both formal and informal).

These are:

- increase opportunities for experience sharing and information exchange between younger and more experienced agencies;
- establish a more formalised cooperation via "Twinning Programmes";
- make greater use of ICN Training On-Demand modules for younger agencies;
- create up-to-date databases on the ICN website of merger cases, market studies and case law in general;
- create a platform where ICN members could upload (links to) their press releases or decisions;
- use seminars, workshops, teleseminars and other interactive tools to discuss real cases;
- develop case studies showing the efficiencies and benefits resulting from inter-agency dialogue.

How the ICN does it

I. Inclusiveness

ICN members and NGAs strongly advocate for a greater participation of younger agencies to make sure that the ICN work responds to the needs of all its members. The ICN should engage younger and smaller agencies to participate in the drafting of work products and encourage regular and active participation in ICN events. Suggestions included:

- encourage active participation of younger agencies in the ICN activities, including leading projects;
- limit, combine or better distribute workshops throughout the year;
- organise joint events with the OECD and other international organizations;
- encourage more involvement of NGAs;
- organise meetings across all regions;
- encourage exchanges for younger agencies in/with more experienced agencies;

- organise trainings for younger agencies;
- develop products targeted at young agencies and/or new staff;
- translate ICN work products in more languages.

II. Operational suggestions

A number of suggestions from ICN member agencies and NGAs include ways to enhance communication within the network, increase information on ICN work products and events, and improve organisational aspects of events and seminars. Suggestions included:

- design a better organised and more user-friendly ICN website;
- make ICN work products easier to find and track; add cross-references to pre-existing materials;
- publish ICN work products or links to them, as well as information on upcoming ICN teleseminars, on the agencies' website;
- increase interaction across all regions, for example via teleseminars and meetings;
- update and, eventually, expand the existing materials rather than create new documents;
- make available more recorded teleseminars on the ICN website so that they could be accessible anytime;
- organise teleseminars to introduce/promote a new/specific workbook;
- circulate or re-circulate ICN work products on a regular basis;
- circulate a newsletter/bulletin with regular updates of published materials;
- Involve a broad range of stakeholders when drafting written documents.

III. Involvement of NGAs

Agencies report that NGAs participate only occasionally in the activities of the ICN. NGAs, on their side, declare that they would like to be more involved, but feel that invitations to participate in projects to join ICN events are limited. NGAs have several ideas on how to increase NGAs participation. Suggestions included:

- enhance the dialogue between ICN member agencies and NGAs;

- better inform NGAs about opportunities to contribute to ICN work products; invite NGAs to participate;
- invite NGAs to submit position papers on specific issues or offline comments to seminars;
- give a broader range of NGAs the possibility to participate in the network, for example judiciary or government representatives;
- send invitation to participate at ICN events or teleseminars earlier;
- webcasting the annual conference online.

4.2 Suggestion on topics and type of work products

Both ICN members and NGAs identified a large number of topics that the ICN should address. The level of detail of the answers varies considerably. Also, some topics are general issues while some are particular aspects of broader topics. Therefore all suggestions have been listed as they appeared in the responses in [Annex 2](#) and [Annex 4](#).

The interplay between competition law and intellectual property rights is a theme that both ICN members and NGAs would like the ICN to address. Other topics identified by both categories of respondents were vertical restraints and inter-agency cooperation in merger and anti-cartel enforcement.

Concerning type of work products, both ICN members and NGAs agree that interactive tools are particularly useful and encourage the ICN to continue organising teleseminars, webinars and workshops with give agencies and NGAs the possibility to exchange views and discuss real cases. Both categories of respondents agree that RPs are particularly useful. Also, both ICN members and NGAs encourage the ICN to organise training sessions for younger agencies.

4.3 Existing work

Member agencies and NGAs provided useful feedback and make several suggestions for future work. It must be noted, however, that ICN already undertook several initiatives and developed a considerable number of work products to implement many of the suggestions. Drawing the line between new proposals and existing work is, however, not straightforward. Several of the suggested topics have been partially touched upon in

previous ICN work products, but they are not dealt with in a comprehensive way. Sometimes topics are fully covered by existing materials, but these materials need to be updated or to be broadened in scope to include developments in law enforcement, economic thinking or more recent case studies.

Concerning the suggestions on the process, the ICN regularly adopts initiatives aimed at improving the functioning of the network and effectiveness of its activities.

Annex 5 and Annex 6 include a set of tables that report work products, initiatives or events where/by which the proposals advanced in the survey were already implemented or will be implemented in the near future. The tables include some examples of past, present and planned events, projects and products aimed at advancing the process towards more convergence, cooperation, and inclusiveness, as well as at improving the ICN operational functioning (Annex 5). They also indicated work products where the topics suggested by the respondents to the survey are already addressed, at least partially (Annex 6). Some suggestions for future work, both in terms of process and topics, are already included in the current 3 year plan of the working groups.

5 Response to feedback

The future of the ICN in its Second Decade was the topic of a roundtable discussion on April 5, 2016 in Washington D.C. The group discussions at the Roundtable provided valuable input and further ideas for the ICN future. Additionally, ICN member agencies and NGAs discussed the results of the Second Decade survey at the ICN Annual Conference in Singapore. In the plenary session “Steering Group Second Decade’s Review” moderated by Andreas Mundt,⁹ Randy Tritell,¹⁰ Rose Webb,¹¹ Francis Kariuki¹² and Cal Goldman¹³ praised the ICN achievements and shared their views about possible improvements. Following some introductory remarks by Rose Webb, Tembinkosi Bonakele,¹⁴ Blanca Rodriguez-Galindo¹⁵ and Ania Thiemann,¹⁶ in the breakout session “The Future of ICN in its Second Decade”, participants discussed in smaller groups the issues of member engagement, the ICN’s institutional structure, ICN’s existing work and its implementation, and promoting cooperation.

Additionally, the co-chairs of each working group responded to the feedback of the survey by shortly describing what suggestions their respective working group has already implemented or intends to implement in the future and how, based on the survey results.

5.1 Discussions in Washington and Singapore

I. Convergence & Implementation

Participants unanimously expressed an interest in **focusing on implementation**. The ICN has developed a vast library of practical work products. The consensus-based nature of these products, which reflects the diversity among jurisdictions and incorporates the experience of more mature agencies, make the products easy to use and implement.

⁹ President of the Bundeskartellamt and ICN Chair

¹⁰ Director of the USA Federal Trade Commission’s Office of International Affairs.

¹¹ Chief Executive Officer of the Hong Kong Competition Commission

¹² Director General of the Competition Authority of Kenya

¹³ Chair of Competition, Antitrust and Foreign Investment Group at Goodmans LLP.

¹⁴ Commissioner, Competition Commission South Africa.

¹⁵ Head of Unit, European Commission, DG COMP.

¹⁶ Global Relations Manager, OECD Competition Division.

ICN work products are particularly valuable for younger agencies: they help compile internal manuals, external guidelines and developing the practices and procedures of a new agency; they are used for training and developing the staff; they help advocacy towards governments and businesses, particularly in explaining why the agency is proposing to undertake its enforcement activities in a particular way.

Efforts towards implementation do not start after completion of a work product, but rather at a very initial phase. Implementation can be fostered by making sure that the topics dealt with in the work products meet the needs of ICN members. Demand-driven project selection of topics that are of widespread relevance is a “pre-implementation” tool in that it invites greater participation from interested agencies and promotes “ownership” of the ultimate work product across the greater number of members that participated in the project.

The work of the ICN’s AIN was mentioned as an important tool to promote implementation. The specific structure and operation of the AIN might be reconsidered and reconciled with working group implementation efforts.

More awareness about ICN work products and feedback from the ICN members on how and to what extent they use work products would also increase implementation. Participants mentioned the value of implementation surveys, reports, and peer reviews. There are interesting synergies to be explored in the complementarity between, for example, the OECD and the ICN, particularly with regard to experience sharing, reports and training materials, as the ICN can build on OECD materials with a wider geographic scope and a different perspective. Suggestions to improve implementation included:

- organise in-depth trainings on existing work products;
- organise more Trainings on Demand to explain how to implement workbooks and Recommended Practices into daily practice;
- schedule gatherings (regional or otherwise) for implementation discussions among agencies that are likely to encounter similar implementation challenges;
- intensify contact with regional organisations and networks;
- share successful, but also unsuccessful implementation experiences. These case studies could be then disseminated in the Chair’s newsletter or on a blog;

- expand the use of self-assessment tools to identify areas in which agencies might like support in improving implementation;
- develop in-depth implementation surveys that go beyond Yes/No questions to better understand best practices and challenges encountered;
- create a dictionary or glossary of defined terms in competition enforcement. Gaps currently exist between different jurisdictions' diction in some areas; a tool to help members understand each other's terminology would aid understanding and conversations related to convergence;
- better capitalize on existing synergies from working relationships with partners like the OECD and World Bank to explore opportunities for joint projects or complementary materials;
- create an "implementation team," e.g. a group with representatives of all working groups that plans and monitors implementation efforts;
- Make the ICN website easier to navigate.

Participants also suggested several ways to revise existing work products in order to make them more targeted and user friendly:

- update work products so that materials reflect the state of the art and are useful also for more mature agencies;
- limit the work on future projects in order to focus on implementation of the existing ones;
- include executive summaries of work product. Given the vast amount of materials that the ICN has produced, executive summaries can enable member agencies to quickly understand if they are relevant for them;
- incorporate more practical matters and examples, in addition to technical explanations, as these are especially beneficial to younger agencies;
- highlight documents or "easy steps" documents;
- produce shorter key documents, which make it easier for agencies to assist with translations;
- adapting work product to various skill levels to ensure it's useful to all member agencies (e.g., create fundamental materials for new agencies but expand existing work for mature agencies – the current guidance document stops at investigations but could be expanded to decisions and adverse evidence);

- creating a new agency “starter kit”;
- develop some “back to basics” material (e.g., addressing basic concepts such as why competition law is beneficial and cartels are harmful) which also young agencies and their NGAs would feel comfortable assisting with;
- solicit feedback on current work products to improve materials and address members’ specific needs.

In Washington, participants recognized that total uniformity is not the goal but that ICN can continue to help bridge gaps in particular areas. In areas where principles and practice differ among jurisdictions, informed divergence may also be helpful and constructive.

Increasing the cooperation between ICN and NGAs is also important as NGAs greatly contribute to outreach and implementation initiatives.

II. Advocacy

ICN plays an important advocacy role and the network’s continued growth provides opportunity to increase this role. Participants proposed implementation and judicial advocacy as specific topics for focused advocacy efforts. Concrete suggestions were:

- extract some key findings of members’ surveys as statistics (“X out of Y agencies do it this way, or have this law..”); these can be very persuasive for government advocacy;
- develop more work products to assist in outreach to small business or general civil society;
- develop basic materials, messages, experiences of how different jurisdictions have explained the benefits of competition enforcement in very simple terms;
- develop statements that members could use to stand up for competition policy even in “difficult” times, for example during a financial crisis;
- provide focused instruction and feedback to specific members that are interested in undertaking reforms;
- consider expanding ICN advocacy in legislative bodies, for example when there is an opportunity to support reforms to conform to ICN recommendations (such as to establish or strengthen a requirement for local nexus between the transaction and the jurisdiction);

- advocate ICN work in other international competition bodies and also to the business community to help promote a culture of competition.
- Partner with other international organisations, like UNCTAD, especially to target young agencies;
- take a seat at the table at major international economic meetings, where business, labour, and other groups already have a voice, such as at Davos, the G-20, and similar fora;
- continue to advocate for position papers at high level.

III. Cooperation

The ICN could better identify where the challenges to cooperation occur, i.e. what is not working and how to overcome the difficulties.

Discussants praised the successes of the merger cooperation guidelines and encouraged the idea of applying the guidelines to other subjects as well. In particular, members found the merger cooperation case studies helpful and suggested exploring better ways to store and distribute institutional knowledge, like a database or clearinghouse similar to what the Advocacy Working Group currently uses.

Participants also stressed the importance of cooperation with regional networks. Two successful examples were mentioned: The presence of the ICN at the meeting of the African Competition Forum, carried out on the margins of the OECD Global Forum on Competition in Paris, and the Agency Effectiveness Working Group workshop in Botswana organized with the support of the African Competition Network. Concrete suggestions to improve cooperation included:

- increase experience sharing when changes in legislation or structure of the authority are envisaged;
- Increase cooperation in relation to waivers;
- better identify where the challenges to cooperation occur and consider ways to overcome them.

IV. Inclusiveness

The ICN has grown immensely and this led also to increased diversity among members. Participants suggested that the ICN should encourage younger members and/or

members with different viewpoints to speak up and share their perspectives on existing views and materials. Practical suggestions included:

- produce a roadmap with key work products for new members;
- develop a more systematic approach for outreach to young members (e.g., twinning, regional approach, ways for them to participate in an uninhibited manner);
- promote peer-to-peer learning;
- streamline the cooperation and coordination in light of strained resources, like a single data collection format;
- encourage younger agencies to participate in accordance with their available resources (even just responding to surveys or providing some examples of their outreach material can be useful);
- work more closely with regional agencies and forums;
- devote greater attention to issues which are relevant for younger agencies (benefits of competition, privatisation, bid-rigging) and/or to broader policy questions.

Participants agreed on the importance and value of increasing member engagement in general and suggested ways to better do so. Time differences remain a barrier to participation. Working group calls, teleseminars and town hall meetings can all be difficult for the Asia-Pacific time zone. Some attempt has been made to address this problem, for example some working groups held two calls, but other solutions can be explored. Proposed ways to generally increase member engagement include:

- hold workshops and trainings more frequently, as these were considered to be most valuable;
- hold events on the margins of other conferences to limit time and cost burdens;
- ensure that the location of the events reflects membership;
- keep using of conference calls and teleseminars as they are cost effective;
- give more thought and recognition to informed divergence.

V. Operational suggestions & institutional structure

Participants unanimously agreed that the ICN website needs improvement, especially that the content should be more searchable.

The use of conference calls and teleseminars could be improved by:

- scheduling them for times more convenient for jurisdictions from the Asia-Pacific region;
- using Wi-Fi teleconference technology to limit costs and improve call performance;
- making recordings of the calls available.

Participants also agree that the ICN could do more to advertise its activities and its products. They appreciated the Chairman's newsletter and encouraged continuing it. They also supported the idea of increasing ICN presence in social media. External communication could be improved by:

- improving the ICN's website (improve functionality and capacity for the website, present of work product more clearly, make the content more searchable, create a start-up toolkit for newer agencies);
- investing in a PR Person;
- issuing more press releases throughout the year;
- improving participation in the ICN blog.

Ensuring constant involvement of senior leaders in ICN activities sends a strong message of the value of the ICN's work both within the agency and to the business community, governments, and others to whom it is crucial to show the importance of sound and convergent competition enforcement and policy.

As the ICN grows bigger and bigger, administrative tasks have also increased. Discussants advanced the idea of:

- a stronger Secretariat;
- a liason with regional bodies/regional networks;
- a liason with NGAs (lawyers and companies via the lawyers).

In Washington discussions also addressed the issue of potential revenue generators. While many favor focusing on outside funding, all recognize the potential constraints and downsides to pursuing these alternatives. A member fee for event participation would increase the burden on new and small agencies with scarce resources. Seek funding from NGAs and private entities may present conflicts of interest. Some alternatives were suggested:

- utilize ICN publications to generate funding, however it is unclear who would collect and manage the money;
- utilize partnerships to host events in conjunction with existing networks;
- rely on academia to offset some costs, such as the annual conference, if universities donate space or food.

VI. NGAs involvement

The great value for the ICN of cooperating with a broad range of NGAs, including consumer organizations, academics, business groups, economists, legal practitioners is undisputed. ICN members agree that NGAs greatly contributed to the work of ICN from the beginning. NGAs, on their side, praise the achievements of the ICN in the areas of, among others, merger review, cartel enforcement, unilateral conduct and investigative process. NGAs believe that they can contribute to the network in a constructive manner to assist in keeping the ICN in the forefront of international cooperation and convergence in the future. NGAs also shared ideas how to help the ICN deal with limited resources (for example, NGAs providing logistics support for teleseminars and webinars and having national bar associations organize educational events).

Participants agreed that the survey provided several useful suggestions on how to engage a wider range of NGAs, both geographically and from all walks of profession, in all aspects of the ICN work. NGAs encourage the ICN to:

- involve NGAs more in the ICN activities, especially NGAs from the newer jurisdictions;
- better inform NGAs on how and where to be involved;
- have a more clearly defined role for NGA participation;
- create an official NGA database;

- pairing NGAs from jurisdictions with long-standing competition laws with public and private sector representatives from newer jurisdictions on ICN working groups;
- continue work on competition advocacy.

VII. Topics for future work

Participants found the results of the surveys to be very informative when deciding topics for future work. They supported the idea of focusing on existing work product, especially in light of resources and the goal of implementation of current work product. However, they identified the following topics among the many suggestions for priority consideration for future work:

- Vertical restraints
- Two- and multi-sided
- Emerging technologies/disruptive innovation
- Interface between competition law and intellectual property rights
- Interface between competition law and public interest considerations
- Joint ventures and non-hard-core horizontal restraints
- Coordination of investigations and sanctions
- State-owned enterprises
- Due process in investigations

5.2 Response to feedback of ICN working groups

Advocacy Working Group response to feedback

According to co-chairs of the Advocacy Working Group (AWG), the Second Decade Survey feedback confirms that the diverse range of AWG materials are considered useful by ICN members, with manuals and guidance indicated as most useful. The survey feedback also contains a number of helpful suggestions of work that the ICN can focus on in the future in the area of advocacy. The co-chairs consider the feedback extremely valuable for planning the future work of the working group. As noted in Annexes 5 and 6, some of the suggested focus areas have already been addressed by the group in its work, or are planned to be addressed in the 2016-2017 ICN year. The co-chairs will nevertheless carefully review the suggestions provided and consider

whether new work can be undertaken, or existing work can be further promoted and implemented, to address the suggestions made, and build this into the long-term planning of the group.

Taking into consideration feedback received from ICN members and NGAs in the consultation on the ICN's Second Decade review, the following new projects are included in the AWG's work plan for 2016-2019:

- Continuing the development of the **Benefits Project**. The online Benefits Platform now includes tips, strategies, messages and case studies on how to explain the benefits of competition to both government and business stakeholders. The Benefits Platform will be expanded to address the media and the public. This combined output will assist agencies and NGAs with successful stories and practical solutions related to advocacy. This project will be able to meet the request of ICN members and NGAs for more experience sharing on specific cases and on successful examples of implementation of ICN work products or more generally successful advocacy stories.
- **Building an Effective Advocacy Strategy**. This project aims to improve the way competition agencies define their advocacy strategies, by encouraging experience sharing and discussion among agencies and NGAs on this topic. Particular attention will be paid to the stages that precede and follow the advocacy actions, i.e. the elaboration of the advocacy strategy (analysis of the environment, priority setting, definition of the advocacy objectives, feasibility study) and the consequent monitoring of the results and refining of the strategy. The project will address certain topics emerged from the survey: ex-post assessment of the effectiveness of advocacy efforts and guidance on how to deal with sectoral regulators.
- Continuing the **Market Studies Project**. Recent work on market studies has included an update of the Market Studies Good Practices Handbook, which can assist members in selecting, planning, carrying out and evaluating market studies, and updating the Market Studies Information Store, which is an online catalogue of over 700 market studies by ICN Members spanning 10 years. The AWG will develop high-level guiding principles in the form of an easy-access

leaflet which will complement the Handbook. The AWG will also encourage ICN Members to exchange experiences with and principles for the evaluation of market studies. To the extent that good practices can be established, these will be annexed to the Handbook. The co-chairs will welcome new contributions to the Information Store on an ongoing basis as a way of promoting successful stories in market studies work. This project will be able to meet the need of ICN members and NGAs for more guidance type of work, for a database of market studies and for the topic of post assessment of the advocacy efforts.

- ICN Advocacy Workshops. The next **Advocacy Workshop** will be held in November 2016. AWG workshops promote awareness, use, and implementation of AWG work products, but also foster experience sharing and to promote networking in view of more informal cooperation between younger and more experienced agencies.
- Continuing the cooperation with the World Bank Group on an **Advocacy Contest** which showcases successful advocacy stories by competition agencies. This project will be able to meet the request of ICN members and NGAs for more experience sharing on specific cases and on successful examples of implementation of ICN work products or more generally successful advocacy stories.
- According to the survey, **teleseminars/webinars** appear to be relatively more important in AWG than in other WGs. This is why, cutting across the different working group projects, the co-chairs will continue to arrange teleseminars which allow the exchange of experiences, success stories and challenges in carrying out advocacy work. These teleseminars will also serve the purpose of raising awareness of and implementing existing advocacy work product.
- In conjunction with revisions to the ICN website, the co-chairs will look for ways to make the AWG materials more accessible and visible. The necessity of a better structured and updated website was highlighted in the responses to the survey. This update work of the AWG section will serve the dual aims of enhancing implementation of work product and encouraging greater

inclusiveness by making the materials more easily available to newer ICN members.

Agency Effectiveness Working Group response to feedback

The co-chairs of the Agency Effectiveness Working Group (AEWG) point out that reacting to ICN members' needs in the area of agency effectiveness has always been indispensable for the planning and the activity of the group.

As an example of this, the AEWG work plan for 2016-2017 is solely based on the survey that AEWG co-chairs carried out among AEWG members and NGAs. In response to the feedback received from the survey, the following new projects are included in the AEWG's work plan for 2016-2017:

- **Agency communication: web & social media strategy and use**
- **Competition agency staff training programs**

Both projects received broad support from the AEWG members, including from the younger agencies. The AEWG will continue focusing on ICN members' preferences in the future. AEWG members' views – both agencies and NGAs' views – will play a crucial role before any new AEWG's work plans are confirmed.

Given that NGAs would like the ICN to achieve greater convergence of national competition law practices, the AEWG, will particularly **promote the ICN Guidance on Investigative Process**, which addresses the issue of how enforcement tools and procedures can contribute to enhancing the effectiveness of agencies' investigative processes.

According to the co-chairs, a challenge that AEWG faces is how to promote **more dialogue with NGAs** about agency effectiveness. Some NGAs perceive this topic as too agency-orientated.

Finally, the co-chairs declare that the AEWG will continue to contribute in the broader work of the ICN by cooperating with other working groups and international organisations, such as the OECD. Representatives of the OECD have been invited to participate to AEWG expert calls relating to agency effectiveness. In 2016 the AEWG closely cooperated with the African Competition Forum. Preliminary plans for working

with UNCTAD are in preparation for 2017. In addition, academics took active part in AEWG teleseminars and workshops: this is a good example on how to avoid that the AEWG is perceived as being an agencies-only working group.

Advocacy and Implementation Network response to feedback

The Advocacy and Implementation Network (AIN) was established in 2008 with the aim of promoting and advocating the use of ICN work products especially for young agencies, which could lead to convergence and cooperation between ICN member jurisdictions. The project leader for AIN, the Japan Fair Trade Commission, indicates that the AIN has already taken the following measures which respond to the feedback of the survey, and will continue/ strengthen these efforts at the second half of this decade.

- Promoting AIN Support Program (AISUP): AIN has provided technical assistance to younger agencies using ICN work products in order to help them to implement international best practices. At the same time, it has helped them to have opportunities for sharing experiences and exchanging information with more experienced agencies.
- Updating the ICN Work Products Catalogue: AIN has made improvements to the Catalogue annually for making it easier for users to find and track ICN work products, and posted it on ICN website. AIN is now updating the Catalogue in order to publish it in early summer.
- Introducing ICN activities/work products at various events: AIN has actively introduced ICN activities and ICN work products not only at ICN events but also at seminars and workshop hosted by other organization such like OECD, UNCTAD, APEC, and African Competition Forum in order to increase awareness of ICN work products especially for young agencies. (See the AIN Activity Report for more details)
- Distributing USB drives containing ICN work products: The JFTC has distributed USB drives containing the electronic data of ICN Work Products, ICN Work Products Catalogue and AISUP Flyer at various events including both ICN events and other organization's events in order to increase awareness of ICN work products.

Cartel Working Group response to feedback

According to the co-chairs, the Second Decade feedback discussions have confirmed the interest of ICN members in many of the projects included in the Cartel Working Group's Work Plan. In particular, possible future initiatives identified in the feedback, such as experience sharing through workshops, teleseminars or work focused on particular topics are part of the Cartel Working Group's existing work product and will continue to be part of the group's 2016-2019 work plan.

In line with the outcome of the Second Decade feedback, the Cartel Working Group (CWG) will take measures to better involve younger agencies in its work. This includes offering **sessions dedicated to younger agencies** at the CWG workshops and teleseminars. These sessions will focus on issues that are of particular interest to younger agencies; they will provide the opportunity to interested agencies to present concrete difficulties and challenges they are facing and to receive targeted feedback from other ICN members and NGAs. The CWG will also continue to ensure involvement of younger agencies as co-chairs of the CWG. In addition, the CWG ensures that teleseminars are run at Asia-Pacific friendly times in order to facilitate maximum participation of ICN members, while the possible ways to **enhance accessibility** to the discussion of teleseminars, including the use of recording and conference service using Wi-Fi internet will be explored.

The focus of the CWG is on **revising existing materials**, such as the Anti-Cartel Enforcement manual, **developing some new concise materials** (e.g. the Catalogue of investigative powers and on leniency) and using the teleseminars and workshops to increase access to existing cartel WG material and expertise. This also requires a major effort to update the **website**, and particularly the ICN Cartel templates.

In order to ensure transparency and the full use of the available expertise, the CWG aims in the long term to increase its **interaction with NGAs**. NGAs already play a major role in the CWG teleseminars, and also the Asia-Pacific friendly seminars and in the future, they will be more frequently invited to participate on calls and be consulted on the future work of the CWG. In this context the CWG will ensure that NGAs contribute with ideas and suggestions for projects for the CWG's annual work plan. Traditionally, NGAs are invited to the CWG events, where in principle most of the sessions are open

to NGAs. However, workshop or teleseminar sessions can be confined to agencies, because of the need to ensure an environment in which agencies can speak freely on sensitive topics.

Finally, the Cartel Working Group will also continue to contribute to the broader work of the ICN by a) coordinating with the other ICN working groups and b) cooperating with regional groups, such as the African Competition Forum and other working groups and international organizations, such as OECD. The CWG makes use of the Advocacy & Implementation Network (AIN) to improve promotion and accessibility of the work products.

Merger Working Group response to feedback

The co-chairs of the Merger Working Group (MWG) value the Second Decade feedback and are encouraged that the messages on increased implementation, continued development of Recommended Practices and other guidance, the value of workshops, and the desire to explore new topics of widespread interest are consistent with the MWG's vision. The MWG intends to use the feedback to inform its selection of future work and its open working procedures.

The co-chairs remind that the MWG has produced an extensive range of work products, reinforced and promoted by periodic workshops, relevant to merger enforcement across all ICN members. In its early days, the MWG focused on three fundamentals of merger enforcement: notification, investigation, and analysis. In recent years, MWG work has branched out into issues such as remedies and enforcement cooperation. The format of MWG work spans the range of ICN creativity and member needs, including Recommended Practices, practical guides, informative reports, model language, staff manuals, handbooks and workbooks, teleseminars, and regular workshops that include skills training as well as policy discussions. The MWG has reinforced its work product with comprehensive promotion and implementation efforts, particularly on the two sets of ICN Merger Recommended Practices.

In 2011, the MWG had a WG-wide assessment that identified work areas of greatest interest to members and NGAs. That assessment led to recent work on economic analysis, enforcement cooperation, and remedies. This commitment to pursue work of greatest interest and high relevance continues with the MWG's 2016-2019 work plan

and its focus on **investigative techniques** and **developing reliable evidence**, **training-style workshops**, **implementation of existing work product including those related to remedies and cooperation**, and **revisiting** the sets of **recommended practices** for any needed updates and explanation. The MWG also maintains a **contact list** as part of a framework for cooperation, aimed at connecting interested members and facilitating their case and policy cooperation. Finally, the MWG recognizes the benefits of a streamlined website and will support forthcoming ICN-wide projects related to its revitalization.

The co-chairs also point out that the MWG has dozens of active member agencies and their NGAs and maintains a commitment to outreach efforts to encourage even more **participation**. These efforts have included calls for new members (and new participants) on MWG's existing work, translations of work product, workshop sessions aimed to new members, and teleseminars and workshop sessions conducted in Spanish and French. In its work selection, implementation, and outreach efforts the MWG will continue to ensure that there are no barriers to entry to MWG participation.

Unilateral Conduct Working Group response to feedback

The co-chairs of the Unilateral Conduct Working Group (UCWG) confirms that the UCWG either has implemented or intends to implement many of the suggestions of the Second Decade Survey Report. The co-chairs mention, for example, that the UCWG has significant work product drafted which considers: remedies in unilateral conduct cases; refusals to deal and unilateral conduct in regulated sectors. The UCWG has further completed a number of surveys of international unilateral conduct regimes.

In 2016-2017, the UCWG plans to tackle additional topics suggested by the Second Decade Survey for consideration including the topic "Dominance: what is abuse" by drafting a chapter of the group workbook on **Analytical Framework for Evaluating Unilateral Conduct**. Additionally, the Working Group will prepare an issues paper on the treatment of **vertical restraints** by ICN members. The 2015 ICN Special Project considered online vertical restraints, in particular: the extent to which online vertical restraints are, or should be, prioritised by the ICN membership; whether, and to what extent, existing legal frameworks, investigative tools, and analytical tools in ICN member jurisdictions are able to deal with online vertical restraints effectively; what

recommendations could or should be made by the ICN in relation to online vertical restraints. The UCWG will build upon the Special Project in identifying possible areas of early focus. The issues paper will be supplemented by an interactive webinar or teleconference which will be used to explore key issues arising with ICN members and NGAs. These activities will form the basis of a report and recommendation by the Working Group to the Steering Group on possible future work.

Conclusions

The Second Decade follow-up survey 2015 has confirmed the achievements of the ICN since its founding in 2001 and provided valuable suggestions on how to improve the effectiveness of the network.

The ICN today is a mature network with more than 130 members from 120 jurisdictions. The ICN works closely with other international organisations and is well respected in the international antitrust community.

ICN members acknowledge the positive impact that the ICN had so far in terms of international cooperation and convergence. Members perceive the network as an important tool to articulate international standards, advocate for competition policy in national governments, and promote the competition culture around the world.

ICN work products set standards and have impact on competition law and its application around the world. ICN materials prove to be of great value to all members: they guide agencies in daily work but also inspire changes in laws, procedures, and practices. According to the survey, more than 50% of the responding members have changed their internal agency practices in line with ICN work products, 25% have changed their law on substance and approximately 30% have changed their law with regard to procedure. Finally, more than 50% make use of ICN training materials. The ICN matters because of the impact it has on competition law and competition law enforcement in member jurisdictions.

NGAs also praise the achievements of the ICN: the network fosters dialogue among agencies around the world and produces a considerable amount of practical and useful work products.

Both member agencies and NGAs have provided useful suggestions on how to improve the functioning and the effectiveness of the ICN. Greater focus on implementation and encouraging greater participation from younger agencies were identified as key priorities. The ICN also should foster implementation of ICN work products, in particular of its Recommended Practices and other guidance. The main areas of consideration include:

Operations

- Improve the accessibility to work products and presentation of the ICN's website.
- Promote communication within the network, for example through newsletters and periodic town hall discussions.

Participation

- Encourage more active participation from all members, in particular younger agencies, including project leadership.
- Invite more NGA participation.

New work topics

- Identify gaps in the ICN's work product portfolio and develop new work to fill these gaps.
- New topic suggestions included: online vertical restraints, two- and multi-sided markets, disruptive innovations, joint ventures and non-cartel horizontal agreements, intellectual property, public interest considerations and sector regulation.
- Update existing work, as needed.

Implementation of work product

- Promote implementation with the aim of achieving greater convergence inspired by ICN work.
- Assist individual agencies making changes to their laws and practices.

External engagement

- Leverage the value of ICN work through engagement with other international organizations that address competition.
- Strengthen ICN voice as an advocate for competition principles.

The ICN is constantly striving for progress. Its informal structure, strategic planning, and participatory approach to work are informed by pragmatic self-assessment and aspirational goal setting. Progress has to be considered a constant exercise reflecting the dynamic nature of the network and its work.

The network-wide survey results and discussions that took place in Washington and Singapore serve as a comprehensive stock-taking exercise for future improvement. The present report will inform potential proposals to improve efficacy and efficiency of the ICN in the future. The Steering Group will reflect on the ideas collected through the stock-taking exercise, also taking into account previous network initiatives, existing work, and current work plans for 2016-2019. The decision on whether and how to implement specific proposals will be based on member needs and network goals, taking into account available resources. The need for any structural changes in particular must be carefully evaluated.

At its meeting at the 2016 ICN Annual Conference, the Steering Group agreed to set up an informal group of members to review the stock-taking input and report back to the Steering Group with specific proposals for action. The Steering Group will update the ICN community on the progress of developing and evaluating these proposals.

Annex 1: List of respondents – ICN members survey

| Jurisdiction | Member |
|------------------------|---|
| Algeria | Competition Council |
| Andean Community | General Secretariat of the Andean Community |
| Armenia | State Commission for the Protection of Economic Competition |
| Australia | Australian Competition and Consumer Commission |
| Barbados | Barbados Fair Trading Commission |
| Belgium | Belgian Competition Authority |
| Bosnia and Herzegovina | Bosnia and Herzegovina Council of Competition |
| Botswana | Competition Authority |
| Bulgaria | Commission on Protection of Competition |
| Brazil | Administrative Council for Economic Defense |
| Canada | Competition Bureau |
| Caricom | CARICOM Competition Commission |
| Channel Islands | Channel Island Competition and Regulatory Authorities |
| Chile | Fiscalía Nacional Económica |
| Cyprus | Commission for the Protection of Competition |
| Croatia | Croatian Competition Agency |
| Czech Rep | Office for the Protection of Competition |
| Colombia | Superintendence of Industry and Commerce |
| Denmark | Danish Competition and Consumer Authority |
| Dominican Republic | National Competition Commission |
| Equador | Ecuador Superintendency for Market Power Control |
| Estonia | Estonian Competition Authority |
| El Salvador | Superintendencia de Competencia |
| EU | European Commission, Directorate General for Competition |
| EFTA | European Free Trade Area Surveillance Authority |
| France | Autorité de la concurrence |
| Finland | Finnish Competition and Consumer Authority |
| Germany | Bundeskartellamt |
| Gambia | Gambia Competition and Consumer Protection Commission |
| Georgia | Georgian Competition Agency |
| Greenland | Greenlandic Competition Authority |
| Greece | Hellenic Competition Commission |
| Honduras | Commission for the Defense and Promotion of Competition |
| Hong Kong | Hong Kong Competition Commission |
| Hungary | Hungarian Competition Authority |
| India | Competition Commission of India |
| Iceland | Icelandic Competition Authority |
| Indonesia | Commission for the Supervision of Business Competition |
| Israel | Israel Antitrust Authority |
| Italy | Italian Competition Authority |
| Jamaica | Jamaica Fair Trading Commission |

| | |
|----------------|--|
| Japan | Japan Fair Trade Commission |
| Kenya | Competition Authority of Kenya |
| Korea | Korea Fair Trade Commission |
| Kuwait | Competition Protection Authority |
| Latvia | Competition Council of Latvia |
| Morocco | Competition Council of Morocco |
| Montenegro | Agency for Protection of Competition |
| Mongolia | Authority for Fair Competition and Consumer Protection |
| Malawi | Competition and Fair Trading Commission |
| Moldova | Competition Council of the Republic of Moldova |
| Mexico | Mexican Federal Economic Competition Commission |
| Namibia | Namibian Competition Commission |
| Netherlands | Authority for Consumers and Markets |
| New Zealand | New Zealand Commerce Commission |
| Norway | Norwegian Competition Authority |
| Pakistan | Competition Commission of Pakistan |
| Panama | Consumer Protection and Competition Defense Authority |
| Russia | Russian Federal Antimonopoly Service |
| Switzerland | Competition Commission |
| Singapore | Competition Commission of Singapore |
| Senegal | Commission de la Concurrence |
| Saudi Arabia | Council of Competition |
| Serbia | Commission for Protection of Competition |
| Slovenia | Slovenian Competition Protection Agency |
| South Africa | South African Competition Commission |
| Sweden | Swedish Competition Authority |
| Taiwan | Taiwan Fair Trade Commission |
| Tanzania | Fair Competition Commission |
| Tunisia | Competition Council of Tunisia |
| Turkey | Turkish Competition Authority |
| Ukraine | Antimonopoly Committee of the Ukraine |
| United Kingdom | Competition and Markets Authority |
| USA | U.S. Department of Justice, Antitrust Division |
| USA | U.S. Federal Trade Commission |

Annex 2: List of topics suggested by ICN members

| Topics for future work |
|---|
| Advocacy with judges/Introduction of a judges programme |
| Agency design and efficiency |
| Agreements and/or joint ventures that may have pro-competitive benefits |
| Approaches to market definition |
| Assessing unilateral conduct with reference to dynamic competition and innovation |
| Commitments/Remedies |
| Competition enforcement in oligopolistic markets |
| Competition policy and state-owned enterprises/ state actions |
| Competition rules when dealing with isolated geographic areas |
| Competitive Neutrality |
| Convergence in leniency programs |
| Coordination of fine methodologies |
| Criminalisation of cartels |
| Cross-border merger analysis |
| Damages claims |
| Dealing with confidential and private data in electronic evidence |
| Dealing with digital evidence |
| Dealing with sector regulators |
| Demand estimation models |
| Detection of cartels |
| Effective communication strategies |
| Enhanced cooperation techniques/best practices in anti-cartel enforcement |
| Export Cartels |
| Ex-post assessment of competition agency decisions |
| Forensic computer techniques |
| Guidance on how to overcome barriers to implementation |
| High-technology markets |
| Hostile mergers |
| How to deal with public interest in competition cases |
| How to effectively promote pro-competition policies within government |
| How to overcome barriers to participation |
| In-depth work on abuse of dominance/substantial market power issues |
| Innovation mergers with coordinated effects |
| Intellectual property and competition policy |
| International cooperation |
| Interplay between unilateral conduct and intellectual property |
| Measuring the effectiveness of advocacy activities |
| Mergers in dynamic industries |
| Minority shareholdings |
| Monetary and non-monetary sanctions in cartels |
| Online restraints |
| Pharmaceutical mergers |

| |
|--|
| Policy issues (policy papers or statements etc.) |
| Post-mortem comparisons of relevant cases in multiple jurisdictions |
| Practical solutions related to advocacy |
| Practical tools to facilitate cooperation |
| Practical/investigative skills and developing reliable evidence |
| Preparation and presentation of economic evidence in supporting cartel cases |
| Quantification of a substantial lessening of competition and of efficiencies in mergers |
| Recent developments in relevant economic analysis/tools used in competition assessments |
| Refusal to deal |
| Relationship between competition and consumer welfare |
| Sectors in the ICN economies where competition law is not applicable |
| Successful stories: market studies |
| Successful stories: regulatory interventions |
| Surveys and summaries of international competition regimes concerning unilateral conduct |
| Two-sided, multi-sided markets |
| Unfair competition and misleading advertising |
| Unilateral conduct in regulated sectors |
| Updated Merger- and Cartel Templates |
| Vertical restraints |

Annex 3: List of respondents – NGAs survey

| Country | NGA | Name |
|-----------|--|---------------------------------|
| Australia | Minter Ellison | Russell Miller AM |
| Australia | Clifford Chance | Dave Poddar |
| Barbados | Willoughby and Associates | DeCoursey D. Eversley |
| Belgium | Linklaters LLP | Gerwin Van Gerven |
| Brazil | Mackenzie University Law School / Brazilian Bar Association of Sao Paulo | Vincente Bagnoli |
| Brazil | Advocacia José Del Chiaro | Maurílio Monteiro de Abreu |
| Brazil | Universidade Federal do Rio de Janeiro - Instituto de Economia | Eduardo Pontual Ribeiro |
| Brazil | Go Associados | Ricardo Ferreira Pastore |
| Brazil | TozziniFreire Advogados | Marcelo Calliari |
| Brazil | Vella Pugliese Buosi e Guidoni Advogados | Priscila Brolio Gonçalves |
| Brazil | LCA Consultores | Bernardo Gouthier Macedo |
| Brazil | Levy & Salomão Advogados | Ana Paula Martinez |
| Brazil | Souza Cescon Barrieu e Flesch Advogados | Luciano Inácio de Souza |
| Brazil | Ministry of Development, Industry and Trade | Fernando M. Furlan |
| Brazil | Mattos Filho Advogados | Amadeu Ribeiro |
| Brazil | Lino, Beraldi, Belluzzo e Caminati Advogados | Flavia Chiquito Dos Santos |
| Brazil | Tauil & Chequer Associate to Mayer Brown LLP | Fernanda Duarte Calmon Carvalho |
| Brazil | TozziniFreire Advogados | Daniel Oliveira Andreoli |
| Brazil | Levy & Salomão Advogados | Mariana Tavares De Araujo |
| Canada | Mc Millan | James Musgrove |
| Canada | Goodmans LLP | Cal Goldman |
| Canada | Fasken Martineau Dumoulin | Hny Do |
| Canada | Sauder School of Business, University of British Columbia | Thomas Ross |
| Canada | The Brattle Group | Renée Duplantis |
| Canada | Mc Millan | Guy Pinsonnault |
| Canada | Borden Ladner Gervais LLP | Subrata Bhattacharjee |
| Canada | Bennett Jones (US) LLP | Melanie Aitken |
| EU | Microsoft | Jean-Yves Art |

| | | |
|-------------|--|---------------------|
| EU/UK | Latham & Watkins | Marc Hansen |
| EU | Linklaters LLP | Jonas Koponen |
| EU | Association of in-house competition lawyers | Paolo Palmigiano |
| France | Linklaters LLP | Anne Wachsmann |
| Germany | Hengeler Mueller | Alf-Henrik Bischke |
| Germany | Noerr LLP | Peter Stauber |
| Germany | University of Bonn | Daniel Zimmer |
| Germany | Studienvereinigung Kartellrecht e.V. | Frank Montag |
| Germany | EE&MC / University of Brussels | Doris Hildebrand |
| Italy | Barclays Bank PLC | Simone Pieri |
| Italy | Intesa Sanpaolo S.p.A. | Jacques Moscianese |
| Japan | Mori Hamada & Matsumoto | Kenji Ito |
| Japan | Morrison Forster / Ito & Mitomi | Kei Amemiya |
| Japan | Anderson Mori & Tomotsune | Atsushi Yamada |
| Netherlands | Radicand Economics, Lexonomics, and U.S.E. | Paul de Bijl |
| Netherlands | De Brauw Blackstone Westbroek N.V. Brussels/Amsterdam | Jolling de Pree |
| Russia | Egorov, Puginsky, Afanasiev & Partners / Moscow State Law University | Denis Gavrilov |
| Singapore | Allen & Gledhill | Daren Shiau |
| Singapore | WongPartnership LLP | Ameera Ashraf |
| Switzerland | Homburger AG | Franz Hoffet |
| UK | Freshfields | John Davies |
| UK /EU | Shell International Limited | Anne Riley |
| USA | Walmart | Chuck Webb |
| USA | White&Case | Joseph Angland |
| USA | Heritage Foundation | Alden F. Abbott |
| USA | Gibson, Dunn & Crutcher LLP | Scott Hammond |
| USA | New York University | Eleanor Fox |
| USA | King & Spalding | Wendy Huang Waszmer |
| USA | Sullivan & Cromwell LLP | Joseph Matelis |
| USA | University of Florida | D. Daniel Sokol |

| | | |
|-----|---|--------------|
| USA | American Antitrust Institute | Bert Foer |
| USA | Vinson & Elkins LLP | Billy Vigdor |
| USA | U.S. Chamber of Commerce | Sean Heather |
| USA | Ronald Stern (retired - formerly at General Electric Company) | Ronald Stern |

Annex 4: List of topics suggested by NGAs

| Topics |
|--|
| Application of the Investigative Process Recommendations of May 2015 |
| Approach to fines, damages and other relief when there is potential overlap |
| Articulation of leniency applications in multiple jurisdictions |
| Behavioural and structural remedies: case study guidance |
| Best practices guidance in the field of coordination of investigations and sanctions |
| Best practices on balance between promoting civil redress and protecting leniency programmes |
| Big data |
| Case study guidance on behavioural and structural remedies |
| Competition law guidance in IT sector |
| Compliance issues and priorities |
| Corporate compliance programs: guidance from NCAs |
| Criminalization of cartels and punishment of individuals |
| Due process and investigation |
| Effective evaluation methods of proposed remedies and its costs in merger control |
| Fines calculation |
| Global remedies (or the necessity to have them) |
| Guidance in the field of coordination of investigations and sanctions |
| Guidance on economics applied to competition law |
| Guidelines to information exchange/price signalling |
| How a complex merger case can be dealt with in a phase I investigation |
| Impact of private enforcement on public enforcement |
| Imposition of remedies in unilateral conduct and cartel cases |
| Interface Antitrust and High Tech. |
| Interface between antitrust, data privacy, cyber security and data access |
| Interface between competition law and anti-bribery |
| Interface between competition law and public interest considerations |
| Interface between merger control and foreign investment reviews |
| Interface between public and private enforcement of competition laws |
| Interface between trade and competition |
| Interface of intellectual property rights and competition law |
| Joint ventures |
| Legal privilege in competition investigations |
| New measurements of anticompetitive market distortions and their overall welfare effect |
| Parental liability and fine implications |
| Positive examples of cooperation between NGAs and competition authorities |
| Private enforcement: damage claims, calculation of damages, role of NCAs |
| Principles on inter-agency cooperation in relation to multiagency immunity applications |
| Remedies in unilateral conduct and cartel cases |
| Review of best practices in relation to fining guidelines |
| Review of compliance efforts by NCAs |
| Self-assessment tools for NCAs |
| Series of programs (teleseminars, trainings) looking at key issues specific to a particular industry |

| |
|--|
| Standards for evaluation of collaboration in the context of leniency and settlements |
| State aid and public subsidies |
| State restraints on competition |
| Survey to identify commonalities and differences in immunity/leniency policy |
| Survey to update information on the extent of conversion in approach to monopolisation/abuse cases |
| Treatment of State Owned Enterprises under competition law |
| Vertical restraints (including RPM) |
| Waivers in leniency programs |

Annex 5: Suggested improvements in the ICN's processes – Examples of existing products and initiatives

| Convergence & Implementation | |
|--|---|
| Continue developing Recommended Practices and periodically update them | RP on Competition Assessment MWG update of Merger Remedies Review Report MWG 2016/2017 project of reviewing RP 2013-2014 CWG update of existing Anti-Cartel Enforcement Manual chapter on Drafting and Implementing an Effective Leniency Program UCWG ongoing workbook on the analysis of unilateral conduct |
| Help younger agencies to implement international best practices | AIN/AISUP coordinates this work Self-assessment tools on MWG RPs Twinning project |
| Focus on relevant topics and practical materials that can facilitate soft harmonization | CWG Catalogue on investigative powers, Checklist for an effective and efficient leniency program |
| Develop comparative work to identify differences among jurisdictions and evaluate how to bridge the gaps they create | UCWG comparative conduct reports MWG comparative guidelines reports CWG project on efficient and effective leniency programme CWG webinar series |
| Develop case studies showing the efficiencies and benefits resulting from adopting Recommended Practices | MWG RPs implementation reports MWG Remedies Project |
| Circulate ICN new products and updates directly within the relevant divisions of the agencies | AEWG plan to create a list of trainer contacts for new work distribution |

| | |
|---|--|
| Cooperate more closely with international organizations (UNCTAD, OECD, ICC, BIAC) to increase awareness and promote implementation of ICN work products | ICN / OECD Liaison has the role of coordinating cooperation AWG has had close cooperation with the OECD on the issue of market studies Recent ACF coordination in Paris & Botswana |
| Organise meetings between NCAs and NGAs to discuss the use and/or implementation of the ICN work products | |
| Collect and share successful implementation stories | Implementation stories project during 2015-2016 by CADE |
| Perform self-assessment exercises | MWG self-assessment tools and ongoing exercise on N&P RPs MWG 2013 self assessment tool |

| | |
|---|---|
| Advocacy & ICN's Profile | |
| Develop successful advocacy stories | The benefits platform contains case studies demonstrating successful advocacy stories. Additionally, the ICN / WBG contest project demonstrates successful advocacy initiatives. This is presented in a booklet, a WBG event and at the ICN Annual Conference |
| Cooperate more closely with international organisations like WTO, OECD and UNCTAD | AWG has had close cooperation with the OECD on the issue of market studies Recent joint OECD/ICN survey on cooperation |

| | |
|--|---|
| Promote the interaction between its member agencies and the judiciary, other regulatory agencies, and the legislative bodies | Cooperation with the judiciary was the focus of the 2013 Special Report Interaction with decision makers covered in 2015 Special Project in the context of disruptive innovations. AWG Benefits Platform demonstrates tools and methods to explain benefits of competition to government stakeholders. AWG Market Studies Handbook considers advocacy to government in the context of market studies and also considers interaction with other regulatory bodies in the carrying out of market studies. |
| Publish ad-hoc articles in relevant publications in the competition field in the name of ICN | The ICN has a 'column' in the CPI which presents ICN work in selected areas |
| Mention ICN work products and main ICN achievements at public (non-ICN) events where they intervene as speakers / moderators | 2013 Chair editorial in FT |
| Provide information to business schools, law schools and economic departments about ICN work products | |
| Circulate a newsletter / bulletin with news and developments in the area of competition law enforcement | ICN Blog fulfills the role of promotion of competition issues related to different member agencies. Chair newsletter |

| Cooperation | |
|--|--|
| Increase opportunities for experience sharing and information exchange between younger and more experienced agencies | World Bank - ICN Competition Advocacy Contest |
| Establish a more formalised cooperation via "Twinning Programmes" | |
| Make greater use of ICN Training On-Demand for younger agencies | Presentations in member technical assistance work and at ICN workshops |
| Create up-to-date databases on the ICN website of merger cases, market studies and case law in general | Market Studies have recently been updated on the Information Store. Technical and resource limitations make it difficult to keep a rolling update, and it is also dependent on member agency contributions |
| Create a platform where ICN members could upload (links to) their press releases or decisions | ICN Blog fulfills this purpose |
| Use seminars, workshops, teleseminars and other interactive tools to discuss real cases | See AWG Teleseminar on successful advocacy cases of the first edition of the WB-ICN Contest. In addition, the AWG will discuss a hypothetical competition assessment 'case' at the Annual Conference based on real-life examples. Hypotheticals based on real cases have been the basis for UCWG and other workshops in recent years various MWG, CWG, UCWG webinars |
| Develop case studies showing the efficiencies and benefits resulting from inter-agency dialogue | MWG cooperation guide case studies MWG Remedies Project and International cooperation guidance include such success stories |

| Inclusiveness | |
|--|--|
| Encourage active participation of younger agencies in the ICN activities, including leading projects | AWG has actively involved younger agencies in their project teams, including the benefits project and the market studies handbook Most WGs hold time zone friendly group calls |
| Limit, combine or better distribute workshops throughout the year | |
| Organising joint events with the OECD and other international organizations | ICN has held an annual advocacy contest with the WBG. WBG and ICC also hold pre-ICN events. AEWG workshop in Botswana had the support of the African Competition Network |
| Encourage more involvement of NGAs | CWG webinars, where possible (depending on subject) |
| Organise meetings across all regions | Workshops and Annual Conferences have rotated around different parts of the world. Recent workshops in Botswana, Colombia, Brussels, New Delhi, Cape Town, Istanbul demonstrate variety |
| Encourage exchanges for younger agencies in/with more experienced agencies | |
| Organise trainings for younger agencies | |
| Develop products targeted at young agencies and/or new staff | Core enforcement work product -- MWG, CWG and UCWG each have staff-focused "workbooks" CWG catalogue, checklist, manual chapters. |
| Translate ICN work products in more languages | AWG Competition Assessment RPs were released in 4 languages Many ITOD modules have translated transcripts |

| Operational suggestions | |
|---|--|
| Design a better organised and more user-friendly ICN website | New website is in development |
| Make ICN work products easier to find and track; add cross-references to pre-existing materials | <p>AWG attempts to cross-reference existing AWG and other WG work products where appropriate when publishing new work product</p> <p>MWG webpage has a dedicated page with all work product</p> <p>Dedicated pages on website to ICN Recommendations and ICN cooperation work</p> <p>ITOD modules regularly refer to related existing ICN work</p> |
| Publish ICN work products (or links to them), as well as information on upcoming ICN seminars, on the agencies' website | DG COMP public website has webpage on ICN |
| Increase interaction across all regions, for example via teleseminars and meetings | CWG webinars |
| Update and, eventually, expand the existing materials rather than create new documents | <p>The 2012 Market Studies Handbook is being updated in 2016</p> <p>CWG regularly updates Manual chapters</p> <p>MWG updated its Investigative Techniques Handbook</p> |
| Make available more recorded seminars on the ICN website so that they could be accessible anytime | Some WGs do this for some calls |
| Organise teleseminars to introduce/promote a new/specific workbook | <p>Common practice in WGs</p> <p>CWG webinar series</p> |
| Circulate or re-circulate ICN work products on a regular basis | Blog started a "did you know" series on past work |
| Circulate a newsletter/bulletin with regular updates of published materials | ICN Chair newsletter |
| Involve a broad range of stakeholders when drafting written documents | CWG membership |

| NGA Involvement | |
|--|--|
| Enhance the dialogue between ICN member agencies and NGAs | |
| Better inform NGAs about opportunities to contribute to ICN work products; invite to participate | AWG actively engages NGAs in its work MWG and CWG send regular updates |
| Invite NGAs to submit position papers on specific issues or offline comments to seminars | UCWG has started to introduce position papers in its work on analytical framework. |
| Give a broader range of NGAs the possibility to participate, for example judiciary or government representatives | |
| Send invitation to join calls, workshops and annual conference earlier | WG chair guidance suggests a timeline for sending out this information. |
| Webcasting the annual conference online | |

Annex 6: Suggested topics – Examples of existing products and initiatives

| Advocacy | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|---|------------|---|---|------------------------------------|
| Advocacy with sector regulators (see also cross cutting) | X | <p>Market Studies Handbook covers engaging stakeholders including sector regulators.</p> <p>Advocacy toolkit has case studies covering sector regulators.</p> <p>See also: <i>Competition Advocacy: Case Studies on Regulated Sectors (2010)</i> and <i>Competition Advocacy in Regulated Sectors: Examples of Success (2009)</i> of the Competition Implementation Policy WG and the work of Telecommunications WG 2005-2006</p> | | |
| Advocacy: How to effectively promote pro-competition policies within government | X | <p>Benefits platform</p> <p>See also the slide deck of the AWG Teleseminar on Competition Advocacy with Lawmakers (28 March 2011)</p> | | |
| Advocacy: Measuring the effectiveness of advocacy activities | X | <p>See the slide deck of the AWG Teleseminar on Measuring Competitive Restrictions hold on February 26, 2015.</p> <p>The Advocacy Toolkit gives case studies of agencies' practices with implementing and monitoring advocacy activities, including measuring effectiveness.</p> <p>AWG workshops</p> | X (Part of the ongoing work with the Market Studies Handbook may include discussing agencies' experiences and practices for evaluating market studies). | |

| | | | | |
|--|---|--|--|--|
| Advocacy: Practical solutions related to advocacy | X | Market Studies Handbook Advocacy Toolkit (process and tools) | X (Building an effective advocacy strategy) | |
| Advocacy: successful stories, market studies | X | Market Studies Information Store | X (high-level guiding principles in selecting and conducting market studies) | |
| Advocacy: Successful stories, regulatory interventions | X | ICN / WBG contest project Competition Advocacy in Regulated Sectors: Competition Advocacy Review – Case Studies on Regulated Sectors (2005) | | |

| Cartels | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|--|-------------------|--|-------------------------------------|---|
| Cartel investigation: use of economic evidence | | | | |
| Substantive issues: Atypical cartels | | Webinar series 2013-2014: webinar on atypical cartels | | |
| Substantive issues: Information exchanges | | Webinar series 2013-2014: webinar on exchange of information | | |

| | | | | |
|--|---|--|--|---|
| Cartel investigation: detection | X | Anti-Cartel Enforcement Manual Chapter 4: Cartel Case Initiation (2010) CWG Catalogue on investigative powers Webinar series 2014-2015: webinar on ex-officio cartel investigations; webinar on interview techniques | X Webinar series 2016-2017 on investigative tools and detection methods. Topic for CWG Workshop 2016, especially challenges in electronic evidence gathering. | X |
| Cartel investigation: due process | | Guidance on Investigative Process | Procedural fairness is topic for CWG Workshop 2016 | X |
| Cartel sanctions: criminalisation and non-monetary sanctions | | Webinar on criminalisation (2009) Webinar series 2014-15 on fines: webinar on interplay between criminal and civil/administrative cartel investigations | Relationship between agencies and prosecutors is topic for CWG Workshop 2016 | |
| Leniency: survey on commonalities & differences | | | | X |
| Leniency: use of waivers | X | Leniency Waiver Template and explanatory note (2014), Anti-Cartel Enforcement Manual Chapter 2: Drafting and Implementing an Effective Leniency Program | | |

| | | | | |
|--|---|--|---|---|
| Leniency in multiple jurisdictions | X | Anti-Cartel Enforcement Manual, Chapter 2: Drafting and Implementing an Effective Leniency Program (2014). 2012-2013 Call Series on Leniency: Webinar on "Leniency Considerations in Multi-Jurisdictional Investigations" (2012) | | X |
| Leniency: convergence | X | Anti-cartel Enforcement Manual, Chapter 2: Drafting and Implementing an Effective Leniency Program (2014). | X (checklist for effective leniency programme) Topic for CWG Workshop 2016 | |
| Leniency: interaction with private actions & civil redress | X | 2012-2013 Call Series on Leniency. webinar on " The Interaction Between Leniency Programs and Private Enforcement" (2012) Webinar series 2015-16 "Impact of private enforcement on public anti-cartel enforcement": webinar on the interplay of public and private enforcement in terms of cartel sanctioning and deterrence; webinar on the interplay between private enforcement and leniency policy; webinar on the impact of private enforcement on public anti-cartel enforcement – the perspective of NGAs. | X Webinar series 2016-17 on disclosure and discovery | |
| Cartels: private enforcement; damage claims, role of NCAs | X | Interaction of Public and Private Enforcement in Cartel Cases (2007) Webinar series 2015-16: Webinar on “The interplay of public and private enforcement in terms of cartel sanctioning and deterrence”. | X Webinar 2016-17 on discovery and disclosure | |

| | | | | |
|--|---|--|---|---|
| Cartel fines: calculation | X | Setting of fines for cartels in ICN Jurisdictions (2008) Webinar series 2014-15 on fines: webinar on different types of sanctions and of sanctioning methods used for deterring international cartels; webinar on complementarity and interplay between sanctions imposed by different agencies (agencies only); webinar on specific sanctioning issues relevant to sanctioning of international cartels (agencies only). | X Ongoing: SG1 project on the update of the 2008 report on fine setting | |
| Cartel fines: parental liability | | | | |
| Cartel cooperation: best practices for coordination of investigations | X | Cooperation Between Competition Agencies in Cartel Investigations (2007) Anti-Cartel Enforcement Manual (chapter 9 International Cooperation and Information sharing) | | X |
| Cartel cooperation: sanctions, international overlap and coordination of fines | | Webinar series 2014-15 on fines: webinar on different types of sanctions and of sanctioning methods used for deterring international cartels; webinar on complementarity and interplay between sanctions imposed by different agencies (agencies only); webinar on specific sanctioning issues relevant to sanctioning of international cartels (agencies only). | X Setting of fines and the role of "other enforcement tools" such as alternative case resolution. Topic for CWG Workshop 2016. | |

| | | | | |
|---|---|--|--|--|
| Cartels: corporate compliance | X | Anti-Cartel Enforcement Manual Chapter 8: Cartel Awareness, Outreach and Compliance Chapter Call series on Compliance 2015-2016: Increasing cartel deterrence through compliance programs. Webinar on promoting compliance programs for cartel deterrence; webinar on considering compliance programs in calculating fines (agencies only). | | |
| Practical tools to facilitate cooperation | X | Anti-Cartel Enforcement Manual - Chapter 9: International Cooperation and Information Sharing (2013) Framework for the promotion of the sharing of non-confidential information (2015-) | X On-going: Implementing the ICN framework for the promotion of the sharing of non-confidential information | |
| Updated Cartel Templates | X | Anti-Cartel Enforcement Template | Ongoing | |

| Mergers | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|--|-------------------|----------------------|-------------------------------------|---|
| Merger remedies: Effective evaluation methods of proposed remedies | X | 2005 Remedies Report | X Ongoing Remedies Project | |
| Merger remedies: global remedies | | | X Ongoing Remedies Project | |
| Merger remedies: case studies | | | X Ongoing Remedies Project | |

| | | | | |
|---|---|---|---------------------------------------|---|
| Merger investigation: efficiency in phase I | | | X Ongoing Remedies Project | |
| Merger analysis: quantification of a substantial lessening of competition | | | | |
| Merger analysis: quantification of efficiencies | | 2006 Merger Guidelines Workbook | | |
| Merger Cooperation: cross-border analysis | | ICN/OECD Cooperation Report, MWG Practical Guide to Cooperation | | X |
| Interface between merger control and foreign investment reviews | | | | |
| Hostile mergers | | | | |
| Mergers: innovation mergers and mergers in dynamic industries | | | | |
| Minority shareholdings | | | | |
| Pharmaceutical mergers | | | | |
| Practical tools to facilitate cooperation | X | ICN's Framework for Merger Review Cooperation (2012) & Practical Guide to International Enforcement Cooperation in Mergers (2015) | X (implementation of practical guide) | X (continued implementation of practical guide) |
| Updated Merger Templates | X | Merger Notification and Procedures Template (revised as needed) | X | X |

| Unilateral conduct | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|--|-------------------|--|-------------------------------------|---|
| Dominance: what is abuse | X | UCWG RPs on Dominance Ongoing analytical framework project: Chapters on Exclusionary abuses | X (analytical framework seminars) | |
| Dominance: implementation of RPs, survey on use and convergence | | | X (teleseminars) | |
| Remedies in unilateral conduct cases | X | UCWG teleseminar 2012 Special Project | | |
| Interface between intellectual property and competition policy | | | | |
| Refusal to deal | X | Report on the Analysis of Refusal to Deal with a Rival (2010) | | |
| Surveys and summaries of international competition regimes concerning unilateral conduct | X | UCWG comparative report series on specific conduct Study on objectives of unilateral conduct rules in national competition law/ Chapter 1 on objectives | | |
| Unilateral conduct in regulated sectors (see also cross cutting) | X | RP on state regulated monopolies AERS WG reports, 2004-05 | | |
| UC: dynamic competition and innovation | | | | |

| Cross-cutting and other substantive issues | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|---|------------|--|--|------------------------------------|
| Sectors: programs (teleseminars, training programs) looking at key issues specific to a particular industry | X | 2004-5 AERS WG reports | | |
| Sectors: IT sector and high-technology markets (see mergers and UC) | | Ad hoc teleseminars | | |
| Agreements and/or Joint ventures | | | | X |
| Vertical restraints (including RPM) | X | 2015 Special Project | X UCWG | X |
| Guidelines to information exchange/price signalling | | | | X |
| Guidance on economics applied to competition law | X | MWG Economic evidence chapter E conomist sessions at annual conference | X ICN economists workshop/summit in 2016 | |
| Approaches to market definition | X | ITOD module Chapter of Merger Guidlelines Workbook MWG Merger Analysis RPs UCWG Dominance RPs | | |
| Competition enforcement in oligopolistic markets | | | | |
| Dealing with confidential and private data in electronic evidence | X | Guidance on Investigative Process on confidentiality | | |

| | | | | |
|--|---|---|---------------------------|--------|
| Dealing with digital evidence | X | Anti-Cartel Enforcement Manual - Chapter 3: Digital Evidence Gathering (2014) | X AEWG | |
| Demand estimation models | | | | |
| Forensic computer techniques | X | CWG Anti-Cartel Enforcement Manual Chapter 3 Multiple CWG workshops topic | | |
| Practical/investigative skills and developing reliable evidence | X | MWG Investigative Techniques - Chapter on reliable evidence | X MWG to revisit chapter | |
| Two-sided, multi-sided markets | | Past UCWG teleseminar | | |
| Due process and investigation (see also cartels) | X | ICN Guidance on Investigative Process | XAEWG implementation work | |
| Agency design and efficiency | X | Agency Practice Manual, various institutional issues | X AEWG | X AEWG |
| Ex-post assessment of competition agency decisions, including relevant cases in multiple jurisdictions | X | Part of AEWG report on evaluation, impact assessment | | |
| Review of compliance efforts by NCAs (see also cartels) | | AWG annual conference breakouts | | |
| Interface between public and private enforcement of competition laws (see also cartels) | X | CWG report on private/public enforcement interaction | | |

| Other issues | Available? | Work Product | In current 3 year work plan? | To be considered for future plans? |
|---|------------|--|------------------------------|------------------------------------|
| Legal privilege in competition investigations | X | AEWG Investigative Process Guidance | | |
| State aid and public subsidies | | 2014 Special Proejct | | X |
| State restraints on competition | X | 2014 Special Proejct Current ITOD module Past CB/CPIWG reports on advocacy AERS report on state action AWG Benefits project RP on state regulated monopolies Town Hall conference call | | X |
| Competitive neutrality | | 2014 Special Proejct | | X |
| Interface between competition law and anti-bribery | | | | |
| Interface between competition law and consumer welfare | X | Report on Competition Enforcement and Consumer Welfare (2011) | | |
| Competition rules when dealing with isolated geographic areas | X | 2009 Special Project | | |
| Measurements of anticompetitive market distortions and overall welfare effect | X | AWG RPs on competition assessment See the slide deck of the AWG Teleseminar on Measuring Competitive Restrictions hold on February 26, 2015 | | |

| | | | | |
|---|---|--|---|---|
| Self-assessment tools for NCAs | X | MWG self assessment tools for both sets of RPs | X AEWG implementation work on Investigative Process | |
| Positive examples of cooperation between NGAs and competition authorities | X | MWG Investigative Techniques chapter on private sector perspectives Included in International Merger Enforcement Cooperation Guidance | | |
| Treatment of State Owned Enterprises under competition law | X | 2014 Special Project UCWG report and RPs on state created monopolies AERS report on state action | | X |
| Advocacy with judges/Introduction of a judges programme | X | CPIWG 2006-07 Judiciary Reports 2013 Special Proejct and follow-up teleseminars | | |
| Competitive neutrality | | | | |
| Interface between competition law and consumer welfare | | | | |
| Interface between competition law and public interest considerations | | Town hall teleseminar | | |
| Unfair competition and misleading advertising | | | | |

| | | | | |
|---|--|--|--|--|
| Interface between antitrust, big data, data privacy, cyber security and data access | | | | |
| Interface between trade and competition | | | | |
| Export cartels | | | | |

